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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 18.02.2025

\+ **W.P.(C) 15997/2024, CM APPL. 67225/2024, 72263/2024, 5411/2025**

JAYATI MOZUMDAR .....Petitioner

Through: Ms. Indrani Ghosh, Ms. Shobhana Takiar & Mr. Kuljeet Singh, Advocates.

versus

MANAGING COMMITTEE SRI SATHYA SAI VIDYA VIHAR & ANR. .....Respondents

Through: Mr. Sudarshan Rajan, Mr. Amit Anand & Mr. H. Bajaj, Advocates for R-1.
Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi & Ms. Kanika Tyagi, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J (ORAL)

W.P.(C) 15997/2024 & CM APPL. 5411/2025 (*for directions*)

1. The petitioner, who was appointed as a Post-Graduate Teacher in Chemistry in the respondent No.1-School ["the School"], has filed this petition under Article 226 of the Constitution, seeking re-employment until 30.04.2025 in terms of the proviso to Rule 110(2) of the Delhi School Education Act and Rules, 1973 ["the Rules/DSEAR"].

2. The petitioner was appointed to the said post on 20.07.1998. Even

though such a stipulation was perhaps unnecessary, the appointment letter[1] contained an express provision that the terms and conditions of her appointment are governed by DSEAR.

3. The present case concerns the retirement age stipulated in Rule 110 of the Rules. The relevant provision is Rule 110(2), which is set out below:-

> *"**110. Retirement age.** – xxxx xxxx xxxx*
> *(2) Notwithstanding anything contained in sub-rule (1), every teacher, laboratory assistant, Librarian, Principal or Vice-Principal employed in such school **shall continue to hold office until he attains the age of 60 years:***
> ***Provided that where a teacher, Principal or Vice-Principal attains the age of superannuation on or after the 1st day of November of any year, such teacher, Principal or Vice-Principal shall be re-employed upto the 30th day of April of the year immediately following**.[2]"*

4. The petitioner attained the age of 60 years on 30.11.2024. In terms of the proviso to Rule 110(2), she addressed a representation to the Officiating Principal of the School on 27.10.2024, seeking re-employment until 30.04.2025. She made a further representation on 14.11.2024[3], after receiving a communication dated 04.11.2024[4], stating that she would superannuate on 30.11.2024.

5. I have heard Ms. Indrani Ghosh, learned counsel for the petitioner, and Mr. Sudarshan Rajan, learned counsel for the School.

6. The only objection taken by Mr. Rajan concerns maintainability of the petition under Article 226 of the Constitution. He submits that the judgments of the Supreme Court in *St. Mary's Education Society and*

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[1] Annexure P-2 to the writ petition.
[2] Emphasis supplied.
[3] Annexure P-5 to the writ petition.
[4] Annexure P-4 to the writ petition.

Anr. v. Rajendra Prasad Bhargava And Ors.,[5] and *Army Welfare Education Society, New Delhi v. Sunil Kumar Sharma & Ors.*[6], make it clear that service matters regarding private unaided schools are not amenable to the writ jurisdiction of the Court.

7. The discussion on this aspect, and the conclusions of the Court, are contained in the following extracts of the judgment in *St. Mary's*[7]*:-*

> *"**54. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution 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.***
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> *xxxx xxxx xxxx*
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> *66. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law. **It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction** irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.*
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> *xxxx xxxx xxxx*
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> *75. We may sum up our final conclusions as under:*
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> ***75.1. 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***

[5] (2023) 4 SCC 498.
[6] 2024 SCC OnLine SC 1683.
[7] Supra (Note 4).

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.

75.2. 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.

75.3. 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 recognised 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.

75.4. Even if it be perceived that imparting education by private unaided 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 with 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.*
> *75.5. 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."*[8]

The judgment in *Army Welfare Education Society*[9] is based upon earlier authorities of the Supreme Court, including *St. Mary's*[10].

8. It is clear from the above decision that, if service conditions are governed by statute, and the institution is discharging a public function, a writ would lie against it in respect of such service conditions.

9. *St. Mary's*[11] has also been considered in the Division Bench decision of this Court in *Bharat Mata Saraswati Bal Mandir Senior Secondary School v. Vinita Singh and Others*[12]. The Court has held that in a situation where the service conditions are governed by statute, the judgment in *St. Mary's*[13] itself carves out an exception, in which the writ remedy is available.

10. In the present case, the relief sought by the petitioner is directly in terms of DSEAR. Rule 110(2) provides for the retirement age, and its proviso contemplates re-employment, as sought by the petitioner. In my view, therefore, the exception referred to in *St. Mary's*[14] is clearly

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[8] Emphasis supplied.
[9] Supra (Note 5).
[10] Supra (Note 4).
[11] Supra (Note 4).
[12] 2023 SCC OnLine Del 3934.
[13] Supra (Note 4).
[14] Supra (Note 4).

applicable, and the preliminary objection is rejected.

11. As far as the petitioner's entitlement to re-employment under Rule 110(2) proviso is concerned, Mr. Rajan readily accepts that she is so entitled.

12. In the facts and circumstances aforesaid, the petition is allowed. The School is directed to re-employ the petitioner until 30.04.2025, with all consequential benefits, including salary and emoluments from 01.12.2024. The arrears be paid within four weeks from today.

13. The purpose of proviso to Rule 110(2) is evidently to prevent disruption in the teaching of students in the midst of the academic year. The effect of the action of the School is that such disruption has already occurred. Ms. Ghosh makes it clear that the petitioner does not wish to precipitate further disruption, by insisting upon disturbing the arrangements that have since been made for teaching in the School. However, she will report to the School from Monday, i.e., 24.02.2025, and be available for such duties as the School may assign to her, commensurate with her position.

14. I find it difficult to appreciate that the School has compelled a teacher, who has served in the School for 26 years, to approach the Court for a relief, which the Rules directly mandate. Before this Court also, the only contest has been to the choice of remedy, rather than to the petitioner's right to relief. It is unfortunate that the petitioner has had to litigate for such relief at the fag end of a long career. I, therefore, consider this a fit case for imposition of costs.

15. The writ petition is allowed in the aforesaid terms, with costs of ₹25,000 payable by the School to the petitioner, within four weeks. The

pending applications are disposed of.

PRATEEK JALAN, J

FEBRUARY 18, 2025
'*pv/Jishnu*'/