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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6501 of 2021

In the matter of an application under Articles 226 and 227 of the Constitution of India.

....

Rahul Mahapatra .... **Petitioner**

-versus-

State of Odisha and Others .... **Opposite Parties**

For Petitioner : Mr. S.S. Tripathy, Advocate

For Opp. Parties : Mr. A. Tripathy, AGA
Mr. S.S. Das, Sr. Advocate
along with
Ms. S. Das, Advoate
(for O.P. No.3)

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:14.05.2026 and Date of Judgment:09.07.2026

Biraja Prasanna Satapathy, J.

1. Heard Mr. S.S. Tripathy, learned counsel appearing for the petitioner, Mr. A. Tripathy, learned Addl. Govt. Advocate for the State and Mr. S.S. Das, learned Senior Counsel appearing along with Ms. S. Das, learned counsel for the Opp. Party No.3.

2. Even though the present Writ Petition has been filed *inter alia* challenging order dated 21.01.2021, so passed by Opp. Party No.3 under Annexure-1, but since a preliminary objection was raised by the learned Senior Counsel appearing for the Opp. Party No.3, with regard to maintainability of the Writ Petition against Opp. Party No.3, the matter was heard at length on the question of maintainability by this Court. Therefore, prior to dealing with the matter on merit, this Court is inclined to decide the question of maintainability of the Writ Petition as against Opp. Party No.3.

3. Learned Senior Counsel appearing for Opp. Party No.3, while raising the question of maintainability, contended that Opp. Party No.3 though is a Corporation, but it was incorporated for a Special Purpose and registered as a Public Company, in terms of the provisions contained under Section-3 of the

Companies Act, 1956. Section 3 of the Act reads as follows:-

> ***"3. DEFINITIONS OF "COMPANY", "EXISTING COMPANY", "PRIVATE COMPANY" AND "PUBLIC COMPANY"***
>
> *(1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company", shall, subject to the provisions of sub-section (2), have the meanings specified below : -*
>
> *(i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii);*
>
> *(iii) "private company" 1[means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by is articles, -]*
>
> *[3] [(iv) "public company" means a company which- (a) is not a private company;*
>
> *(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;*
>
> *(c) is a private company which is a subsidiary of a company which is not a private company.]."*

3.1. It is further contended that incorporation of the Company became imperative for the purpose of creating, nurturing and developing a knowledge-led economy, a knowledge-based communities across the urban, rural and tribal regions of the State. Not only that in order to have the information collected and disseminated globally through the ICT, the department of Higher Education, Govt. of Odisha in collaboration with Maharashtra Knowledge Corporation Limited being the promoters, agreed for the formation of a joint venture Company and accordingly Opp. Party No.3 was incorporated as a Public Limited Company and not as a Government Company.

3.2. It is also contended that since State was a promoter with regard to formation and incorporation of Opp. Party No.3 as a Public Limited Company, Chief Secretary of the State became the Chairman of the Company. Not only that since the Department of Higher Education was the promoter and shareholder on behalf of the State, the Company was placed under the Administrative Control of the Department of Higher Education, which ultimately got transferred to the Electronics and Information Technology Department w.e.f.13.12.2019. In view of such transfer of the Administrative Control w.e.f. 13.12.2019, w.e.f. 18.02.2020, Secretary of E and I.T. Department became the Chairman of the Company.

3.3. Learned Senior Counsel vehemently contended that since Opp. Party No.3 is registered as a Public Limited Company in terms of the provision contained U/s.3 of the Companies Act, 1956 and as not a Government Company and it has its own Human Resource Policy and not governed by any policies or law, which is binding on any Government Company, the writ petitioner at the instance of the petitioner challenging an order passed by Opp. Party No.3, is not maintainable as no writ can be issued to Opp. Party No.3, being a Public Limited Company.

3.4. It is also contended that since Opp. Party No.3 was incorporated as a Public Limited Company, neither the Higher Education Department of the State of Odisha nor Maharashtra Knowledge Corporation Limited being the shareholders, have any Controlling Power over the day to day affairs of the Opp. Party No.3.

3.5. It is also contended that as provided under Section-179 of the Companies Act, 2013, which is a parametria provision as like Section-291 of the Companies Act, 1956, the Board of Directors of the Company are entitled to exercise all such powers and to do all such acts and things, as the Company is authorised to exercise and do. It is accordingly contended that since Opp. Party No.3 is a Public Limited Company, Opp. Party No.3 is neither a State in terms of the provisions contained under Article-12 of the Constitution of India nor any authority coming within the provisions of Art-226 of the Constitution of India, where prerogative writs can be issued by this Court.

3.6. It is also contended that Opp. Party No.3 is not performing any public duty and the same is evident from the Memorandum of Association of the company so enclosed to the Additional Affidavit filed by the petitioner.

3.7. Since Opp. Party No.3 is not rendering any public duty, the Writ Petition so filed by the petitioner against the impugned order so issued by Opp. Party No.3, is not maintainable. In support of such submission, reliance was placed to the following decisions of the Hon'ble Apex Court:-

> ***"1. AIR 1992 SC 76 (Chandar Mohan Khanna Vs. NCERT)***
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> ***2. (2024) 16 SCC 598 (Army Welfare Education Society Vs. Sunil Kumar Sharma and Ors.)"***

3.8. Hon'ble Apex Court in the case of ***Chandar Mohan Khana*** in Para-2, 3, 5 and 6 has held as follows:-

> **"2.** *There are only general principles but not exhaustive tests to determine whether a body is an instrumentality or agency of the government. Even in general principles, there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the government and those which are not. The powers, functions, finances and control of the government are some of the indicating factors to answer the question whether a body is "State" or not. Each case should be handled with care and caution. Where the financial assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the government, it would afford some indication of the body being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. If the*

functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor. These are merely indicative indicia and are by no means conclusive or clinching in any case (see (i) Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi [(1975) 1 SCC 421 : 1975 SCC (L&S) 101] ; (ii) R.D. Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : AIR 1979 SC 1628] ; (iii) Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] and (iv) Som Prakash Rekhi v. Union of India [(1981) 1 SCC 449 : 1981 SCC (L&S) 200]).

3. *Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control, however vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". If the government operates behind a corporate veil, carrying out governmental activity and governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution. (See: (i) P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214] ; (ii) Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429] and (iii) Tekraj Vasandi @ K.L. Basandhi v. Union of India [(1988) 1 SCC 236 : 1988 SCC (L&S) 300 : (1988) 2 SCR 260] .)*

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5. *The object of the NCERT as seen from the above analysis is to assist and advise the Ministry of Education and Social Welfare in the implementation of the governmental policies and major programmes in the field of education particularly school education. The NCERT undertakes several kinds of programmes and activities connected with the coordination of* *research extension services and training, dissemination of improved educational techniques, collaboration in the educational programmes. It also undertakes preparation and publication of books, materials, periodicals and other literature. These activities are not wholly related to governmental functions. The affairs of the NCERT are conducted by the Executive Committee comprising government servants and educationists. The Executive Committee would enter into arrangements with government, public or private organisations or individuals in furtherance of the objectives for implementation of programmes. The funds of the NCERT consist of: (i) grants made by the government, (ii) contribution from other sources and (iii) income from its own assets. It is free to apply its income and property towards the promotion of its objectives and implementation of the programmes. The government control is confined only to the proper utilisation of the grant. The NCERT is thus largely an autonomous body.*

6. *Almost a similar case was considered by this Court in Tekraj Vasandi @ K.L. Basandhi v. Union of India [(1988) 1 SCC 236 : 1988 SCC (L&S) 300 : (1988) 2 SCR 260] . This Court was required to determine whether the Institute of Constitutional and Parliamentary Studies (ICPS) was State under Article 12. The ICPS was a registered society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the society was the then Speaker of the Lok Sabha. Out of the five Vice-Presidents three were the then Central ministers; the other two were the then Chief Justice of India and the Attorney General. The objects of the society were to provide for constitutional and parliamentary studies, promotion of research in constitutional law, setting up of legislative research and reference service for the benefit of legislators, organisation of training programmes in matters of parliamentary interest and importance and publication of a journal. The Court found that ICPS was born as a voluntary organisation. It found further that though the annual financial contribution from the State was substantial, it was entitled to receive aid from the public and in fact, received contributions from other sources. Its objects were not governmental business. As regards the argument that the government exercised pervasive control over ICPS, the Court said: (SCC p. 257, para 20)*

"In a Welfare State … governmental control is very pervasive and in fact touches all aspects of social

existence …. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

3.9. Hon'ble Apex Court in the case of ***Sunil Kumar Sharma*** in Para-35, 41, 42, 45 to 48, 50 to 52, 55 to 57 has held as follows:-

*"**35.** We begin with the decision of this Court in Vaish Degree College v. Lakshmi Narain [Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58 : 1976 SCC (L&S) 176 : AIR 1976 SC 888] . This is one of the landmark decisions of this Court as this case discussed and considered all the previous decisions and the same has been referred to and relied upon by this Court till this date. This Court held that a contract of personal service cannot ordinarily be enforced specifically. Three exceptions were set out as well recognised: (1) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (2) where a worker is sought to be reinstated under the Industrial law; (3) where a statutory body acts in breach or violation of the mandatory provisions of the statute. A statutory body was defined in that case as one which was created by or under a statute and owed its existence to a statute. It was held that an institution governed by certain statutory provisions for its proper maintenance and administration would not be a statutory body. The test prescribed was whether the institution would exist in the absence of a statute.*

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__41.__ If the authority/body can be treated as "State" within the meaning of Article 12 of the Constitution of India, then in such circumstances, it goes without saying that a writ petition under Article 226 would be maintainable against such an authority/body for the purpose of enforcement of fundamental and other legal rights. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of the High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs *to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

42. *So far as Article 12 of the Constitution is concerned, the "State" includes "all local and other authorities within the territory of India or under the control of the Government of India". The debate on the question as to which body would qualify as "other authority" and the test/principles applicable for ascertaining as to whether a particular body can be treated as "other authority" has been never ending. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), a writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be "State" under Article 12. Power is extended to issue directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also "for any other purpose". Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject-matter which can be dealt with under this Article is also wider in scope.*

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45. *In Andi Mukta Sadguru [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] , dispute arose between the Trust which was managing and running science college and teachers of the said college. It pertained to payment of certain employment related benefits like basic pay, etc. The matter was referred to the Chancellor of Gujarat University for his decision. The Chancellor passed an award, which was accepted by the University as well as the State Government and a direction was issued to all affiliated colleges to pay their teachers in terms of the said award. However, the aforesaid Trust running the science college did not implement the award. Teachers filed the writ petition seeking mandamus and direction to the Trust to pay them their dues of salary, allowances, provident fund and gratuity in accordance therewith. It is in this context an issue* *arose as to whether the writ petition under Article 226 of the Constitution was maintainable against the said Trust which was admittedly not a statutory body or authority under Article 12 of the Constitution as it was a private trust running an educational institution. The High Court held that the writ petition was maintainable and the said view was upheld by this Court in the aforesaid judgment.*

46. *The discussion which is relevant for our purposes is contained in paras 15 to 20 of Andi Mukta Sadguru [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] . However, we would like to reproduce paras 15, 17 and 20, which read as under: (Andi Mukta Sadguru [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] , SCC pp. 698-700)*

"15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellant Trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating university. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [See, The Evolving Indian Administrative Law by M.P. Jain (1983), p. 226.] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

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17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means every body which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue writs "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

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20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

47. *In para 15 the Court in Andi Mukta Sadguru [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] spelled out two exceptions to the writ of mandamus viz.: (i) if the rights are purely of a private character, no mandamus can issue; and (ii) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aided institution, because of this reason, it discharges public function, like government institution, by way of imparting education to students, more particularly when rules and regulations of the affiliating university are applicable to such an institution, being an aided institution. In such a* *situation, the Court held that the service conditions of academic staff were not purely of a private character as the staff had superadded protection by the University's decision creating a legal right and duty relationship between the staff and the management. Further, the Court explained in para 20 that the term "authority" used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 32, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term "authority" appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.*

48. *In K. Krishnamacharyulu [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841] , this Court again emphasised that where there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in performance of their duties. In such a situation, remedy provided under Article 226 would be available to the teachers.*

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50. *In Satimbla Sharma [Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75] , the school therein was initially established as a mission school by Respondent 2. The school adopted the 10+2 system in 1993 and got affiliated to the Himachal Pradesh Board of School Education. Before Independence in 1947, the school was receiving grant-in-aid from the British Indian Government and thereafter from the Government of India up to 1950. Between 1951 and 1966, the school received grant-in-aid from the State Government of Punjab. After the State of Himachal Pradesh was formed, the school received grant-in-aid from the Government of Himachal Pradesh for the period between 1967 and 1976. From the year 1977-1978, the Government of Himachal Pradesh stopped the grant-in-aid. In such circumstances, the teachers of the school were paid less than the teachers of the government schools and the Government-aided schools* *in the State of Himachal Pradesh. This led to filing of a writ petition in the High Court of Himachal Pradesh seeking a direction to pay the salary and allowances on a par with the teachers of government schools and the Government-aided schools. A learned Single Judge of the High Court allowed the writ petition and directed the respondents therein to pay to the writ petitioners therein salary and allowances on a par with their counterparts working in the government schools from the dates they were entitled to and at the rates admissible from time to time. Respondents 1 and 2 therein preferred letters patent appeal before the Division Bench of the High Court. The appeal came to be allowed and the writ petition filed by the teachers was dismissed.*

51. *In such circumstances referred to above, the litigation travelled to this Court. This Court, while disposing of the appeal, held as under: (Satimbla Sharma case [Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75] , SCC pp. 768-69, paras 25-28)*

"25. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of government-aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of government schools and therefore a mandamus could not be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as were payable to teachers of government institutions.

26. In K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841] , relied upon by the learned counsel for the appellants, executive instructions were issued by the Government that the scales of pay of Laboratory Assistants as non-teaching staff of private colleges shall be on a par with the government employees and this Court held that even though there were no statutory rules, the Laboratory Assistants as non-teaching staff of private college were entitled to the parity of the pay scales as per the executive instructions of the Government and the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on a par with government employees.

In the present case, there are no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of government schools or government-aided schools.

27. We cannot also issue a mandamus to Respondents 1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in Clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the Report of Education Commission 1964-1966 that the scales of pay of school teachers belonging to the same category but working under different managements such as Government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive instruction or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court.

28. We, however, find that the 2009 Act has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and sub-section (3) of Section 23 of the 2009 Act provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make rules and Section 38(2)(l) of the 2009 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under sub-section (3) of Section 23. Section 2(a) defines "appropriate Government" as the State Government within whose territory the school is established.

29. The State of Himachal Pradesh, Respondent 3 in this appeal, is thus empowered to make rules under sub-section (3) of Section 23 read with Section 38(2)(l) of the 2009 Act prescribing the salary and allowances payable to, and the terms and conditions of service of, teachers. Article 39(d) of the Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. Respondent 3 should therefore

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consider making rules under Section 23 read with Section 38(2)(l) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible."

52. *Thus, the dictum as laid in Satimbla Sharma [Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75] is clear. In the absence of any statutory provisions requiring a private unaided school to pay to its teachers the same salary and allowances as payable to the teachers of the government schools, a mandamus cannot be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as payable to the teachers of government institutions. In the case at hand, the respondents are being paid the same salary and allowances as being paid to the teachers and non-teaching staff appointed by the appellant Society.*

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55. *This Court ultimately held as under: (Rajendra Prasad Bhargava case [St. Mary's Education Society v. Rajendra Prasad Bhargava, (2023) 4 SCC 498] , SCC pp. 519-37, paras 29-74)*

"29. Respondent 1 herein has laid much emphasis on the fact that at the time of his appointment in the school, the same was affiliated to the Madhya Pradesh State Board. It is his case that at the relevant point of time the school used to receive the grant-in-aid from the State Government of Madhya Pradesh. Later in point of time, the school came to be affiliated to CBSE. The argument of Respondent 1 seems to be that as the school is affiliated to the Central Board i.e. CBSE, it falls within the ambit of "State" under Article 12 of the Constitution. The school is affiliated to CBSE for the purpose of imparting elementary education under the Right of Children to Free and Compulsory Education Act, 2009 (for short "the 2009 Act"). As Appellant 1 is engaged in imparting of education, it could be said to be performing public functions. To put it in other words, Appellant 1 could be said to be performing public duty. Even if a body performing public duty is amenable to the writ jurisdiction, all its decisions are not subject to judicial review. Only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction. If the action challenged does not have the public element, a writ of mandamus cannot be issued as the action could be said to be essentially of a private character.

30. We may at the outset state that CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body. The distinction between a body created by the statute and a body governed in accordance with a statute has been explained by this Court in Vaish Degree College v. Lakshmi Narain [Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58 : 1976 SCC (L&S) 176 : AIR 1976 SC 888] , as follows: (SCC p. 65, para 10)

'10. … It is, therefore, clear that there is a well-marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.'

31. As stated above, the school is affiliated to CBSE for the sake of convenience, namely, for the purpose of recognition and syllabus or the courses of study and the provisions of the 2009 Act and the Rules framed thereunder.

32. The contention canvassed by Respondent 1 is that a writ petition is maintainable against the Committee of Management controlling the affairs of an institution (minority) run by it, if it violates any rules and Bye-laws laid down by CBSE. First, as discussed above, CBSE itself is not a statutory body nor the regulations framed by it have any statutory force. Secondly, the mere fact that the Board grants recognition to the institutions on certain terms and conditions itself does not confer any enforceable right on any person as against the Committee of Management.

33. In R. v. St. Aloysius Higher Secondary School [R. v. St. Aloysius Higher Secondary School, (1972) 4 SCC 188] , this Court held that the mere fact that an institution is recognised by an authority, does not itself create an enforceable right to an aggrieved party against the Management by a teacher on the ground of breach or non-compliance of any of the Rules *which was part of terms of the recognition. It was observed as under: (SCC p. 198, para 24)*

'24. … The Rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce these rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, such as teacher aggrieved by some order of the management cannot derive from the rules any enforceable right against the management on the ground of breach or non-compliance of any of the rules.'

34. In Anita Verma v. D.A.V. College Management Committee [Anita Verma v. D.A.V. College Management Committee, (1992) 1 UPLBEC 30 (All)] it was observed:

'30. Where the services of a teacher were terminated, the Court held that the writ petition under Article 226 is not maintainable as the institution cannot be treated as the instrumentality of the State. The matter was considered in detail in Harbans Kaur v. Guru Tegh Bahadur Public School [Harbans Kaur v. Guru Tegh Bahadur Public School, 1992 SCC OnLine All 444] , wherein the services of the petitioner were terminated by the Managing Committee of the institution recognised by CBSE. It was held that the Affiliation Bye-laws framed by CBSE have no statutory force. The Court under Article 226 of the Constitution of India can enforce compliance of statutory provision against a committee of management as held in a Full Bench decision of this Court in Aley Ahmad Abidi v. District Inspector of Schools [Aley Ahmad Abidi v. District Inspector of Schools, 1976 SCC OnLine All 325 : AIR 1977 All 539] . The Affiliation Bye-laws of CBSE having no statutory force, the only remedy against the aggrieved person is to approach CBSE putting his grievances in relation to the violation of the Affiliation Bye-laws by the institution.'

35. Thus, where a teacher or non-teaching staff challenges the action of Committee of Management that it has violated the terms of contract or the rules of the Affiliation Bye-laws, the appropriate remedy of such teacher or employee is to approach CBSE or to take such other legal remedy available under law. It is open to CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with the Affiliation Bye-laws.

36. It needs no elaboration to state that a school affiliated to CBSE which is unaided is not State within

Article 12 of the Constitution of India (see Satimbla Sharma v. St Paul's Senior Secondary School [Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75]). Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen (see K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841]). The school affiliated to CBSE is therefore an "authority" amenable to the jurisdiction under Article 226 of the Constitution of India (see Binny Ltd. v. V. Sadasivan [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]). However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee — confirmation, suspension, transfer, termination, etc. (see Apollo Tyres Ltd. v. C.P. Sebastian [Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360 : (2009) 5 SCC (Civ) 358 : (2010) 1 SCC (L&S) 359]).

37. This Court in K.K. Saksena v. International Commission on Irrigation & Drainage [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] , after an exhaustive review of its earlier decisions on the subject, held as follows: (SCC pp. 692 & 696, paras 43 & 52)

'43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the

domain of public law as distinguished from private law.

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52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority/body which is State within the meaning of Article 12 of the Constitution of India; and

(iii) when such an employee is "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and "status" to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal.'

38. The following decisions have been adverted to in K.K. Saksena [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] :

1. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] ,

2. G. Bassi Reddy v. International Crops Research Institute [G. Bassi Reddy v. International Crops Research Institute, (2003) 4 SCC 225] ,

3. Praga Tools Corpn. v. C.A. Imanual [Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585 : (1969) 39 Comp Cas 889] ,

4. Federal Bank Ltd. v. Sagar Thomas [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733 : (2004) 120 Comp Cas 63] .

39. This Court in Janet Jeyapaul v. SRM University [Janet Jeyapaul v. SRM University, (2015) 16 SCC 530 : 8 SCEC 68] , held that when a private body exercises its public functions even if it is not State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article 226 of the Constitution. In Binny [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC

657 : 2005 SCC (L&S) 881] , this Court held that Article 226 of the Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in the discharge of public function.

40. Para 11 of the judgment in Binny [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] is reproduced below: (SCC pp. 665-66)

'11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest."

41. This Court considered various of its other decisions to examine the question of public law remedy under Article 226 of the Constitution. This Court observed in Binny [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] as under: (SCC p. 673, para 29)

'29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for

enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies.'

42. In the penultimate paragraph, this Court ruled as under: (Binny case [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , SCC p. 674, para 32)

'32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.'

43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of.

44. A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of Appellant 1 herein are to impart education, which is a public function. However, the issue herein is with regard to the termination of service *of Respondent 1, which is basically a service contract. A body is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.*

45. In Delhi Public School v. M.K. Gandhi [Delhi Public School v. M.K. Gandhi, (2015) 17 SCC 353 : (2017) 5 SCC (Civ) 461 : (2015) 3 SCC (L&S) 745] , this Court held that no writ is maintainable against a private school as it is not "State" within the meaning of Article 12 of the Constitution of India.

46. In Trigun Chand Thakur v. State of Bihar [Trigun Chand Thakur v. State of Bihar, (2019) 7 SCC 513 : (2019) 2 SCC (L&S) 378] , this Court upheld the view [Trigun Chand Thakur v. State of Bihar, 2008 SCC OnLine Pat 994] of a Division Bench of the Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management.

47. In Satimbla Sharma [Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75] , this Court held that the unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not "State" within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority private schools.

48. The Full Bench of the Allahabad High Court in Roychan Abraham v. State of U.P. [Roychan Abraham v. State of U.P., 2019 SCC OnLine All 3935 : AIR 2019 All 96] , after taking into consideration various decisions of this Court, held as under: (SCC OnLine All para 38)

'38. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which confers a right upon the aggrieved to invoke 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 petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the

service conditions were regulated by 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.'

49. We may refer to and rely upon one order passed by this Court in S.K. Varshney v. Our Lady of Fatima Higher Secondary School [S.K. Varshney v. Our Lady of Fatima Higher Secondary School, (2023) 4 SCC 539] , in which the dispute was one relating to the retirement age of a teacher working in an unaided institution. This Court, while dismissing the appeal preferred by the employee, held as under: (SCC p. 540, paras 4-8)

'4. 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.

5. Aggrieved thereby, writ appeals have been filed before the Division Bench without any result. The Division Bench held [S.K. Varshney v. Our Lady of Fatima Higher Secondary School, 1999 SCC OnLine All 908] that the writ petitions are not maintainable against a private institute. Aggrieved thereby, these appeals have been filed.

6. The counsel for the appellant relied on a decision rendered by this Court in K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841] He particularly relied on the observation made by this Court in para 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.

7. This Court in Sushmita Basu v. Ballygunge Siksha Samity [Sushmita Basu v. Ballygunge Siksha Samity, (2006) 7 SCC 680 : 2006 SCC (L&S) 1741] 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 grievances of the appellants are of personal nature.

8. 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.'

50. We may also refer to and rely upon the decision of this Court in Vidya Ram Misra v. Shri Jai Narain College [Vidya Ram Misra v. Shri Jai Narain College, (1972) 1 SCC 623] . The appellant therein filed a writ petition before the Lucknow Bench of the High Court of Allahabad challenging the validity of a resolution passed by the Managing Committee of Shri Jai Narain College, Lucknow, an associated college of Lucknow University, terminating his services and praying for issue of an appropriate writ or order quashing the resolution. A learned Single Judge of the High Court finding that in terminating the services, the Managing Committee acted in violation of the principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order. A Division Bench of the High Court found that the relationship between the college and the appellant therein was that of master and servant and that even if the service of the appellant had been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a writ or order in the nature of certiorari and that, in fact, no principle of natural justice was violated by terminating the services of the appellant. The writ petition was dismissed. In appeal, this Court upheld the decision of the High Court holding that the lecturer cannot have any cause of action on breach of the law but only on breach of the contract, hence he has a remedy only by way of suit for damages and not by way of writ under Article 226 of the Constitution.

51. In Vidya Ram Misra [Vidya Ram Misra v. Shri Jai Narain College, (1972) 1 SCC 623] , this Court observed thus: (SCC p. 629, paras 12-13)

'12. Whereas in P.R.K. Jodh v. A.L. Pande [P.R.K. Jodh v. A.L. Pande, 1965 SCC OnLine SC 86 : (1965) 2 SCR 713] , the terms and conditions of service embodied in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the

contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract. So, Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant's remedy lay elsewhere.

13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in S.R. Tewari v. District Board [S.R. Tewari v. District Board, 1963 SCC OnLine SC 83 : (1964) 3 SCR 55 : AIR 1964 SC 1680] , might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the argument of Mr Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in P.R.K. Jodh [P.R.K. Jodh v. A.L. Pande, 1965 SCC OnLine SC 86 : (1965) 2 SCR 713] , and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court.'

52. In the case on hand, the facts are similar. Rule 26(1) of the Affiliation Bye-laws, framed by CBSE, provides that each school affiliated with the Board shall frame Service Rules. Sub-rule (2) of it provides that a service contract will be entered with each employee as per the provision in the Education Act of the State/Union Territory, or as given in Appendix III, if not obligatory as per the State Education Act. These rules also provide procedures for appointments, probation, confirmation, recruitment, attendance representations, grant of leave, code of conduct, disciplinary procedure, penalties, etc. The model form of contract of service, to be executed by an employee, given in Appendix III, lays down that the service, under this agreement, will be liable to disciplinary action in accordance with the Rules and Regulations framed by the school from time to time. Only in case where the post is abolished or an employee intends to resign, Rule 31 of the Affiliation Bye-laws of the Board will apply. It may be noted that the above Bye-laws do not provide for any particular procedure for dismissal *or removal of a teacher for being incorporated in the contract. Nor does the model form of contract given in Appendix III lay down any particular procedure for that purpose. On the contrary, the disciplinary action is to be taken in accordance with the Rules and Regulations framed by the school from time to time.*

53. On a plain reading of these provisions, it becomes clear that the terms and conditions mentioned in the Affiliation Bye-laws may be incorporated in the contract to be entered into between the school and the employee concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Chapter VII of the Affiliation Bye-laws have no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract they have no vitality and can confer no legal rights. The terms and conditions mentioned in the Affiliation Bye-laws have no efficacy, unless they are incorporated in a contract. In the absence of any statutory provisions governing the services of the employees of the school, the service of Respondent 1 was purely contractual. A contract of personal service cannot be enforced specifically. Therefore, Respondent 1 cannot find a cause of action on any breach of the law, but only on the breach of the contract. That being so, the appellant's remedy lies elsewhere and in no case the writ is maintainable.

54. Thus, the aforesaid order [Vidya Ram Misra v. Shri Jai Narain College, (1972) 1 SCC 623] 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.

55. In T.M.A. Pai Foundation v. State of Karnataka [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , an eleven-Judge Bench of this Court formulated certain points in fact to reconsider its earlier decision in Ahmedabad St. Xavier's College Society v. State of Gujarat [Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717 : 1 SCEC 125] , and also Unni Krishnan, J.P. v. State of A.P. [Unni Krishnan, J.P. v. State of A.P., (1993) 4 SCC 111 : 1 SCEC 645] , regarding the 'right of the minority institution including administration of the student and

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imparting education vis-à-vis the right of administration of the non-minority student'.

56. In the said case, very important points arose as follow: (T.M.A. Pai Foundation case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , SCC pp. 709-710, para 450)

'450. … Q.5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government/ university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair *practices and general welfare of teachers could be framed.'*

57. We now proceed to look into the two decisions of this Court in Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 415] and Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] , respectively.

58. In Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 415] , the appellant therein was working as an administrative officer in a privately run educational institution and by way of disciplinary proceedings, was removed from service by the Managing Committee of the said educational institution. A writ petition was filed before the learned Single Judge of the High Court challenging the order of the disciplinary authority wherein he was removed from service. The writ petition was ordered [Ramesh Ahluwalia v. State of Punjab, 2009 SCC OnLine P&H 11755] to be dismissed in limine holding that the said educational institution being an unaided and a private school managed by the society cannot be said to be an instrument of the State. The appeal before the Division Bench also came to be dismissed [Ramesh Ahluwalia v. State of Punjab, 2010 SCC OnLine P&H 13111] . The matter travelled to this Court.

59. The principal argument before this Court in Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 415] was in regard to the maintainability of the writ petition against a private educational institution. It was argued on the behalf of the appellant therein that although a private educational institution may not fall within the definition of "State" or "other authorities/instrumentalities" of the State under Article 12 of the Constitution, yet a writ petition would be maintainable as the said educational institution could be said to be discharging public functions by imparting education. However, the learned counsel for the educational institution therein took a plea before this Court that while considering whether a body falling within the definition of "State", it is necessary to consider whether such body is financially, functionally and administratively dominated by or under the control of the Government. It was further argued that if the control is merely regulatory either under a statute or otherwise, it would not ipso facto make the body "State" within Article 12 of the Constitution. On the conspectus of the peculiar facts of the case and the *submissions advanced, this Court held that a writ petition would be maintainable if a private educational institution discharges public functions, more particularly imparting education. Even by holding so, this Court declined to extend any benefits to the teacher as the case involved disputed questions of fact.*

60. We take notice of the fact that in Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 415] the attention of the Hon'ble Judges was not drawn to the earlier decisions of this Court in K. Krishnamacharyulu [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841] , Federal Bank [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733 : (2004) 120 Comp Cas 63] , Sushmita Basu v. Ballygunge Siksha Samity [Sushmita Basu v. Ballygunge Siksha Samity, (2006) 7 SCC 680 : 2006 SCC (L&S) 1741] , and Delhi Public School v. M.K. Gandhi [Delhi Public School v. M.K. Gandhi, (2015) 17 SCC 353 : (2017) 5 SCC (Civ) 461 : (2015) 3 SCC (L&S) 745] .

61. In Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] , this Court followed Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 415] referred to above.

62. We may say without any hesitation that Respondent 1 herein cannot press into service the dictum as laid down by this Court in Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] as the said case is distinguishable. The most important distinguishing feature of Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] is that in the said case the removal of the teacher from service was subject to the approval of the State Government. The State Government took a specific stance before this Court that its approval was required both for the appointment as well as removal of the teacher. In the case on hand, indisputably the Government or any other agency of the Government has no role to play in the termination of Respondent 1 herein.

63. In context with Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S)

854] , we remind ourselves of Bye-law 49(2) which provides that no order with regard to the imposition of major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Disciplinary Committee. Thus unlike Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] where approval was required of the State Government, in the case on hand the approval is to be obtained from the Disciplinary Committee of the institution. This distinguishing feature seems to have been overlooked by the High Court while passing the impugned order.

64. In Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] , the school was receiving grant-in-aid to the extent of dearness allowance. The appointment and the removal, as noted above, is required to be approved by the District Inspector of School (Primary Education) and, if any action is taken dehors such mandatory provisions, the same would not come within the realm of private element.

65. In Trigun Chand Thakur [Trigun Chand Thakur v. State of Bihar, (2019) 7 SCC 513 : (2019) 2 SCC (L&S) 378] , the appellant therein was appointed as a Sanskrit teacher and a show-cause notice was issued upon him on the ground that he was absent on the eve of Independence day and Teachers Day which resulted into a dismissal order passed by the Managing Committee of the private school. The challenge was made by filing a writ petition before the High Court which was dismissed on the ground that the writ petition is not maintainable against an order terminating the service by the Managing Committee of the private school. This Court held that even if the private school was receiving a financial aid from the Government, it does not make the said Managing Committee of the school "State" within the meaning of Article 12 of the Constitution of India.

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.*

67. Our present judgment would remain incomplete if we fail to refer to the decision of this Court in Ramakrishna Mission v. Kago Kunya [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] . In the said case this Court considered all its earlier judgments on the issue. The writ petition was not found maintainable against the Mission merely for the reason that it was found running a hospital, thus discharging public functions/public duty. This Court considered the issue in reference to the element of public function which should be akin to the work performed by the State in its sovereign capacity. This Court took the view that every public function/public duty would not make a writ petition to be maintainable against an "authority" or a "person" referred under Article 226 of the Constitution of India unless the functions are such which are akin to the functions of the State or are sovereign in nature.

68. Few relevant paragraphs of the said judgment are quoted as under for ready reference: (Ramakrishna Mission case [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] , SCC pp. 309-11 & 313, paras 17-22 & 25-26)

'17. The basic issue before this Court is whether the functions performed by the hospital are public functions, on the basis of which a writ of mandamus can lie under Article 226 of the Constitution.

18. The hospital is a branch of the Ramakrishna Mission and is subject to its control. The Mission was established by Swami Vivekanand, the foremost disciple of Shri Ramakrishna Paramhansa. Service to humanity is for the organisation co-equal with service to God as is reflected in the motto "Atmano Mokshartham Jagad Hitaya Cha". The main object of the Ramakrishna Mission is to impart knowledge in and promote the study of Vedanta and its principles propounded by Shri Ramakrishna Paramahansa and practically illustrated by his own life and of comparative theology in its widest form. Its objects include, inter alia to establish, maintain, carry on and assist schools, colleges, universities, research institutions, libraries, hospitals and take up

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development and general welfare activities for the benefit of the underprivileged/backward/tribal people of society without any discrimination. These activities are voluntary, charitable and non-profit making in nature. The activities undertaken by the Mission, a non-profit entity are not closely related to those performed by the State in its sovereign capacity nor do they partake of the nature of a public duty.

19. The Governing Body of the Mission is constituted by members of the Board of Trustees of Ramakrishna Math and is vested with the power and authority to manage the organisation. The properties and funds of the Mission and its management vest in the Governing Body. Any person can become a member of the Mission if elected by the Governing Body. Members on roll form the quorum of the annual general meetings. The Managing Committee comprises of members appointed by the Governing Body for managing the affairs of the Mission. Under the Memorandum of Association and Rules and Regulations of the Mission, there is no governmental control in the functioning, administration and day-to-day management of the Mission. The conditions of service of the employees of the hospital are governed by service rules which are framed by the Mission without the intervention of any governmental body.

20. In coming to the conclusion that the appellants fell within the description of an authority under Article 226, the High Court placed a considerable degree of reliance on the judgment of a two-Judge Bench of this Court in Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] . Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] was a case where a public trust was running a college which was affiliated to Gujarat University, a body governed by the State legislation. The teachers of the University and all its affiliated colleges were governed, insofar as their pay scales were concerned, by the recommendations of the University Grants Commission. A dispute over pay scales raised by the association representing the teachers of the University had been the subject-matter of an award of the Chancellor, which was accepted by the Government as well as by the University. The management of the college, in question, decided to close it down without prior approval. A writ petition was instituted before the High Court for the enforcement of the right of the teachers to receive their salaries and terminal benefits *in accordance with the governing provisions. In that context, this Court dealt with the issue as to whether the management of the college was amenable to the writ jurisdiction. A number of circumstances weighed in the ultimate decision of this Court, including the following:*

20.1. The trust was managing an affiliated college.

20.2. The college was in receipt of government aid.

20.3. The aid of the Government played a major role in the control, management and work of the educational institution.

20.4. Aided institutions, in a similar manner as government institutions, discharge a public function of imparting education to students.

20.5. All aided institutions are governed by the rules and regulations of the affiliating University.

20.6. Their activities are closely supervised by the University.

20.7. Employment in such institutions is hence, not devoid of a public character and is governed by the decisions taken by the University which are binding on the management.

21. It was in the above circumstances that this Court came to the conclusion that the service conditions of the academic staff do not partake of a private character, but are governed by a right-duty relationship between the staff and the management. A breach of the duty, it was held, would be amenable to the remedy of a writ of mandamus. While the Court recognised that "the fast expanding maze of bodies affecting rights of people cannot be put into watertight compartments", it laid down two exceptions where the remedy of mandamus would not be available: (Andi Mukta case [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] , SCC p. 698, para 15)

"15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus."

22. Following the decision in Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] , this Court has had the occasion to re-visit the underlying principles in successive decisions. This has led to the evolution of principles to determine what constitutes a "public duty" and "public function" and *whether the writ of mandamus would be available to an individual who seeks to enforce her right.*

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25. A similar view was taken in Ramesh Ahluwalia v. State of Punjab [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 415] , where a two-Judge Bench of this Court held that a private body can be held to be amenable to the jurisdiction of the High Court under Article 226 when it performs public functions which are normally expected to be performed by the State or its authorities.

26. In Federal Bank Ltd. v. Sagar Thomas [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733 : (2004) 120 Comp Cas 63] , this Court analysed the earlier judgments of this Court and provided a classification of entities against whom a writ petition may be maintainable: (SCC p. 748, para 18)

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against: (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function." '

69. The aforesaid decision of this Court in Ramakrishna Mission [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] came to be considered exhaustively by a Full Bench of the High Court of Allahabad in Uttam Chand Rawat v. State of U.P. [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , wherein the Full Bench was called upon to answer the following question: (Uttam Chand Rawat case [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , SCC OnLine All para 1)

'1. … … "(i) Whether the element of public function and public duty inherent in the enterprise that an educational institution undertakes, conditions of service of teachers, whose functions are a sine qua non to the discharge of that public function or duty, can be regarded as governed by the private law of contract and with no remedy available under Article 226 of the Constitution?…" '

70. The Full Bench proceeded to answer the aforesaid question as under: (Uttam Chand Rawat case [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , SCC OnLine All paras 16-20)

'16. The substance of the discussion made above is that a writ petition would be maintainable against the authority or the person which may be a private body, if it discharges public function/public duty, which is otherwise primary function of the State referred in the judgment of the Supreme Court in Ramakrishna Mission [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] and the issue under public law is involved. The aforesaid twin test has to be satisfied for entertaining writ petition under Article 226 of the Constitution of India.

17. From the discussion aforesaid and in the light of the judgments referred above, a writ petition under Article 226 of the Constitution would be maintainable against: (i) the Government; (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

18. There is thin line between "public functions" and "private functions" discharged by a person or a private body/authority. The writ petition would be maintainable only after determining the nature of the duty to be enforced by the body or authority rather than identifying the authority against whom it is sought.

19. It is also that even if a person or authority is discharging public function or public duty, the writ petition would be maintainable under Article 226 of the Constitution, if Court is satisfied that action under challenge falls in the domain of public law, as distinguished from private law. The twin tests for maintainability of writ are as follows:

1. The person or authority is discharging public duty/public functions.

2. Their action under challenge falls in domain of public law and not under common law.

20. The writ petition would not be maintainable against an authority or a person merely for the reason that it has been created under the statute or is to be governed by regulatory provisions. It would not even in *a case where aid is received unless it is substantial in nature. The control of the State is another issue to hold a writ petition to be maintainable against an authority or a person.'*

71. We owe a duty to consider one relevant aspect of the matter. Although this aspect which we want to take notice of has not been highlighted by Respondent 1, yet we must look into the same. We have referred to the CBSE Affiliation Bye-laws in the earlier part of our judgment. Appendix IV of the Affiliation Bye-laws is with respect to the minority institutions. Clause 6 of Appendix IV is with respect to the disciplinary control over the staff in a minority educational institution. We take notice of the fact that in Clause 6, the State has the regulatory power to safeguard the interests of their employees and their service conditions including the procedure for punishment to be imposed.

72. For the sake of convenience and at the cost of repetition, we quote Clause 6 once again as under:

*'**6. Disciplinary control over staff in Minority Educational Institutions**.—While the managements should exercise the disciplinary control over staff, it must be ensured that they hold an inquiry and follow a fair procedure before punishment is given. With a view to preventing the possible misuse of power by the management of the Minority Educational Institutions, the State has the regulatory power to safeguard the interests of their employees and their service conditions including procedure for punishment to be imposed.'*

73. It could be argued that as the State has regulatory power to safeguard the interests of the employees serving with the minority institutions, any action or decision taken by such institution is amenable to writ jurisdiction under Article 226 of the Constitution.

74. In the aforesaid context, we may only say that merely because the State Government has the regulatory power, the same, by itself, would not confer any such status upon the institution (school) nor put any such obligations upon it which may be enforced through issue of a writ under Article 226 of the Constitution. In this regard, we may refer to and rely upon the decision of this Court in Federal Bank [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733 : (2004) 120 Comp Cas 63] . While deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, this Court held thus: (Ramakrishna Mission case [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] , SCC pp. 315-16, paras 33-35)

'33. … "33. … in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We do not find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank." (Federal Bank case [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733 : (2004) 120 Comp Cas 63] , SCC pp. 758-59, para 33)

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. The Act, inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved.' "

56. *The final conclusion drawn in the said decision is reproduced herein: (Rajendra Prasad Bhargava case [St. Mary's Education Society v. Rajendra Prasad Bhargava, (2023) 4 SCC 498] , SCC pp. 537-38, paras 75-76)*

"75. We may sum up our final conclusions as under:

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 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.

76. In view of the aforesaid discussion, we hold that the learned Single Judge [Rajendra Prasad Bhargava v. Union of India, 2017 SCC OnLine MP 2337] of the High Court was justified in taking the view that the original writ application filed by Respondent 1 herein under Article 226 of the Constitution is not maintainable. The appeal court could be said to have committed an error in taking a contrary view."

***57.** In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the High Court committed an egregious error in entertaining the writ petition filed by the respondents herein holding that the appellant Society is "State" within Article 12 of the Constitution. Undoubtedly, the school run by the appellant Society imparts education. Imparting education involves public* *duty and therefore public law element could also be said to be involved. However, the relationship between the respondents herein and the appellant Society is that of an employee and a private employer arising out of a private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element. The school cannot be said to be discharging any public duty in connection with the employment of the respondents."*

3.10. It is also contended that the Department of Higher Education while issuing letter dated 05.08.2016 so enclosed as Annexure-A/10 to the written note, clearly indicated that Opp. Party No.3 is not a Public Sector Undertaking and it is a Public Limited Company, as per Companies Act.

3.11. Making all these submissions, learned Senior Counsel appearing for the Opp. Party No.3 contended that against the impugned order, the Writ Petition so filed by the petitioner is not maintainable.

4. Mr. S.S. Tripathy, learned counsel appearing for the petitioner on the other hand while making his submission that the Writ Petition is very much maintainable against Opp. Party No.3 contended that, even though Opp. Party No.3 was incorporated as a

Public Limited Company, but it is not only a State within the meaning of Article-12 of the Constitution of India but also it is amenable to the writ jurisdiction of this Court under Art-226 of the Constitution of India.

4.1. In support of his submission, reliance was placed to a decision of the Hon'ble Apex Court in the case of ***Ajay Hasia Vs. Khalid Mujib Sehravardi***, ***(1981) 1 SCC 722***. Hon'ble Apex Court in Para-9 and 11 of the decision has held as follows:-

> ***"9.*** *The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case [(1979) 3 SCC 489] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case [(1979) 3 SCC 489] as follows:*
>
> *"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)*
>
> *(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)*

(3) It may also be a relevant factor … whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case [(1979) 3 SCC 489] , be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12.

xxxx xxxx xxxx xxxx

***11.** We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12.*

4.2. Reliance was also placed to a decision of the Hon'ble Apex Court in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani***, ***(1989) 2 SCC 691***. Hon'ble Apex Court in Para-16 to 20 has held as follows:-

> *"**16.** The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure". The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review":*
>
> *"At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.*
>
> *The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are — and who are not — public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that*

the judges can develop the public law as they think best. That they have done and are doing." [See The Closing Chapter by Rt. Hon. Lord Denning, p. 122]

17. *There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".*

18. *Article 226 reads:*

"226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

19. *The scope of this article has been explained by Subba Rao, J., in Dwarkanath v. ITO [(1965) 3 SCR 536] : (SCR pp. 540-41)*
"This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements

of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

***20.** The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."*

4.3. Reliance was also placed to a decision of the Hon'ble Apex Court in the case of ***Balmer Lawrie & Co. Ltd. Vs. Partha Sarathi Sen Roy*, *(2013) 8 SCC 345***. Hon'ble Apex Court in Para-21 to 24 and 28 has held as follows:-

***"21.** A public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of the public, and not for private profit. Article 298 of the Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the Government and the legislature alone, and it includes within its ambit, various other instrumentalities of State* *action. The law may bestow upon such organisation the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The "State" being an abstract entity, can only act through an instrumentality or an agency of natural or juridical persons. The concept of an instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company, or to a society. In a given case, the court must decide, whether such a company or society is an instrumentality or agency of the Government, so as to determine whether the same falls within the meaning of the expression "authority", as mentioned in Article 12 of the Constitution, upon consideration of all relevant factors.*

22. *In light of the aforementioned discussion, it is evident that it is rather difficult to provide an exhaustive definition of the term "authorities", which would fall within the ambit of Article 12 of the Constitution. This is precisely why only an inclusive definition is possible. It is in order to keep pace with the broad approach adopted with respect to the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, that whenever possible courts have tried to curb the arbitrary exercise of power against individuals by centres of power, and therefore, there has been a corresponding expansion of the judicial definition of the term "State", as mentioned in Article 12 of the Constitution.*

23. *In light of the changing socio-economic policies of this country, and the variety of methods by which government functions are usually performed, the court must examine, whether an inference can be drawn to the effect that such an authority is in fact an instrumentality of the State under Article 12 of the Constitution. It may not be easy for the court, in such a case, to determine which duties form a part of private action, and which form a part of State action, for the reason that the conduct of the private authority may have become so entwined with governmental policies, or so impregnated with governmental character, so as to become subject to the constitutional limitations that are placed upon State action. Therefore, the court must determine whether the aggregate of all relevant factors once considered, would compel a conclusion as regards the body being bestowed with State responsibilities.*

24. *When we discuss "pervasive control", the term "control" is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word "regulate", would mean to control or to adjust by rule, or to subject to governing* *principles. (Vide State of Mysore v. Allum Karibasappa [(1974) 2 SCC 498 : AIR 1974 SC 1863] , U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn. [(2004) 5 SCC 430 : AIR 2004 SC 3697] , Zee Telefilms Ltd. [Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649 : AIR 2005 SC 2677] and Union of India v. Asian Food Industries [(2006) 13 SCC 542 : AIR 2007 SC 750] .)*

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28. *In order to determine whether an authority is amenable to writ jurisdiction except in the case of habeas corpus or quo warranto, it must be examined, whether the company/corporation is an instrumentality or an agency of the State, and if the same carries on business for the benefit of the public; whether the entire share capital of the company is held by the Government; whether its administration is in the hands of a Board of Directors appointed by the Government; and even if the Board of Directors has been appointed by the Government, whether it is completely free from governmental control in the discharge of its functions; whether the company enjoys monopoly status; and whether there exists within the company, deep and pervasive State control. The other factors that may be considered are whether the functions carried out by the company/corporation are closely related to governmental functions, or whether a department of the Government has been transferred to the company/corporation, and the question in each case, would be whether in light of the cumulative facts as established, the company is financially, functionally and administratively under the control of the Government. In the event that the Government provides financial support to a company, but does not retain any control/watch over how it is spent, then the same would not fall within the ambit of exercising deep and pervasive control. Such control must be particular to the body in question, and not general in nature. It must also be deep and pervasive. The control should not, therefore, be merely regulatory."*

4.4. Reliance was also placed to a decision of the Hon'ble Apex Court in the case of ***Ravi Khokar & Ors. Vs. Union of India and Others***, ***2026 SCC OnLine SC 372***. Hon'ble Apex Court in Para-7, 7.1, 16 and 17 has held as follows:-

*"**7.** Since the advent of the Constitution, the question of whether a particular body can or cannot be recognised as 'State' within the meaning of Article 12[11] has arisen time and again. Initially, this Court adopted a narrow and formalistic approach focusing on whether the body concerned which was created under a statute was part of the traditional Government structure. Over the time however, as functions of the Government expanded multi-fold there was a shift in this approach. State instrumentalities, corporations and autonomous bodies were recognised as covered under this Article, with the shift to a functional and purposive analysis. The test to be satisfied pertained to the nature of functions, character of activity, degree of governmental control. This ensured that the breadth or scope of examination when this question arises is not limited to ownership/origin but is instead informed by accountability, the rule of law in furtherance of practical governance. It shall be useful to refer to certain cases to exemplify the requirements that need to be established for an organization be held to be "State".*

***7.1.** P.N Bhagwati J. (as His Lordship then was) writing for the Court in Ramana Dayaram Shetty v. International Airport Authority of India[12], observed:*

*"**14.** A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, oftentimes made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions*

which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

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16. *We are unable to accept this contention. It may be that in so far as financial aspects of AFGIS are concerned, the Government may not have a direct role however for a body to be held to be a 'State' it is the cumulative effect and impact of deep and pervasive control, financial and administrative control along with other factors such as carrying out of public duty.*

17. *We are of the considered view that AFGIS does indeed perform a public duty. The protection and welfare of armed forces personnel is a core government function. The role of the armed forces is directly linked to the sovereignty and security of the nation and in protecting the same members of the forces are required to adhere to, abide by, and maintain a strict set of rules, unquestionable conduct, and at times in the most severe and adverse circumstances. Thus, providing insurance coverage is a public function as it addresses a collective obligation the State has towards a defined public class whose service is indispensable. The body, in effect, becomes a conduit for the discharge of that obligation. The role of the State in protecting them does not end upon their superannuation from service for the life of a person from the forces is forever shaped by their time in service. Insurance to service members is a critical instrument for safeguarding their physical, mental well-*

being, dignity and economic security. It operates as an assurance of protection and support in case contingencies such as disability or illness befall them or even untimely death which is a real possibility in these services. The fact that healthcare, rehabilitation, support to dependants is available readily, is undoubtedly an aspect that gives great peace of mind to the member of service enabling them to carry out their duties without worry, at least in this regard."

4.5. Reliance was also placed to a decision of the Hon'ble Apex Court in the case of ***Dr. Uttam Kumar Samanta Vs. KIIT University & Ors., 2014 SCC OnLine Ori 398***. Hon'ble Apex Court in Para-20 to 24 has held as follows:-

> ***"20.*** *Black's Law Dictionary (7th Edn.) defines "instrumentality" to mean "a means or agency through which a function of another entity is accomplished, such as a branch of a governing body". "Agency" is defined as:*
>
> *"A fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions."*
>
> *Thus instrumentality and agency are the two terms which to some extent overlap in their meaning; "instrumentality" includes "means" also, which "agency" does not, in its meaning. "Quasigovernmental agency" is "a government-sponsored enterprise or corporation (sometimes called a government-controlled corporation)". Authority, as Webster's Comprehensive Dictionary (International Edition) defines, is "the person or persons in whom government or command is vested; often in the plural". The applicable meaning of the word "authority" given in Webster's Third New International Dictionary, is "a public administrative agency or corporation having quasi-governmental powers and authorized to administer a revenue-producing public enterprise". This was quoted with approval by the Constitution Bench in RSEB case wherein the Bench held : (AIR p. 1862, para 5)*

"5. This dictionary meaning of the word 'authority' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression 'other authorities' is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words 'other authorities' are used in Article 12 of the Constitution."

21. *Here it will be of great significance to quote a passage from the Constitutional Law of India by H.M. Seervai (Para-9.8. Page-439):*

"9.8. Since the new doctrine has been propounded by judges without asking and answering the question "What is meant by the equal protection of the law's? "we must answer that question. If all men were created equal, and remained equal throughout their lives, then the same laws would apply to all men. But we know that men are unequal; consequently a right conferred on persons that they shall not be denied "the equal protection of the laws" cannot mean the protection of the same laws for all. It is here that the doctrine of classification, (the old doctrine) steps in, and gives content and significance to the guarantee of the equal protection of the laws. According to that doctrine equal protection of the laws must mean the protection of equal laws for all persons similarly situated. To separate persons similarly situated from those who are not, we must discriminate, that is, "act on the basis of a difference between" persons, or "observe distinctions carefully" between persons who are, and persons who are not similarly situated. But as the distinction is to be made for the purpose of making a law, how must the distinction be related to the law? This is answered by the central test for a permissible classification: "Permissible classification must satisfy two conditions, namely, (i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question", with the qualification that" the differentia and the object are different(so) that the object by itself cannot be the basis of the classification. A law based on a permissible classification fulfils the guarantee of the equal protection of the laws and is valid; a law based on an impermissible classification violates that guarantee and is void."

22. *The above judgments make it clear that the teachers who are arms of the institutions are entitled to enforce their right availing the remedy provided under Article 226. This otherwise means that in a just and proper case where injustice is palpable, the Court should not hesitate to exercise its powers under Article 226 to remove the same. At the cost of repetition, I once again observe that in view of my discussion in paragraphs 12 to 18 the opposite party no. 1 University is unambiguously imparting a public duty by clearly shouldering a sovereign power of the State and it has an public ailment. Law as laid down by our own High Court (supra) makes it clear that powers of Article 226 can be invoked even where there is violation of natural justice while terminating teachers. The decisions shown by the opposite parties counsels are clearly distinguishable from the point of view that case of Xavier Institute is wholly unaided private institution having passed not taking into account/consideration the catena of decisions operating in the filed referred to hereinabove whereas other decisions are simply in respect of non-statutory, non-aided institutions having no public ailment or public duty at all. None of the institutions involved in the decision cited by the opposite parties is that of a Deemed University status. To add to it here it is a university created under the U.G.C. Act.*

23. *It also is, thus, clear that the old and conservative view regarding the maintainability of writs against the State or its instrumentalities is giving way to "a liberal meaning". The power under Art. 226 is no longer confined to the issue of writs against statutory authorities and instrumentalities of the State. It covers 'any other person or body performing public duty'. Deemed Universities are supplementing the effort of the State. These cannot survive or subsist without recognition and/or affiliation. The bodies which grant recognition are required to ensure that the institution complies with Art. 14 of the Constitution. These decision represent a Quantum jump-from "the tests' in Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487, to a liberal meaning to the term "authority" in Article 226.*

24. *Further applying the ratio submitted by learned counsel for KIIT vide (2002) 5 SCC 111 it is seen not only the body of the KIIT members from Central Government as well as State Government but, its aim and object is to provide a greater public service in the side of higher education, the University Grant Commission as well as the All India Technical Council of India has its own control over the particular institution and it also receives aids to a great extent from either*

Central Government and Central Governmental Agencies as clearly narrated in para-13 of this judgment. It also required a good number of faculties from Central Government and Central Government affiliated institutions. It is not only a Deemed University under Section 3 of the U.G.C. Act, 1956 but it has been declared to be an university under the notification of the Central Government followed with a gazette notification by Central Government. The university on its own admission as clearly appearing from respective documents establishes that the university enjoys 10% - 20% or more from such aids as over head and it utilizes the same for developmental purpose of the university. From the details narrated hereinabove, the opposite party university is not only enjoying the powers and privileges of the State but also subjected to the limitations and obligations of the State. By virtue of its creation under the U.G.C. Act and then being notified by the Union of India in the official gazette accepting the same to be a Deemed University it can neither remain outside the purview of the "State" nor from the purview of the "other authority" and as such is amenable under Article 226 of the Constitution of India.

To conclude point no. i, it may be stated that classification is permissible when two conditions are satisfied, that is

(i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other and (ii) the differentia must have a rational relation to the object sought to be achieved. In the instant case, the lecturers of the private institution receiving grant from the Centre and Central Agencies, recognized by State created under U.G.C. Act, remains under control of Central Government, University Grants Commission as well as the authorities under AICTE Act are discharging the same duties as that of the lecturers of Govt. institutions or of the institutions which are created under the statute; and they all are discharging 'public duty' in aid of constitutional mandate. Merely because they are not employees of the State Govt. or of the institutions created under the statute, it would be an impermissible classification to place them as a different group to deny them the remedies under Article 226 for preservation and protection of their service rights. Any decision the way other is likely to have a deterrent effect on the objective sought to be achieved. The duty performed by two sets of lecturers is in aid of constitutional mandate and, therefore, it would be unjust to classify the teachers of Deemed institutions as a class distinct from the other. Service holders having

similar stake cannot be discriminated failing such prohibition it will have greater effect on the ultimate duty to educate the students as one cannot forget that the teachers are the most vital organ of the whole teaching system and if this vital organ fails then may be whole system will collapse.

Besides above, I also find the petitioner also becomes remediless as he has no remedy of Appeal to the higher Authority in view of no such provision either in the memorandum of Article of Association or in Conduct and Discipline Rules as provided at Chapter-II of KIIT University Human Resources Manual. Considering such an aspect a Constitution Bench of Hon'ble Apex Court in T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481 directed setting up of Appellate Tribunal in each district of each State to hear appeals over the decisions taken by the Disciplinary Bodies of even purely private Education Institutions. While directing so the Hon'ble Apex Court emphasized that speedy resolution of the disputes between the Teachers and the Managerial is in the interest of all, i.e., students, Management as well as the concerned Teachers. No such Tribunal having been set up in this State as on date, I find the petitioner becomes remediless.

Thus while answering the point no. i in affirmative, I declare that the opposite party no. 1 university being a creature of a statute and since performing public duty comes well within the meaning of "State" under Article 12 of the Constitution of India and its important organ the Teaching Staffs as a part of such public duty as such their grievances can be amenable to the writ jurisdiction of High Court in exercise of jurisdiction under Article 226 of the Constitution of India."

4.6. Bereft of the aforesaid decisions so cited (supra), learned counsel for the petitioner contended that taking into account the objective and reason behind incorporation of Opp. Party No.3, the State of Odisha has deep and pervasive control over Opp. Party No.3.

4.7. It is also contended that as per Memorandum of Association so enclosed to the Additional Affidavit dated 13.05.2026, the equity shares (Total:12,00,000) are divided equally between the Govt. of Odisha, Higher Education Department represented through different officers and Maharashtra Knowledge Corporation Limited represented by its Managing Director.

4.8. Since State of Odisha has got 50% share of Opp. Party No.3, it cannot be held that Opp. Party No.3 is not rendering public duty. It is also contended that as per the Memorandum of Association of Opp. Party No.3, the Main Object of the Company is as follows:-

> *"To develop a new educational paradigm which can plan, implement, supervise and regulate the developing needs of the masses in the emerging knowledge era of the twenty first century and in the emerging context of liberalization, privatization and globalization in the State of Odisha by promoting the IT enabled education programs as practiced in the School & Mass Education Department. Higher Education, Technical and Medical Education under Government of Odisha and to take all such action as may be deemed to be necessary to provide high quality education including better connectivity, computer skills and co-ordination amongst all educational institutions, universities, students and the Government, as well as to obtain sponsorships, institutional backups and financial support for the present and future programs and responsibilities accepted on behalf of the State Government."*

4.9. Making all these submissions, learned counsel for the petitioner contended that against the impugned order, the Writ Petition is very much maintainable against Opp. Party No.3.

5. To the decisions and submission made by the learned counsel appearing for the petitioner, learned Sr. Counsel appearing for O.P. No.3 made further submission contending inter alia that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts make a lot of difference in the precedential value of a decision.

5.1. It is accordingly contended that applicability of the decisions relied on by the learned counsel for the petitioner has to be tested taking into account the facts involved in the present case with the issue involved. In support of such submission, reliance was placed to a decision of the Hon'ble Apex Court in the case of Bhavnagar University vs. Palitana Sugar Mill (P) Ltd., reported in (2003) 2 SCC 111. Hon'ble Apex Court in Para-59 of the judgment has held as follows:-

> ***"59.*** *A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Ram Rakhi v. Union of India [AIR 2002 Del 458 (FB)] , Delhi Admn. (NCT of Delhi) v. Manohar Lal [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670 : AIR 2002 SC 3088] , Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496 : JT (2002) 1 SC 482] and Nalini Mahajan (Dr) v. Director of Income Tax (Investigation) [(2002) 257 ITR 123 (Del)]."*

6. Having heard learned counsel for the parties and considering the submission made, this Court finds that the present Writ Petition has been filed challenging order dated 21.01.2021, so issued by Opp. Party No.3 under Annexure-1. Though it is not disputed that Opp. Party No.3 was incorporated as a Public Limited Company, but taking into account the fact that Govt. in the Department of Higher Education is holding 50% of the share and the Board of Directors of the Opp. Party No.3 comprises of various Higher Authorities of the State, placing reliance on the decisions relied on by the learned counsel appearing for the petitioner so cited (supra), more particularly the decision in the case of

Ravi Khokar, it is the view of this Court that State of Odisha has got pervasive control over the Opp. Party No.3-Corporation.

6.1. Not only that taking into account the main object of Opp. Party No.3 so reflected in its Memorandum of Association, it cannot be held that Opp. Party No.3 is not discharging public duty.

6.2. In view of the aforesaid analysis, this Court is of the view that the Writ Petition is very much maintainable against Opp. Party No.3.

7. In view of the aforesaid finding of this Court with regard to maintainability, the matter be placed for hearing on merit. The Issue with regard to maintainability is accordingly decided.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 9th July, 2026/Basudev