



Regular List
Serial No. 52

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

WP(C) No. 2193/2023
CM Nos. 7617/2023, 5076/2023 & 5737/2024

Date of pronouncement : 27.01.2026

Uploaded on : 29.01.2026

Malika

....Petitioners

Through:- Mr. Nitin Verma, Advocate.

V/s

UT of J&K & Ors

.....Respondents

Through:- Ms. Monika Thakur, Assisting Counsel
vice Mr. Ravinder Gupta, AAG for R-1.
Mr. Karan Singh, Advocate vice
Mr. Vipin Gandotra, Adv for R-2.
Mr. Rajat Gupta, Advocate for R Nos. 3
& 4.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
(ORDER)

01. The petitioner, through the medium of the present petition, has laid challenge to the select list of primary teachers issued by respondents No. 3 and 4 in July, 2023. She has also sought a direction upon respondents No. 2 and 3 to allow her to continue as Primary Teacher (hereinafter to be referred to as '**PRT**') and not to replace her with another contractual teacher.

02. As per case of the petitioner, she had joined respondent-Maharaja Hari Singh DAV Centenary Public



School, Akhnoor (hereinafter to be referred to as **“respondent-School”**) on 04.04.2014 as PRT. It has been submitted that the petitioner has to her credit nine years of continuous service and there has never been any complaint against her regarding her performance. In March, 2023, respondent No. 4 is stated to have issued an advertisement for the post of PRT to which the petitioner responded. She joined her service in April, 2023 but in July, 2023, a fresh advertisement notice was issued by respondent No. 4 for the session 2023-2024.

03. According to the petitioner, she appeared in the interview before the selection committee but to her utter surprise, her name did not figure in the select list and she was kept in waiting list. It has been contended that most of the candidates in the select list do not possess the requisite qualification and they have not undergone B.Ed course and they are not CTET qualified. The petitioner is stated to have made a representation to the respondent No. 3 voicing her grievance about her arbitrary rejection but without any success.

04. Respondent No. 1-UT of J&K and respondent No. 2-Chairman, CBSE have filed their separate replies. Both these respondents have contended that they are not concerned with the selection process. They have also contended that the writ petition against the respondent-School is not maintainable.



05. Respondent Nos. 3 and 4 have filed a joint reply in which they have raised a preliminary objection with regard to maintainability of the writ petition on the ground that relationship between the employees and the administration of DAV School is contractual in nature and as such, the same falls within the realm of private law. Relying upon the judgment of this Court in the case of **Shivali Sharma and Ors Vs. Army Public School and Ors** [WP(C) No. 533/2024] decided on 22.10.2024, respondents No. 3 and 4 have submitted that that the instant writ petition is not maintainable.

06. On merits, respondents' No. 3 and 4 have submitted that the petitioner was working on contractual basis with the respondent-School and her contractual tenure was complete. It has been submitted that it is the prerogative of the selection committee to appoint or reject a candidate on the basis of his/her performance/merit. Since the petitioner could not satisfy the selection committee, as such, she was not selected. It has also been submitted that the petitioner has worked for nine years but her contractual appointment was never extended from time to time. In fact, she had applied at the end of each session and was appointed afresh on contractual period for each session.

07. It has been contended that the management has a right to appoint or reject any candidate and in the absence of



any malafides, the petitioner does not have a right to challenge the selection process.

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

09. Before going to the merits of the case, it would be necessary to deal with preliminary objection raised by learned counsel appearing for the respondents with regard to the maintainability of the petition.

10. According to the respondents, the respondent-School is a private institution, which is being run by a Society and the matters relating to appointment and selection of staff/teachers is governed by the bye-laws of the Society. It has been submitted that there is no public law element involved in the present case, therefore the writ petition against the respondent-school is not maintainable.

11. Learned counsel for the petitioner, on the other hand, has placed reliance upon the judgment of the Himachal Pradesh High Court in the case of **“Dharmender Kumar Vs. State of H.P and Ors”** (CWP No. 5830 of 2014 decided on 3rd May, 2017) to support his contention that the present writ petition against the respondent-School is maintainable. It has been submitted that in similar circumstances, the High Court of Himachal Pradesh has entertained the writ petition against DAV School Shimla.



12. It is not in dispute that the relief that is being sought by the petitioner is primarily against the respondents No. 3 and 4, who happen to be the Chairman and Principal of the respondent-School, which is admittedly a private body. Keeping in view the language of Article 226 of the Constitution, a private body/institution is also amenable to writ jurisdiction of the High Court even when it is not State within the meaning of Article 12. Respondent-School may not be an authority under Article 12 of the Constitution but the same is amenable to writ jurisdiction of the High Court because of wide scope of Article 226 of the Constitution. The words **“any person or authority”** used in Article 226 of the Constitution not only includes the statutory authorities and instrumentalities of the State but it also includes **“any person or authority”** performing public duties. Thus, an action of a person or authority which falls within the domain of public duty is amenable to writ jurisdiction of the High court.

13. The Supreme 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 has discussed the situations in which a writ of mandamus would lie against a person or an authority which is neither a State nor an instrumentality of the State in the following manner:-

“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 nonfundamental 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.”

14. It is, thus, clear that in the aforesaid case, the Supreme Court has carved out two exceptions to the issuance of writ of mandamus against a person or body, which is not a State or its instrumentalities, (i) if the rights are purely of a private character (ii) if the management of the college is purely a private body with no public duty, mandamus would not lie. The guiding factor, therefore, is the nature of duty imposed upon the person or body against whom writ is being sought. Thus, if the nature of duty imposed on a body is public in nature, it is amenable to writ jurisdiction under Article 226 but if the rights sought to be enforced are purely of a private character, a writ cannot be issued against such body.

15. The issue has again be considered by the Supreme Court in the case of **Binny Ltd. Vs. V. Sadasivan**, (2005) 6 SCC 657. Para 32 of the said judgment is relevant to the context and the same is reproduced as under:

“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.”

16. Reference may also be made to the observations of the Supreme Court in the case of **K.K. Saksena Vs. International Commission of Irrigation and Drainage and Ors**, (2015) 4 SCC 67. The same are reproduced as under:

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a '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 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. Reason is obvious. 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.”

17. In **St. Mary's Education Society and anr Vs. Rajendra Prasad Bhargava & Ors** 2022 SCC Online SC 109, the Supreme Court while considering the question whether a writ petition would be maintainable against a private school affiliated to the Madhya Pradesh State Board observed as under:



“27. The respondent No. 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 the CBSE. The argument of the respondent No. 1 seems to be that as the school is affiliated to the Central Board i.e. the CBSE, it falls within the ambit of “State” under Article 12 of the Constitution. The school is affiliated to the CBSE for the purpose of imparting elementary education under the Right of Children to Free and Compulsory Education Act, 2009 (for short, “Act 2009”). As the appellant No. 1 is engaged in imparting of education, it could be said to be performing public functions. To put it in other words, the appellant No. 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.

61. 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.”



18. In the aforesaid case, the Supreme Court summed up its conclusion in the following manner:

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

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

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

(c) It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be 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.

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

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

19. From the foregoing analysis of the legal position, it comes to the fore that while a private body like respondent-School would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution but the judicial review of its actions by the High court would be confined to only those actions which have the element of public duty whereas, its actions which have the character of private law rights are not amenable to the writ jurisdiction of the High court.

20. In the light of the aforesaid legal position, let us now analyse the facts of the present case.



21. The petitioner is aggrieved of her non-selection as a PRT and she is also seeking a writ of mandamus upon the respondents No. 3 and 4 for her re-engagement as PRT. The selection of teachers by a private unaided school results in creating of a contract of service between the school and the selected teacher. The same is a matter which falls within the realm of private law. The rights arising in favour of candidates participating in the selection process are private rights, which cannot be enforced against an institution which is neither a State nor an instrumentality of the State by way of a writ petition.

22. A coordinate bench of this Court in the case of **Showkat Ahmad Rather and ors Vs. Government of J&K and Ors** [WP(C) No. 2197/2021 decided on 11.10.2022) has held that a writ petition for enforcement of private contract of service is not maintainable. Similarly another Single Bench of this Court in the case of **Janak Raj Sharma Vs. D.A.V College Managing Committee and ors**, [WP(C) No. 2747/2024 decided on 13.08.2025] has held that a writ petition against D.A.V School for enforcement of service related rights is not maintainable.

23. In face of aforesaid binding precedents of this Court, the ratio laid down by the High Court of Himachal Pradesh in the judgment relied upon by the petitioner cannot be followed.



24. In the face of aforesaid discussion, the instant petition is held to be not maintainable. The same is dismissed accordingly leaving it open to the petitioner to work out appropriate remedy.

**(SANJAY DHAR)
JUDGE**

**JAMMU
27.01.2026**

Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**

