IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

LPA No.258/2024
LPA No.260/2024
LPA No.261/2024

…Appellant(s)

1. Shivali Sharma wife of Vijay Kumar resident of near Head Post Office behind Bal Bharti of Vidya Mandi School, Udhampur.

2 Mrs Meena Kumari wife of Arjun Singh resident of Chack Rakhwala Udhampur

3. Mrs Ambica Sharma daughter of Parshotam Kumar resident of Omara Morh Near Santoshi Mata Mandir Udhampur

4. Miss Vishaka daughter of Tilak Raj Thapa resident of Indira Nagar Udhampur.

Through: Mr.Aijaz Chowdhary Advocate.

vs.

1. Army Public School through its president (AWES) Chief of Army Staff room No. B-30 ADG Staff Commission South Block Integrated Headquarter of Ministry of Defence New Delhi.

2. Army Public School through its Managing Director (AWES) Building No. 202 Shanker Vihar Delhi Cantonment New Delhi

3. Army Public school Udhampur through its Patron GOC in C Headquarter Northern Command care of 56 APO Udhampur

4. Army Public school through its Chairman (SMAC) Brigadier CDR TA GP HQ Northern Commanda 71Sub Area care of 56 APO

5. Army Public School Udhampur through its Principal P.O PTA T Morh Udhampur.

Through: Mr. Vishal Sharma DSGI.
Mr. Vikas Sharma Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI JUDGE

J U D G M E N T

Sanjeev Kumar, J

LPA No. 258/2024

1 This intra-Court appeal by the appellants arises out of an order and judgment dated 22.10.2024, passed by a learned Single Judge of this Court ["the writ Court"] in WP(C) No. 533/2024 whereby the Writ Court has declined to entertain the writ petition filed by the appellants under Article 226 of the Constitution of India, on the ground that the Army Welfare Education Society (AWES) does not qualify to be a "State" and that the relationship between the Society and its teachers constitutes a private contract. Consequently, in terms of the judgment impugned (supra), the writ petition filed by the appellants has been dismissed.

2 Before we advert to the grounds of challenge urged by Mr. Aijaz Chowdhary, learned counsel appearing for the appellants, to assail the impugned judgment, passed by the Writ Court, we deem it appropriate to briefly notice the controversy which was raised in the writ petition filed before the Writ Court.

3 The appellants herein, who were the writ petitioners before the writ Court, came to be appointed as TGTs/PGTs in different subjects in the Army Public School, Udhampur pursuant to a selection process conducted by the respondents, in terms of the Advertisement Notification dated 16.03.2022. The appellants were placed on probation for a period of two years. However, their probation was neither extended, nor were they confirmed on the posts to which they stood appointed pursuant to the regular

selection process. Resultantly, they were terminated from service. The respondents invoked Article 132(C) of the Red Book of the Army Welfare Education Society (AWES) Rules and Regulations to discontinue the services of the appellants after 31.03.2024.

4 Feeling aggrieved, the appellants not only challenged their termination orders issued by the Army Public School, Udhampur on 16.02.2024, but they also called in question Articles 132(B) and 132(C) of the Red Book. The writ petition was opposed by the respondents, raising a preliminary objection to its maintainability under Article 226 of the Constitution. It was urged by the respondents that the Army Public Schools, including Army Public School, Udhampur, are run by the Army Welfare Education Society ["AWES"], which is not a "State" within the meaning of Article 12 of the Constitution, and, therefore, not amenable to the writ jurisdiction of the High Court. It was also contended before the writ Court that the service disputes between the Society and its employees fall within the realm of law and, therefore, the action of the Society complained of by the appellants is not amenable to the writ jurisdiction of the High Court.

5 The writ Court, after considering the rival contentions, identified the following three issues for consideration:

> *(i) Does the Army Welfare Education Society qualify as a 'State' as defined in Article 12, thereby allowing for a writ to be filed under Article 226 of the Constitution ?*
>
> *(ii) Can a private contract between AWES and the Teachers be enforced by writ jurisdiction ?*
>
> *(iii) Were the respondents justified in terminating the services of the petitioners given the unique facts and circumstances of the case, particularly in light of the absence of any adverse findings against the petitioners, who had successfully completed their probation period in accordance with the AWES Rules.*

6 The writ Court, after dealing with the aforesaid issues at considerable length and analyzing the arguments of the learned counsel

appearing for the parties in light of the settled legal position, came to the conclusion that the writ petition under Article 226 of the Constitution for enforcement of a service contract between AWES and the appellants was not maintainable. The writ Court accepted the preliminary objection raised by the respondents and dismissed the writ petition.

7 The impugned judgment is challenged by the appellants on the ground that the writ Court has failed to correctly appreciate the import of the judgment passed by the Supreme Court in **Army Welfare Education Society, New Delhi vs. Sunil Kumar Sharma and others, 2024 SCC OnLine SC 1683**.

8 Mr. Aijaz Chowdhary, learned counsel for the appellants, would argue that the Army Public School, Udhampur is, though being run by the Army Welfare Education Society is nonetheless imparting education which is a public duty and, therefore, the decisions of AWES are subject to judicial review under Article 226 of the Constitution of India. He took us to the entire judgment of the Supreme Court in **Army Welfare Education Society's case** (supra) to draw a distinction between the case which was under consideration before the Supreme Court and the case on hand before us. Learned counsel appearing for the appellants would also argue that the writ Court has failed to apply the 'doctrine of legitimate expectation' as the Army Public School performs public function and, therefore, the respondents cannot be allowed to breach a promise or deviate from a consistent past practice without any reasonable basis.

9 Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the issue with regard to the maintainability of a writ petition under Article 226 of the Constitution of India against the impugned orders of termination issued by

the Army Public School, Udhampur, is no more *rest integra*. With regard to the controversy involving AWES, which was the subject matter of consideration in **Army Welfare Education Society's *case*** (supra), the Supreme Court framed two questions for consideration:

> "*(i) Whether the appellant Army Welfare Education Society is a "State" within Article 12 of the Constitution of India so as to make a writ petition under Article 226 of the Constitution maintainable against it? In other words, whether a service dispute in the private realm involving a private educational institution and its employees can be adjudicated upon in a writ petition filed under Article 226 of the Constitution?*
>
> *(ii). Even if it is assumed that the appellant Army Welfare Education Society is a body performing public duty amenable to writ jurisdiction, whether all its decisions are subject to judicial review or only those decisions which have public law element therein can be judicially reviewed under the writ jurisdiction?*

10 After an extensive discussion and having regard to the judicial precedents on the point available, the Supreme Court, in paragraphs (38), (41) and (42) of its judgment, concluded as under:

> *"38. In one of the recent pronouncements of this Court in the case of St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors. reported in (2023) 4 SCC 498, to which one of us (J.B. Pardiwala, J.) was a member, the entire law on the subject has been discussed threadbare. In the said case, this Court held that while a private unaided minority institution might be touching the spheres of public function by performing a public duty, its employees have no right of invoking the writ jurisdiction of the High Court under Article 226 of the Constitution in respect of matters relating to service where they are not governed or controlled by the statutory provision.*
>
> *41. The final conclusion drawn in the said decision is reproduced herein:-*
>
> > *"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 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.

"42. 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 a "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".

11 Relying upon the aforesaid judgment, the writ Court found no public law element involved in the discharge of functions by AWES *vis a vis* passing of impugned order of termination against the appellants.

12 It is trite law that a petition under Article 226 of the Constitution is maintainable even against a person or a body discharging public duties or public functions. Such a public duty or public function may arise either from statutory provisions or otherwise. If the duty imposed on a person or a body is other than statutory, it is required to be shown that such a body or person owes a duty or obligation to public, involving a public law element.

13 It is equally true that while a body may be discharging a public function or performing a public duty, rendering its actions amenable to judicial review under Article 226 of the Constitution, its employees would not have right to invoke the writ jurisdiction of the High Court in respect of matters relating to their service where their services are governed by a private contract rather than statutory. Undoubtedly, the functions of educational institutions include the imparting of education would constitute a public function or duty. Any action taken by such an authority in performance of its public duty is open to judicial review under Article 226 of the Constitution. However, its actions and decisions which fall purely within the confines of an ordinary contract of service, having no statutory force or

binding effect, are beyond the scope of judicial review by the High Court under Article 226 of the Constitution.

14 From the pleadings in the writ petition and the nature of the controversy involved, we find that the action of the respondent-Society in not extending the period of probation of the appellants and terminating their services during probation is not taken under any statutory provision. The relationship between the respondent-society and the appellants is governed by a private contract of service, involving no public law element. The employment of teachers and other staff in schools managed and controlled by the Army Welfare Education Society has no direct relation with the public duty of imparting education performed by these institutions.

15 The other plea taken by the learned counsel for the appellants, based on the 'principle of legitimate expectation', is equally devoid of any merit and cannot be accepted. The 'doctrine of legitimate expectation' can only be enforced against the State or its instrumentalities and not against a private body, more particularly when such a body is not acting under any statute. This issue has also been elaborately dealt with by the Supreme Court in **Army Welfare Education Society's case** (supra). Para (48) of the judgment is relevant and is reproduced herein-below:

> "*48. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:*
>
> *a. First, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;*
>
> *b. Secondly, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;*
>
> *c. Thirdly, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;*

> *d. Fourthly, legitimate expectation operates in relation to both substantive and procedural matters;*
>
> *e. Fifthly, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.*
>
> *f. Sixthly, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority merely on the ground that the authority has a duty to act fairly generally".*

16 The position of law has been clearly enunciated by the Supreme Court, leaving no scope for any further debate. 'Legitimate expectation' as is held by the Supreme Court operates within the realm of public law, meaning that a plea of legitimate expectation can only be taken when a public authority breaches a promise or deviates from its consistent past practice without any reasonable basis.

17 Adverting to the case on hand, it is no more *res integra* that imparting of education by a private educational institution may be considered as a public function. However, the relationship between the management of such an institution and its employees remains contractual, falling within the ambit of private law. The 'doctrine of legitimate expectation' has no applicability in respect of a relationship which is governed by private law i.e law of contract, as in the instant case.

18 Viewed from any angle, the action of the respondent-Society impugned in the writ petition, is not amenable to judicial review under 226 of the Constitution. The writ Court has rightly concluded that the writ petition filed by the appellants against the respondents, essentially seeking enforcement of a private contract of service, was not maintainable. We fully concur with the view taken by the writ Court and, as a result, find no merit in this appeal.

19 For the foregoing reasons, this appeal is devoid of merit and the same is, accordingly, dismissed. Consequently, the impugned judgment passed by the writ Court is upheld.

LPA NO.260/2024 & LPA NO. 261/2024

The decision rendered in LPA No. 258/2024 shall govern the disposal of these appeals, as they involve an identical point. The appeals are dismissed.

Interim directions, if any, issued in all the appeals shall stand vacated.

Registry to place a copy of this judgment in all the appeals.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
12.03.2025.
Sanjeev

whether judgment is reportable:Yes