

**(2008) 09 MP CK 0005**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No's. 590 of 2001 and 1534 of 2003**

Yashwant Singh Sikarwar

APPELLANT

Vs

Teresian Carmel Educational Society and others

RESPONDENT

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**Date of Decision : 17-09-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 12, 136

**Citation : (2008) 4 MPLJ 611**

**Hon'ble Judges : S.C. Sharma, J**

**Bench : Single Bench**

**Advocate : U.P.S. Chouhan, for the Appellant; K.N. Gupta with S.N. Gajendragadkar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.C. Sharma, J.

Regard being had to the similitude of the controversy involved in both the writ petitions they were heard analogously together and disposed of by this singular order. For the sake of convenience, the facts stated in Writ Petition 590 of 2001 are exposted herein.

The petitioner before this Court who was a teacher working at Carmel Convent School has filed this present petition challenging the order of Management dated 01st January, 2001, by which, he was informed that he shall be retired on completing 58 years of age on 1st February, 2001. The contention of the petitioner is that respondent No. 1- society, is a registered society under the provisions of Societies Registrikaran Adhiniyam, 1973 and is running a school in the name and style Carmel Convent Senior Secondary School, Gwalior. It has been further contended that the school in question is affiliated to the Central Board of Secondary Education, New Delhi and the society as well as the school as per terms and conditions of affiliation are liable to follow the regulations framed by the Central Board of Secondary Education. It has been further stated by the

petitioner that the byelaws of the Central Board of Secondary Education provides that a school which is affiliated with the Central Board of Secondary Education shall also frame rules in consonance with the Service Rules which are applicable in respect of employees of aided and unaided schools of the State Government/ Union territories. It has been further contended by the petitioner that in the State of Madhya Pradesh retirement age of a teacher in the school of the State Government is 62 years and, therefore, as per byelaws of the Central Board of Secondary Education, he is entitled for continuance upto the age of 62 years. The petitioner has, thus, prayed for quashing of the notice dated 1st January, 2001 and also the subsequent order dated 31-1-2001, by which, he has been superannuated from services on completion of 58 years of age on 1-2-2001 and also prayed for pay and allowances along with reinstatement in service.

The respondent No. 1 to 4 have filed a reply and it has been stated that Carmel Convent School is a private school which is being run by respondent No. 1- society and which is not receiving any financial aid from the Central Government or from the State Government. It has been further stated that the institution does not fall within the meaning of "State" as defined under Article 12 of the Constitution of India and, therefore, is not amenable to writ jurisdiction by this Court. Not only this, the respondents have relied upon a judgment delivered by this Court in the case of Lal Singh vs. The Chairman, School Administration Board, B.S.F. Tekanpur, Gwalior, M.P. No. 996/1991, wherein, in similar circumstances, where a school was being run by a society not receiving grant-in-aid was impleaded as one of the respondent and it has been held by this Court that such an institution is a private body and therefore no writ lies against a private body.

The petitioner has subsequently filed a rejoinder and it has been stated in the rejoinder that the institution in question as it is discharging the public duties is certainly amenable to writ jurisdiction of this Court. The petitioner has relied upon a judgment delivered by this Court in the case of Narendra Pal Singh vs. M.P. Dugdh Mahasangh, Bhopal, reported in 1993 (2) M.P.J.R. 20. It has been further contended that the Carmel Convent School is affiliated with the Central Board of Secondary Education and as per byelaw 30, petitioner is entitled for continuance upto the same age at par with the employees of aided/unaided schools of the State of Madhya Pradesh. The petitioner has also relied upon a judgment delivered by this Court in W.P. No. 1273 of 1997, Smt. Nirmalal Gangajaliwale vs. Management of Carmel Convent School, Gwalior decided on 27th July, 2001, wherein the similar institution was held to be amenable writ jurisdiction by this Court.

Heard learned counsel for the parties at length and perused the record.

In the present case, the dispute is regarding continuance of the petitioner who is an employee of the Carmel Convent School, a school which is being run by a society registered under the Societies Registrikaran Adhiniyam, 1973. It is not in dispute that the institution is not receiving grant-in-aid either from the State

Government or from the Central Government. The institute is certainly affiliated with the Central Board of Secondary Education, New Delhi. The learned counsel for the petitioner has filed a judgment delivered by this Court in W.P. No. 1273 of 1997 decided on 27th July, 2001. By the aforesaid order passed by this Court, another Writ Petition i.e. W.P. No. 792 of 1999, Miss Malini Karkhedkar vs. Teresian Carmel Educational Society and others has also been decided. A Writ Appeal was preferred against the judgment dated 27th July, 2001 passed in W.P. No. 1273 of 1997 and a Division Bench of this Court placing reliance to the judgment delivered by the Apex Court in the case of K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, has held that a writ can be issued against an unaided educational institution which is indulged in imparting education as it is discharging the public duties. It has been further held that writ against such institution is maintainable before this Court. Paragraph 16 of the aforesaid order passed by this Court in Writ Appeal No. 166 of 2006 read as under:--

16. The Apex Court in the case of K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, has laid down that writ can be issued against an unaided educational institution which is indulged in imparting education as it is discharging the public duties. In the present appeals, the appellant is imparting education. Thus, the element of public duty is present and therefore in view of the aforesaid judgment of the Apex Court, is amenable to writ jurisdiction and writ petition lies against the present appellants.

The respondent/society being aggrieved by the order passed by the Division Bench of this Court in the Writ Appeal has preferred a SLP before the Apex Court and the Hon'ble Supreme Court keeping in view the fact that the employee therein has already attained age of 60 years and also keeping in view the fact that the Division Bench has not granted back wages to the employee therein, has declined to interfere with the order passed by the Division Bench of this Court in the Writ Appeal. However, the question of law was left open. The following order dated 29-8-2008 was passed in SLP (Civil) No. 20417-20418/2008.

As the employee has already reached the age of 60 years and the Division Bench has stated that she will not be entitled to any backwages, we do not consider this a fit case for interference under Article 136 of the Constitution. We, therefore, dismissed the petitions leaving open the question of law.

Learned counsel for the respondent/society has also brought to the notice of this Court an order passed in Civil Appeal No. 8783/8784 of 2003, dated July 19, 2007, S.K. Varshney vs. Principal, Our Lady of Fatima H.S.S. and ors., in which, again dispute was regarding retirement age of a teacher working in an unaided institution. The Apex Court while dismissing the appeal preferred by the employee has held as under:

Both the petitions were dismissed by the learned single Judge on the ground that no writ would lie against unaided private institutions and the writ petitions were

not maintainable.

Aggrieved thereby, writ appeals have been filed before the Division Bench without any result. The Division Bench held that the writ petitions are not maintainable against a private institute. Aggrieved thereby, these appeals have been filed.

Counsel for the appellant relied on a decision rendered by this Court in *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, . He particularly relied on the observation made by this Court in paragraph 4 of the order that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226.

This Court in *Sushmita Basu and Others Vs. Ballygunge Siksha Samity and Others*, in which one of us (Sema, J.) is a party, after considering the aforesaid judgment has distinguished the ratio by holding that the writ under Article 226 of the Constitution against a private educational institute would be justified only if a public law element is involved and if it is only a private law remedy no writ petition would lie. In the present cases, there is no question of public law element involved inasmuch as the grievance of the appellants are of personal nature. We, accordingly, hold that writ petitions are not maintainable against the private institute. There is no infirmity in the order passed by the learned single Judge and affirmed by the Division Bench. These appeals are devoid of merit and are, accordingly, dismissed. No costs.

The order passed by the Apex Court makes it very clear that in case of retirement and in case of termination, no public law element is involved. The Apex Court has held that a writ under Article 226 of the Constitution of India against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies. In the present writ petition, the petitioner is claiming continuance in service beyond 58 years of age and, therefore, there is no question of public law element involved inasmuch as the grievance of the petitioner is of personal nature.

Keeping in view the judgments delivered by the Apex Court in the aforesaid cases, the present writ petition is not at all maintainable against the respondent/society as the respondent No. 1/society i.e. Carmel Convent School is a private institution not receiving grant-in-aid either from the State Government or from the Central Government. Resultantly, as the petitions are not maintainable before this Court, the same are hereby dismissed. No order as to costs.