



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

SWP No. 908/1988

Reserved on: 05.03.2026

Pronounced on : 12.03.2026

Uploaded on : 12.03.2026

Whether the operative part or full
judgment is pronounced: Full

Subash Raina

....Petitioners

Through:- Mr. Harpreet Singh, Advocate.

V/s

State of J&K & Ors

.....Respondents

Through:- Mr. Atul Verma, Advocate vice
Mr. Adarsh Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
JUDGMENT

01. The petitioner, through the medium of the present petition, has challenged Order No. CEO/K/2895-2901 dated 30.06.1988 issued by respondents No. 4 and 5 whereby services of the petitioners have been discontinued w.e.f., 01.07.1988. A direction commanding the respondents to reinstate the petitioner in service has also been sought. Besides this, the petitioner has also challenged the vires of Section 14(2) of the J&K Shri Mata Vaishno Devi Shrine Act, 1986.



02. As per case of the petitioner, he was appointed as Pujari at Darbar of respondent No. 1 on 27.09.1986 by respondent No. 4 on a consolidated salary of Rs. 700/- per month. It has been submitted that at the time when the petitioner was employed in the Darbar, he was a student and he had left his studies. It has been submitted that in terms of impugned order dated 30.06.1988 (supra), his services have been discontinued thereby ruining the career of the petitioner. It has been submitted that the petitioner was given to understand that his employment is permanent in nature. It is being submitted that the petitioner discharged his duties with devotion and honestly but without any fault on his part, his services were terminated by respondents No. 4 and 5. It has been submitted that the petitioner has a number of dependents to look after, as such, the impugned order has worked harshly against him.

03. According to the petitioner, the impugned order of disengagement of the petitioner is violative of Articles 14, 16 and 311 of the Constitution of India being in derogation of principles of natural justice. It has been submitted that services of the petitioner could not have been terminated without adopting procedure prescribed under law. It has been submitted that no enquiry was held by the respondents before dispensing with the services of the petitioner.



04. According to the petitioner he was appointed against a clear vacancy and the said vacancy is still existing, as such, there was no need for dispensing with his services. The order impugned, as such, according to the petitioner, is malafide in nature and it has cast a stigma upon him. It has been submitted that in May, 1988, the respondents have created certain posts on which certain other persons have been adjusted but the petitioner has been thrown on road side along with his family.

05. It has been contended that Section 14(2) of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1986 is ultravires of the Constitution being violative of Article 14 of the Constitution as it confers vague and unbridled powers on respondent No. 1.

06. The respondents have contested the writ petition by filing their reply. In their reply, the respondents have submitted that termination of the petitioner is not punitive in nature nor does it cast any stigma upon the petitioner. It has been submitted that appointment of the petitioner was purely on adhoc basis and it does not confer any right upon him to hold the post. It has been contended that protection available under Article 311 of the Constitution of India cannot be extended to the petitioner because respondent-Shri Mata Vaishno Devi Shrine Board (hereinafter to be referred to as **“respondent-Board”**) is not the Government but is an



autonomous body. The respondents have denied having assured the petitioner that his appointment will be made permanent in nature. It has been submitted that having regard to the nature of the impugned order, no enquiry whatsoever was required to be conducted before disengaging the petitioner. It has been contended that Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act is not violative of any provisions of the Constitution and there is no ground to assail the vires of the said Act. It has been submitted that the ground projected by the petitioner is baseless and misconceived.

07. I have heard learned counsel for the parties and perused record of the case.

08. Before dealing with the contentions raised in the present writ petition, it would be apt to notice the history of the present case. Initially, the writ petition was decided by this Court by virtue of judgment dated 22.07.1998. Vide the said judgment, the writ petition was allowed and the impugned order of disengagement of the petitioner was set aside. A direction was issued to the respondents to reinstate the petitioner without back wages. The said judgment came to be challenged by the respondents by way of Letters Patent Appeal bearing LPA (SW) No. 66 of 2000. Vide judgment dated 5.5.2000, a Division Bench of this Court allowed the LPA and the judgment passed by the writ court on 22.07.1998 was set



aside. The judgment of the Division Bench came to be assailed by the petitioner by way of SLP (C) No. 14120/2000 before the Supreme Court. After granting leave, the same was registered as Civil Appeal No. 782 of 2005. Vide order dated 28.01.2005, the Supreme Court set aside the judgment of the writ court as well as the judgment of the Division Bench and remanded the matter to this Court for its fresh decision in accordance with law having regard to the observations made in the said order. It will be profitable to reproduce the relevant extracts of order dated 28.01.2005 passed by the Supreme Court.

“Leave granted.

*In view of the judgment of this Court in Chain Singh Vs. Mata Vaishno Devi Shrine Board and Anr [2004 (8) SCALE 348], the impugned judgment of the Division Bench and that of learned Single Judge are set aside and Writ Petition No. 908 of 1988 is remanded to this High Court for its fresh decision in accordance with law, having regard to what has been said in the aforesaid judgment.
The appeal stands allowed.”*

09. It is in the aforesaid circumstances that the matter has landed back before this Court. In terms of the observations of the Supreme Court made in the afore-quoted order, the matter has to be decided in the light of the judgment passed by the Supreme Court in Chain Singh’s case (supra).

10. In the above context, it is to be noted that the issue that was projected before the Supreme Court in **Chain Singh’s case** (supra) was with regard to maintainability of the writ



petition against respondent-Board. The said case came to be decided by the Supreme Court vide its judgment dated 28.09.2004. While deciding the said case, the Supreme Court has observed as under:

“We allow the appeals and setting aside the impugned judgments of the High Court, remit LPA No. 182 of 1992, LPA No. 183 of 1993, OWP No. 523 of 1995 and writ petition, SWP No. 930 of 1998 to the High Court for hearing and decision in accordance with the law laid down by this Court in Pradeep Kumar Biswas case (supra).

We have refrained from expressing any view on the apprehension voiced by the learned counsel for the appellants that Section 20 of the 1988 Act bars civil suits and adjudications under labour laws. The High Court shall, therefore, first consider the maintainability of the writ petitions under Article 226 of the Constitution of India by examining whether the Shrine Board is amenable to the writ jurisdiction of the High Court, by applying the principles and tests laid down in Pradeep Kumar Biswas case (supra).

The High Court shall also consider whether any alternative remedy is available to the writ petitioners by way of civil suit or industrial adjudication. It shall be open to the High Court to take an appropriate decision thereupon, including the relegation of the parties to the appropriate remedy, if the High Court upon interpretation of the provision of Section 20 of the 1988 Act comes to the conclusion that such alternative remedy is available to the writ petitioners before it.

In case the High Court takes the view that writ petitions are tenable, and that no other equally efficacious alternative remedy is available to the writ petitioners, then the High Court shall decide the writ petitions on their merits.



Although, learned counsel have cited before us a large number of authorities, we consider it unnecessary to refer to them in the view we are inclined to take.

All contentions of the parties are kept open to be canvassed before the High Court.

Considering that the writ petitions have been pending for quite some time, and that they also pertain to cases of termination of services of employees, it is preferable that the hearing of the writ petitions is expedited. The High Court is requested to dispose of the writ petitions, preferably, within a period of six months from the receipt of this judgment.”

11. From the foregoing observations of the Supreme Court, it is clear that the issue whether the Shrine Board is amenable to writ jurisdiction was to be decided by this Court by applying the principles and tests laid down in **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology [(2002) 5 SCC 111]**.

12. After passing of order dated 28.01.2005 passed by the Supreme Court in the present case and judgment dated 28.09.2004 in **Chain Singh's case** (supra), the issue whether the Shrine Board is amenable to the writ jurisdiction of this Court came to be decided by a Division Bench of this Court in **Omkar Sharma & Ors Vs. Mata Vaishno Devi Shrine Board (2005) 3 JKJ 388**. The Division Bench, after taking note of the ratio laid down by the Supreme court in **Pradeep Kumar Biswas's** case (supra) has observed as under:



“20. In the above premises even though the Shrine Board has been constituted under a statute and, therefore, has a statutory status, in the absence of any kind -- even an iota of control of the Government -- financial, functional or administrative -- it cannot be said to be State or an authority within the meaning of [Article 12](#) of the Constitution of India. It has, therefore, to be held that the writ petitions for enforcement of fundamental rights against the Shrine Board are not maintainable. It is not the case of the appellants/petitioners that de hors the claim as to infringement or enforcement of fundamental right, the writ petitions would succeed.”

13. From the foregoing analysis made by the Division Bench, it comes to the fore that even though the Shrine Board has been constituted under a statute and has, therefore, acquired a statutory status, yet in the absence of any kind control of the Government-financial, functional or administrative-it cannot be said to be a State or an authority within the meaning of Article 12 of the Constitution of India. The Division Bench further held that a writ petition for enforcement of the fundamental rights against the Shrine Board is not maintainable. The said judgment of the Division Bench has acquired finality and at present the legal position is that writ petitions against the respondent-Board seeking enforcement of fundamental rights are not maintainable.

14. However, while a writ petition seeking enforcement of fundamental rights against the respondent-Board may not be maintainable, the situation would be different in respect of a case regarding the enforcement of a right other than



fundamental rights. The respondent Board may not be amenable to writ jurisdiction of the High Court when it comes to enforcement of fundamental rights as it has been declared not to be State within the meaning of Article 12 of the Constitution of India. However, the language of Article 226 of the Constitution is wide and as per the provisions contained in the said Article, the High Court has power to issue writs to any person or authority including any Government, therefore, the High Court while exercising its powers under Article 226 of the Constitution of India is vested with jurisdiction to issue writs even against those bodies, who do not qualify to be State within the meaning of Article 12 of the Constitution of India. The Supreme Court in the case of **Board of Control For Cricket in India Vs. Cricket Association of Bihar & Ors, (2015) 3 SCC 251** has settled the controversy by holding that even though BCCI may not be an authority under Article 12 of the Constitution, yet the same is amenable to writ jurisdiction because of wide scope of Article 226 of the Constitution of India. It has been held that the words **“any person or authority”** used in Article 226 of the Constitution of India not only include the statutory authorities and instrumentalities of the State but it also includes any person or authority performing public duties.

15. The next issue that arises for determination is as to in what cases, a writ petition is maintainable against a body,



which does not qualify to be a State within the meaning of Article 12 of the Constitution. This question has been answered by the Supreme Court in the case of **Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors Vs. V.R. Rudani and Ors, 1989 (2) SCC 691** by holding as under:

“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 appellants 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. 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.

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.

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 Art. 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."

16. From the afore-quoted legal position, it appears that in a case where the rights sought to be enforced are purely of a private character, the writ petition would not lie. Thus, the guiding factor is the nature of duty imposed upon the person or body against whom a writ is being sought. If the nature of duty imposed on a body is public in nature, it is amenable to writ jurisdiction under Article 226 of the Constitution of India



but if the rights sought to be enforced are purely of a private character, mandamus cannot be issued against such body.

17. The position has been clarified by the Supreme Court in the case of **Binni Ltd & Anr Vs. Sadasivan and Ors (2005) 6 SCC 657** in the following words:

“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 a 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.”

18. Thus, it is clear that while a body like the respondent-Board, which does not qualify to be a State within the meaning of Article 12 of the Constitution of India, is not amenable to writ jurisdiction of the High Court in the matters relating to enforcement of fundamental rights but it is certainly amenable to the writ jurisdiction in other matters, which have element of any public law. However, a writ would not lie against the respondent-Board in respect of an action, which is essentially of a private character.

19. Turning to the facts of the present case, the petitioner is challenging his termination from service. The impugned action of the respondent-Board does not in any



manner reflect any public element. The petitioner, through the medium of the present petition, is only seeking enforcement of his rights under a contract of service executed by him with the respondent-Board, which is purely private in character lacking any public law element.

20. A coordinate Bench of this Court in the case of **Showkat Ahmad Rather & Ors Vs Government of J&K & ors** [WP(C) No. 2197/2021 decided on 11.10.2022] has, after discussing the law on the subject, held that in the absence of violation of statutory provision or breach of public duty by a body or person, writ petition for enforcement of a private contract of service is not maintainable. In the face of this legal position, the present writ petition filed by the petitioner for challenging his disengagement from service is not maintainable.

21. Even if it is assumed that the present writ petition is maintainable still then the petitioner does not have a case on merits as well. A perusal of the impugned order of disengagement would reveal that the petitioner has been disengaged along with two more employees as their services were no more required by the Board. The impugned order does not cast any stigma on the petitioner and it is not punitive in nature. Admittedly, the engagement of the petitioner as Pujari with the respondent-Board was purely on adhoc basis. An adhoc appointee has no vested right to the



post against, which he has been appointed. Employment of an adhoc appointee ends the moment the purpose or term for which such an employee was hired comes to an end. The respondents have clearly indicated in the impugned order that services of the petitioner along with two more employees are no more required by the respondent-Board. The petitioner does not have a right to continue on the post having regard to the fact that nature of his employment is purely adhoc. He, therefore, cannot seek an order for continuation in service against the respondents.

22. For what has been discussed hereinbefore, the writ petition lacks merit and is, accordingly, dismissed.



सत्यमेव जयते

(SANJAY DHAR)
JUDGE

JAMMU
12.03.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**