

Sr. No.89

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**SWP No. 1597/2017**

**IA No. 1/2017**

Sunita Wali

.....Appellant(s)/Petitioner(s)

Through: Mr. C. M. Koul, Sr. Advocate with  
Mr. A. R. Bhat, Advocate.

**Vs**

UOI and others

..... Respondent(s)

Through: None.

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**ORDER (ORAL)**

1. The petitioner was initially engaged as Village Secretary by the Non-Governmental Organization/Society i.e. the respondent No. 3 in the month of March 1998 and was subsequently promoted as Senior Co-Worker (FSP). The services of the petitioner came to be terminated vide order dated 23.03.2017 issued by the respondent No. 3, which prompted the petitioner to file the present writ petition for issuing the writ in the nature of 'Certiorari' for quashing the order dated 23.03.2017 issued by the respondent No. 3 and also the charge-sheet and the proceedings pursuant thereto. The petitioner also prayed for quashing the order dated 04.05.2017, by virtue of which the appeal of the petitioner came to be rejected and finally the petitioner has prayed for directing the respondents to permit the petitioner to join back her service and perform her duties.

2. Response stands filed by the respondent No. 6 stating therein that the respondent-NGO is an independent, Non-Governmental, Social Development Organization, which provides family-based care for parentless and abandoned children in various parts of India. A preliminary objection in respect of maintainability of the writ petition has been raised, stating thereby that the respondent-society is neither discharging any Government function nor having any monopolistic character. The respondent No.3 is not financially, functionally and administratively dominated or under the control of Government in any manner. The respondent Nos. 1 and 2 have been intentionally made parties to the writ petition with sole purpose to invoke the writ jurisdiction.
3. Mr. C. M. Koul, learned senior counsel appearing on behalf of the petitioner strenuously argued that the present writ petition is maintainable, in view of the activities of the respondent-society. He further submits that the element of public law is involved in the present writ petition, as such, the petitioner is well within her right to maintain a writ petition under Article 226 of Constitution of India. He has placed much reliance upon the judgment of Hon'ble the Supreme Court in cases titled **M/s Zee Tele Films Ltd. and another Vs. Union of India and others** reported as **AIR 2005 SC 2677** and **Marwari Balika Vidyalaya Vs. Asha Srivastva and others** reported as **(2020) 14 SCC 449**.
4. Heard and perused the record.
5. It is urged by the petitioner that the respondent Nos. 1 & 2 are closely monitoring the activities of the respondent society and in view of the fact that the respondent-society is discharging the public duties, the writ

petition would be maintainable. In this context, it would be appropriate to take note of the principles culled out by the Hon'ble Supreme Court for the purpose of entertaining writ petition against an Institution or body involved in the functions of discharging public duties, in case, titled, "**St. Mary's Education Society and another Vs. Rajendra Prasad Bhargava and others**", 2022 SCC Online SC 1091, which are reproduced as under:

**“68.** We may sum up our final conclusions as under:-

(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

(b) Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(c) It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public

duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognized as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

(d) Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

(e) From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character."

6. In view of law laid down by the Hon'ble Apex court, it is clear that even if the Institution or the body is discharging public functions/duty but if the act complained of has no nexus with the discharge of public functions/duty, then the action of the Institution/body may not be amenable to the writ jurisdiction.
7. The petitioner through the medium of present petition has impugned the charge sheet and the order of her termination. In the whole writ petition, the grievance projected by the petitioner is in respect of the disciplinary proceedings and the consequential order of termination passed by the

respondent No. 3 and this Court does not find any issue of public law involved in the present writ petition. The cause projected by the petitioner is in fact a private dispute between the employer and the employee qua the contract of service and the petitioner has not been able to demonstrate any statutory violation by the respondent-society, which may warrant indulgence by this Court. The Hon'ble Supreme Court in case titled "**St. Mary's Education Society and another**" (supra) has held that it is only when the removal of an employee is regulated by some statutory provisions, its violation by the employer may be interfered by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty. The judgment relied upon by the learned senior counsel for the petitioner in **Marwari Balika Vidyalaya Vs. Asha Srivastva and others (supra)**, is not applicable in the present facts and circumstances of the case. This judgment has been taken note of by the Hon'ble Supreme Court in "**St. Mary's Education Society and another**" but has been distinguished. On the same ground, it is distinguishable in the present case as well, as the action of terminating the services of the petitioner by the respondent-society is not to be approved by State.

8. At this stage, Mr. C. M. Koul, learned counsel for the petitioner submits that the petitioner is entitled to certain service benefits as well as her own deposits lying with the respondent-society.
9. Without commenting upon the merits of the claim of the petitioner, it is provided that the petitioner shall be at liberty to approach the respondent-society for redressal of her grievance in respect of payment of her service

benefits and her own deposits, if any. In the event, the petitioner approaches the respondent-society for redressal of her grievances as mentioned above, the respondent-society shall consider the same and proceed in accordance with law.

**10. Disposed of.**

**(RAJNESH OSWAL)  
JUDGE**

**Jammu**  
01.09.2023  
*Sahil Padha*

Whether the order is speaking: Yes/No.  
Whether the order is reportable: Yes/No.

