(2022) 03 GUJ CK 0043

In the Gujarat High Court

Case No : R/Special Civil Application No. 11954, 11325, 12070 Of 2020

Sachin Ramjibhai Chavda — APPELLANT

Vs

Principal Secretary To Government Of Gujarat — RESPONDENT

Date of Decision : 14-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 19(1)(g), 21, 31, 32, 226
Gujarat Educational Institutions Services Tribunal Act, 2006 — Section 11
Specific Relief Act, 1963 — Section 14(1)(b)
Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2022) 03 GUJ CK 0043

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Amit Pancha, Angesh A Panchal, Shalin Mehta, Hemang Shah, Kurven Desai, DG Shukla, Manisha Lavkumar, Premal R Josh, Manisha Lavkumar

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1 These petitions are filed by the teaching staff as well as the non teaching staff of the Gujarat Power Engineering & Research Institute (for short"GPERI"), challenging the notices of cessation of their services from the GPERI. Special Civil Application No.12070 of 2020 has been filed by the teaching staff whereas Special Civil Application Nos.11325 of 2020 and 11954 of 2020 have been filed by the non teaching staff.

2 Mr.Shalin Mehta, learned Senior Counsel with Mr.Hemang M. Shah, learned advocate, appeared in Special Civil Application No. 12070 of 2020. Mr.Amit Panchal, learned advocate with Mr.Angesh Panchal, learned advocate, appeared for the petitioners in Special Civil Application Nos. 11954 of 2020 and 11325 of 2020.

3 For the purposes of discussion of facts, Special Civil Application No.12070 of 2020 be considered.

3.1 The petitioners are members of the teaching staff of GPERI. The GPERI was the first ever degree engineering institution in north Gujarat under the PPP Mode. Gujarat Power Corporation Limited set up a research foundation namely Gujarat Power Education & Research Foundation (GPERF). The foundation in turn set up GPERI with affiliation to the Gujarat Technological University.

3.2 The College was setup to be a semi financed engineering college by virtue of a resolution dated 07.05.2009, of the Education Department, which envisaged setting up colleges under the PPP Model by industrial houses, consortiums etc. The petitioners were appointed as Professors and / or Associate Professors and Assistant Professors with the GPERI. Appointment orders are on record dated 30.08.2012 and 04.03.2015 respectively.

3.3 It is the case of the petitioners that pursuant to the Resolution dated 07.05.2009, a initial fund to setup infrastructural facilities was given by the State. Land was allotted at a token rent. GPERF was setup and registered under the Co-operative Societies Act. Memorandum of Association and rules and regulations were framed for the foundation. It appears that with passage of time, the students' strength in the college reduced as a result of which the income of the college which was the sole funding medium depleted. In January 2019, the GPERI therefore, made a request to the State that looking to the current trend of decreasing admissions and recurring expenses, financial support is necessary and the State was requested to render financial support as, GPCL, the parent body had done enough to bail out GPERI.

3.4 The petitioners have placed on record correspondences made by the institute with the Home Minister and the Education Minister on the same lines.

3.5 On 07.07.2020, a meeting was held chaired by the Chief Minister which included the Minister of Education, Energy, the Addl. Chief Sec. Energy & Petrochemical Dept, Principal Sec. Education etc., where it was discussed that as a result of the dwindling income of the institute the Management of the College be handed over to the Gujarat Technological University and the GPERI College may be made a constituent college of GTU. It is based on this decision, that the notice of cessation of services which is impugned in these petitions was issued. On record are the Minutes of the Meetings of the Board of Governors of GPERI recommending closure of the institute and letters written to the Registrar GTU to take over the college as its constituent college. A request was made that the college be taken over by GTU with dedicated staff. However, it appears that the Gujarat Technological University on 08.09.2020 in its meeting of the Board of Governors, proposed to accept the decision to take over GPERI by the University with zero liability and opined that the human resorces are the liability of the GPERI and GTU is not accuontable for the employees.

3.6 This in a nutshell is the subject matter of challenge which resulted in the notice of cessation.

4 Mr.Shalin Mehta,learned Senior Counsel with Mr.Hemang Shah, learned advocate for the petitioners of SCA No.12070 of 2020 after giving the background as above, submitted that a petition under Article 226 is maintainable. He would submit that there is no alternative remedy available before the Gujarat Educational Institutions

Tribunal. The petitioners were the teaching faculty of the GPERI and the services were terminated pursuant to the directions of the University. On the date of their removal, they were not the employees of the University, and therefore, they cannot approach a Tribunal as the Tribunal would have jurisdiction to entertain an application of an employee of an educational institution provided it's affiliated to the University.

4.1 Alternatively Mr.Mehta, learned Senior Advocate, would submit that a writ of mandamus is sought to command the University to absorb the petitioners and therefore, this Court would have the jurisdiction to entertain the present petition.

4.2 Even otherwise, Mr.Mehta, learned Senior Advocate, would submit that what is under challenge is the order dated 07.07.2020 signed by the stake holders including the State Government and the Tribunal and therefore would have no jurisdiction to decide on policy matters. Only the High Court in exercise of powers under Article 226 of the Constitution of India, can do so by lifting the veil to ascertain whether the cessation letters are bonafide.

4.3 Mr.Mehta, learned Senior Advocate, would further submit that it is evident from the appointment letters of the petitioners that the entire procedure of their appointment was carried out in accordance with the procedure laid down by the Gujarat Technological University. Their appointments were scrutinized and endorsed by the University and therefore it is not open for the respondents to say that their appointments were solely by GPERI. The GTU is not absorbing the petitioners, treating the "Human Resource" as a liability. The entire exercise of handing over the college as a constituent college of the University was behind the back of the petitioners.

4.4 Mr.Mehta, would submit that the notices of cessation are bad as retrenchment can take place only when there is no work or no establishment. In the present case, work exists and so do the students, only the management has changed. The notice of cessation amounts to taking away the petitioners' precious right to work, which has been declared as a fundamental right by the Hon'ble Supreme Court.

4.5 Mr.Mehta, learned Senior Advocate, would further submit that this Court while exercising the powers of judicial review is entitled to ascertain whether the teaching staff was a liability or human resource asset to GPERI. No clause in the appointment order exists to issue a letter of cessation and therefore, the cessation notice violates Article14, 19(1) (g) and 21 of the Constitution of India. The petitioners are not getting any enhanced increments and have been deprived of the benefits of the 7th Pay Commission etc. Appropriate directions need to be issued to the Technological University to absorb the petitioners.

5 Mr.Amit Panchal, learned advocate with Mr.Angesh Panchal, learned advocate for the petitioners made the following submissions:

5.1 The respondents are "State" for the purposes of Article 12. The contention that the institution is setup in the nature of a Public Private Partnership and therefore not amenable to writ jurisdiction is misconceived. Relying on the decison in the case of Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Ors., reported in (2002) 5 SCC 111., to submit that the tests regarding formation of body, objects and functions, management and control and financial aid are satisfied. There is government control inasmuch as, the members of the governing body are from the government. He would rely on the decision in the case of Janet

Geyapaul vs. S.R.M.University., reported in (2015) 16 SCC 530.

5.2 Mr.Panchal, learned advocate, would further submit that the petitioners have no remedy under section 11 of the Gujarat Educational Institutions Services Tribunal Act, 2006. Even if the Tribunal has jurisdiction, since the petition is for enforcement of fundamental rights, violation of principles of natural justice, and since the orders under challenge are wholly without jurisdiction, it is only this Court which can decide the issue. Relying on a decision in the case of Satvati Deswal vs. State of Haryana., reported in (2010) 1 SCC 126., Mr.Panchal, learned advocate, would submit that the petition is maintainable.

5.3 The petition did not involve disputed question of facts. Factual assertions made in the petition are not controverted. Reliance was placed in the decision of ABL International Limited vs. Export Credit Guarantee Corporation of India Ltd., reported in (2004) 3 SCC 553. He also relied on a decision in the case of Hari Krishna Mandir Trust vs. State of Maharashtra., reported in (2020) 9 SCC 356.

5.4 With regard to the financial constraints, Mr.Panchal, learned advocate would submit that there is no mechanism under the Gujarat Technological University Act, 2007, to "Take Over" an educational institution as a " Constituent College". Financial grounds cannot deprive the petitioners of fundamental rights as the instrumentality of the State has to act as a model employer. He relied upon the decision in the case of State of Jharkhand vs. Harihar Yadav., reported in (2014) 2 SCC 114.

5.5 He submitted that the employment of the petitioners cannot be termed as contractual in nature. The petitioners' services have been regularized. He relied on the following decisions to submit that the rules / contractual clauses that allow the State to terminate the services of a permanent employee by serving three months notice has been struck down by the Supreme Court. He relied on the following decisions:

Sr No	Judgment	Propositions
1	W.B State Electricity Board vs. Desh Bandhu Ghosh, (1985) 3 SCC 116 [Pages 1 to 4 Judgment Compilation]	Supreme Court struck down a rule which allowed the WBSED to terminate the services of any permanent employee 'by serving three months' notice or on payment of salary for the corresponding period in lieu thereof. [see paragraph 2]. It was held that "the regulation is totally arbitrary and confers on the Board a power swhich is capable of vicious rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII class so familiar to administrative lawyers. [Paragraph 4].
2	Central Inland Water Transport Corpn v. Brojonath Ganguly, (1998) 3 SCC 156 [Pages 5 to 77 of	Rule 9(i) of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules" of 1979 allowed the corporation to terminate the services of an

	Judgment Compilation]	employee with three months notice, or salary in lieu of notice. [Paragraph 9] The Court held that the Rule being unconscionable was void and could not be enforced. [Discussion starts at Paragraph 76, see at 89-100]. It was held that the rule was "arbitrary and unreasonable and it also wholly ignores and sets aside the audialterampartem rule. It, therefore, violates Article 14 of the Constitution. [Paragraph 105]. Remedy of writ was more efficacious than a civil suit. [Paragraph 103].
3	Basudeo Tiwary v. Sidokanhu University, (1998) 8 SCC 194 [Pages 78 to 84 of compilation]	Court was concerned with a provision of the Bihar Universities Act that allowed the services of a person who had been appointed in an irregular or unauthorized manner to be terminated without notice. [Paragraph 11] Court held that even to reach a finding that the appointment was irregular, and enquiry would have to be made. Such an enquiry could not be made without hearing the appointed employee. The Court held that any deviation from the principles of natural justice was not allowed. It read the requirement of hearing into the statute. Since no notice was given, termination was set aside. [Paragraphs 9 to 13].
4	Balmer Lawrie & Co. Ltd vs. Partha Sarathi Sen Roy, (2013) 8 SCC 345 [Pages 85 to 108 of compilation]	Clause 11(a) of the letter of appointment provided that the Company would have a right, which would be exercised at its sole discretion, to terminate the services of employees by giving them three calendar months' notice in writing, without assigning any reason for such decision. [Paragraph 4] Court held that it could not approve a hire and fire policy. [Paragraph 40] Clause 11(a) was found to be unconscionable and void. [Paragraph 41] Also see detailed discussion regarding the Appellant Company being amenable to writ jurisdiction as State under Article 12. [Paragraphs 9 to 37].

He also relied in the case of Delhi Transport Corporation vs. D.T.C.... Majdoor Congress & Ors., in submitting that the regulations which confers powers to terminate services of a permanent employee by issuing a notice of termination

without assigning reasons is bad in law.

5.6 He would therefore submit that the Courts have refused to enforce "Hire & Fire Clauses". Concluding his submissions, he would submit that the orders of termination are illegal and the petitioners are entitled to be reinstated as part of the GTU.

6 Ms.Manisha Lavkumar, learned Senior Advocate, has appeared with Mr.Premal Joshi, learned advocate for the respondent Nos. 3 &4. She made the following submissions:

6.1 She would submit that it was only a limited role of the State Government which by virtue of the Government Resolution dated 07.05.2009 resolved to invite applications by public partnership model for establishment of semi self financed engineering and polytechnic colleges. These colleges are established on a self sustaining model having a fee structure which is higher than that of government colleges but less than that of self financed colleges. The State Government in its role is restricted to contributing Rs.10 crores for an engineering college and leasing of land at a token rent. The colleges have to run and maintain their own expenses.

6.2 With a view to establish such institution an autonomous society registered under the Societies Registration Act, namely, GPERF was founded. There is no State control. It is on this basis that a preliminary objection is taken with regard to the maintainability of the petition on the ground of an alternative statutory remedy under the Gujarat Educational Institutions Services Tribunal Act, 2006.

6.3 She would further submit that the nature of the present proceedings would require examination of several disputed questions of fact and therefore, the Tribunal would be the most appropriate authority to adjudicate by leading evidence.

6.4 She would further submit that considering the nature of appointments in the semi self financed engineering colleges, no fundamental right of the petitioner is affected. Taking the Court to the appointment orders on record, she would submit that the contractual appointments were accepted by the petitioners which included term of discontinuance / cessation on payment of notice pay. She relied on the following decisions on the aspect of alternative remedy:

(i) Sunil Kumar Biswas vs. Ordinance Factory Board & Ors., reported in (2019) 15 SCC 617.

(ii) Commissioner of Income Tax & Ors vs. Chhabil Dass Agarwal., reported in (2014) 1 SCC 603.

(iii) Radhakrishnan Industries vs. State of Himachal Pradesh., reported in (2021) 6 SCC 771.

6.5 She would therefore submit that the manner and the method of appointment of the petitioners and their terms of appointments would demonstrate that the appointments were contractual and could be terminated in accordance with the terms thereunder.

6.6 There was no advertisement or a selection committee constituted or were their services regularized.

6.7 With regard to the manner and method in which the GPERI was taken over,

she would submit that with the concern that the protection of students is paramount a proposal was forwarded by the engineering college to the GTU on 23.10.2019 to take a decision to make the institute a constituent college of GTU. The proposal was then setup and a Committee was constituted. The Board of Governors of GTU setup a two member committee, which based on a report after a visit and a meeting with the representatives of the GPERI, opined that it could be taken up as a constituent college with all available infrastructure and approximately 600 students. As far as teaching and non teaching staff was concerned, it was resolved that the same could not be taken because it would entail future liabilities. Some of the petitioners have accepted contractual appointments after fresh advertisement was advertised by GTU.

7 Mr. D.G.Shukla, learned advocate, appeared on behalf of the Gujarat Technological University, respondent No.6. He made the following submissions:

7.1 He would submit that the petitioners have an alternative efficacious remedy under the provisions of Gujarat Educational Institutions Services Tribunal Act, 2006. The petition raises highly disputed questions of fact.

7.2 Mr.Shukla, learned advocate,would submit that based on the request made by the Board of Governors of GPERI, where the financial condition was discussed, it was found that there was a deficit of Rs.5.25 crores. The college, therefore, informed the University of its liability towards different payments and pointed out that there was a continuous decrease in admissions from 2016 to 2018. On a proposal being received from the GPERI to consider their college as a constituent college of the University, a proposal was placed before the Academic Council on 29.11.2019. A Committee visited the college and based on its report, a meeting was convened under the Chairmanship of the Hon'ble the Chief Minister on 07.07.2020. It was decided that the University will take over the college as a constituent college with zero liability. Accordingly, the Board of Governors resolved to do so. This was done in the interest of the students who were undergoing education with the college. The University neither appointed the petitioners, nor were they terminated by the University. There was no employee-employer relationship. The report of the Board of Governors would indicate that since the employees were the liability of the GPERI, they should not be taken over by the University as their liability. On fresh advertisement for contractual appointment being issued, some of the petitioners have accepted appointments on a contractual basis. Relying on the affidavit in reply, he would justify the stand of not taking over the human resources.

8 Having considered the submissions made by the learned counsels for the respective parties, the Court has to consider the aspect of whether the notice of cessation dated 14.09.2020 issued to the petitioners is valid. If the answer to the question of it being valid is in the affirmative, the issue that will need to be decided is whether in exercise of jurisdiction under Article 226 of the Constitution of India, can the Court issue a writ of mandamus setting aside the notices in question and direct that the petitioners be absorbed / reinstated with the institution which is now a constituent college of the Gujarat Technological University.

8.1 It is necessary therefore to briefly examine the basis on which the GPERI was established.

8.2 On 07.05.2009, the State through its Education Department resolved that over the past 15 years, the number of seats of engineering colleges available for

admission to the students of Gujarat are not adequate. Resultantly, students from Gujarat are required to go outstation. It was therefore decided to invite applications on a Public Private Partnership model from industrial houses consortiums, public sector undertakings, trusts registered societies etc., to fund the establishment of semi self financed engineering and polytechnic colleges. The establishment had to be on a self sustaining mode with a fee structure to support its on going functions. Necessary infrastructure would be the State's contribution as a one time measure restricted to Rs.10 crore for an engineering college and a lease of land at a token rent. Reading the resolution would indicate that these colleges were to maintain their expenses, create their own establishment, recruit their own teachers and carry on day to day functions based on the funds received from fee collection.

8.3 It was based on this resolution that the Gujarat Power Corporation Limited applied to the State Government on 08.06.2009 for setting up a semi self financed engineering college at Mehsana. In furtherance thereof it established the Gujarat Power Education & Research Foundation, an autonomous Society registered under the Societies Registration Act. Reading the Memorandum of Assocaition of the GPERF, it would be clear that the object of GPERF was to act as an autonomous body for promotion and development of education. The funds of the Society comprised and consisted of subscriptions received from the members, funds, donations, gifts, grants, fees or contributions accepted on behalf of the Society. The governing body of the Society consisted of a Chairman, who was the Managing Director of GPCL. One Director from the Board of Director of GPCL was nominated. So also three full time employees of GPCL were nominated on the governing body. Only one representative of the Department of Technical Education was nominated by the department. One technocrat, one Chartered Accountant and one educationist was to be nominated by the GPCL. In other words, of the members of the governing body, only one was a nominee of the State Government through the Department of Technical Education. The rules and regulations of the GPERF would indicate that only one representative of Government of Gujarat was nominated. In other words, except for lending a helping hand by initial finance of Rs.10 crores for setting up the infrastructure and leasing of land at a token rent, the State Government did not have a deep and pervasive control. Merely because the nominees of the government were on Board that itself did not make it an instrumentality or "other authority" amenable to the writ jurisdiction of this Court.

8.4 The question that has consistently been a matter of examination by the Courts in various decisions is to whether merely because an institution is setup initially by a State or carries out functions which are sovereign in nature or in the nature of public duties, can they be said to be bodies amenable to the writ of this Court. In the case of Pradeep Biswas (supra), the Hon'ble Supreme Court was confronted with a question whether the Council of Scientific & Industrial Research was a State or other authority within the meaning of Article 12. The Hon'ble Supreme Court on the basis of the facts held that CSIR was a State as it was under the control of the government and was an agency thereof. This the Court did finding that looking to the financial position of CSIR at least 70% of the funds were available from the grants made available by the Government of India. The decision in the case of Sabhajit Tewary vs. Union of India., (1975) 1 SCC 485 was relooked. The decision therefore in the case of Pradeep Kumar (supra) relied upon by Mr.Panchal, lerned counsel, was a case where on facts apart from the initial capital of Rs.10 lakhs which was made available by the Central Government from the financial position it was shown that at least 70% of the funds of CSIR were from the grants made by

the Government of India. The non governmental contributions were a pittance compared to massive governmental input.

8.5 Facts on hand would indicate that the State except for establishig the institution by an initial grant of Rs.10 crores, lifted its hand for the institution to walk and progress on its own as a self sustaining model as a semi self financed engineering institution to run from its own income earned from the fees. In the case of K.K.Saksena vs. International Commission on Irrigation, Drainage & Ors., reported in (2015) 4 SCC 670, the Supreme Court considered the issue of the maintainability of the petition under Article 226 of the Constitution of India in context of contract of personal service under Section 14(1)(b) of the Specific Relief Act, 1963. Considering the case law on hand, certain tests were set out in paragraphs 14 to 17 of the decision, which read as under:

"14 We may also like to point out that the aforesaid examination of the issue undertaken by the High Court is keeping in view the principles laid down by this Court in catena of judgments and the tests which are to be applied to arrive at the decision as to whether a particular authority can be termed as 'State' or 'other authority' within the meaning of Article 12. It took note of the Constitution Bench decision in Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors.[1], wherein the following six tests were culled out from its earlier judgment in the case of Ramana Dayaram Shetty v. International Airport Authority of India & Ors[2]:

"(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

(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 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)."

15 The Court also took into consideration and referred to the following passage from the judgment in Pradeep Kumar Biswas & Ors. v. Indian Institute of Chemical Biology & Ors.[3]:

"40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the

body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

16. The aforesaid judgment was relied upon by another Constitution Bench in M/s. Zee Telefilms Ltd. & Anr. v. Union of India & Ors.[4] In that case, the Court was concerned with the issue as to whether Board of Control for Cricket in India (BCCI) is a 'State' within the meaning of Article 12 of the Constitution. After detailed discussion on the functioning of the BCCI, the Constitution Bench concluded that it was not a 'State' under Article 12 and made the following observations in this behalf: "30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas case is not a factor indicating a pervasive State control of the Board."

17. Before arriving at the aforesaid conclusion, the Court had summarized the legal position, on the basis of earlier judgments, in para 22, which reads as under:

"22. Above is the ratio decidendi laid down by a seven-Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touchstone of the parameters laid down in Pradeep Kumar Biswas case. Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biswas case for a body to be a State under Article 12. They are:-

"(1) Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State."

8.6 Considering the decisions of the Hon'ble Supreme Court in that context, paras 35 to 52 are reproduced hereunder would indicate that even if a person or authority is "State within the meaning of Article 12 of the Constitution", in a case where the issue is with regard to enforcement of a private law, a writ of mandamus would not lie. Paras 35 to 52 of the decision reads as under:

"35. The discussion which is relevant for our purposes is contained in paras 15 to 20. However, we would like to reproduce paras 15, 17 and 20, which read 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. (See - The Evolving Indian Administrative Law by M.P. Jain (1983) p.266). 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 mandamusmus (sic) 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 the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Court 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 like 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."

36. In para 15 of Anadi Mukta Sadguru Case, the Court 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 aiding 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,

held the Court, the service conditions of academic staff were not purely of a private character as the staff had super-aided protection by University's decision creating a legal right and duty relationship between the staff and the management.

37. Further, the Court explained in para 20 in Anadi Mukta Sadguru case 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 31, 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.

38. In K. Krishnamacharyulu & Ors. v. Sri Venkateswara Hindu College of Engineering & Anr.[6], this Court again emphasized that : (SCC p. 572, para4)

"4.....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 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. The aforesaid two cases pertain to educational institutions and the function of imparting education was treated as the performance of public duty, that too by those bodies where the aided institutions were discharging the said functions like Government institutions and the interest was created by the Government in such institutions to impart education.

39. In G. Bassi Reddy v. International Crops Research Institute & Anr.[7], the Court was concerned with the nature of function performed by a research institute. The Court was to examine if the function performed by such research institute would be public function or public duty. Answering the question in the negative in the said case, the Court made the following pertinent observations:

"28...Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities."

Merely because the activity of the said research institute enures to the benefit of the Indian public, it cannot be a guiding factor to determine the character of the Institute and bring the same within the sweep of 'public function or public duty'. The Court pointed out:

"28...In Praga Tools Corporation v. C.V. Imanual, AIR 1960 (sic -1969) SC 1306, the Court construed Art. 226 to hold that the High Court could issue a writ of mandamus" to secure the performance of the duty or statutory duty" in the

performance of which the one who applies for it has a sufficient legal interest". The Court also held that:(SCC p.589, para6)

"6...an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal v. Union of India, 1957 SCR 738)."

40. Somewhat more pointed and lucid discussion can be found in the case of Federal Bank Ltd. v. Sagar Thomas & Ors.[8], inasmuch as in that case the Court culled out the categories of body/ persons who would be amenable to writ jurisdiction of the High Court. This can be found in para 18 of the said judgment, specifying eight categories, as follows:(SCC p.748)

"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."

41. In Binny Ltd. & Anr. v. V. Sadasivan & Ors.[9], the Court clarified that though writ can be issued against any private body or person, the scope of mandamus is limited to enforcement of public duty. It is the nature of duty performed by such person/body which is the determinative factor as the Court is to enforce the said duty and the identity of authority against whom the right is sought is not relevant. Such duty, the Court clarified, can either be statutory or even otherwise, but, there has to be public law element in the action of that body.

42. Reading of the categorization given in Federal Bank Ltd. (supra), one can find that three types of private bodies can still be amenable to writ jurisdiction under Article 226 of the Constitution, which are mentioned at serial numbers (vi) to (viii) in para 18 of the judgment extracted above.

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.

44. Within a couple of years of the framing of the Constitution, this Court remarked in Election Commission of India v. Saka Venkata Subba Rao[10] that administrative law in India has been shaped in the English mould. Power to issue

writ or any order of direction for 'any other purpose' has been held to be included in Article 226 of the Constitution 'with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of the King's Bench in England. It is for this reason ordinary 'private law remedies' are not enforceable through extraordinary writ jurisdiction, even though brought against public authorities (See - Administrative Law; 8th Edition; H.W.R. Wade & C.F. Forsyth, page 656). In a number of decisions, this Court ha held that contractual and commercial obligations are enforceable only by ordinary action and not by judicial review.

45. On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. However, as noted in Federal Bank Ltd. (supra), such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function.

46. In the present case, since ICID is not funded by the Government nor it is discharging any function under any statute, the only question is as to whether it is discharging public duty or positive obligation of public nature.

47. It is clear from the reading of the impugned judgment, the High Court was fully conscious of the principles laid down in the aforesaid judgments, cognizance whereof is duly taken by the High Court. Applying the test in the case at hand, namely that of ICID, the High Court opined that it was not discharging any public function or public duty, which would make it amenable to the writ jurisdiction of the High Court under Article 226. The discussion of the High Court is contained in paras 34 to 36 and we reproduce the same for the purpose of our appreciation: (K.K.Saksena case, SCC OnLine Del)

"34. On a perusal of the preamble and the objects, it is clear as crystal that the respondent has been established as a Scientific, Technical, Professional and Voluntary Non-Governmental International Organization, dedicated to enhance the world-wide supply of food and fibre for all people by improving water and land management and the productivity of irrigated and drained lands so that the appropriate management of water, environment and the application of irrigation, drainage and flood control techniques. It is required to consider certain kind of objects which are basically a facilitation process. It cannot be said that the functions that are carried out by ICID are anyway similar to or closely related to those performable by the State in its sovereign capacity. It is fundamentally in the realm of collection of data, research, holding of seminars and organizing studies, promotion of the development and systematic management of sustained irrigation and drainage systems, publication of newsletter, pamphlets and bulletins and its role extends beyond the territorial boundaries of India. The memberships extend to participating countries and sometimes, as by-law would reveal, ICID encourages the participation of interested national and non0member countries on certain conditions.

35. As has been held in the case of Federal Bank Ltd. (supra), solely because a private company carries on banking business, it cannot be said that it would be amenable to the writ jurisdiction. The Apex Court has opined that the provisions of Banking Regulation Act and other statutes have the regulatory measure to play.

The activities undertaken by the respondent-society, a non-governmental organization, do not actually partake the nature of public duty or state actions. There is absence of public element as has been stated in V.R. Rudani and others (supra) and Sri Venkateswara Hindu College of Engineering and another (supra). It also does not discharge duties having a positive application of public nature. It carries on voluntary activities which many a non-governmental organizations perform. The said activities cannot be stated to be remotely connected with the activities of the State. On a scrutiny of the constitution and by-laws, it is difficult to hold that the respondent- society has obligation to discharge certain activities which are statutory or of public character. The concept of public duty cannot be construed in a vacuum. A private society, in certain cases, may be amenable to the writ jurisdiction if the writ court is satisfied that it is necessary to compel such society or association to enforce any statutory obligation or such obligations of public nature casting positive public obligation upon it.

36. As we perceive, the only object of the ICID is for promoting the development and application of certain aspects, which have been voluntarily undertaken but the said activities cannot be said that ICID carries on public duties to make itself amenable to the writ jurisdiction under Article 226 of the Constitution."

48. We are in agreement with the aforesaid analysis by the High Court and it answers all the arguments raised by the learned senior counsel appearing for the appellant. The learned counsel argued that once the society is registered in India it cannot be treated as international body. This argument is hardly of any relevance in determining the character of ICID. The focus has to be on the function discharged by ICID, namely, whether it is discharging any public duties. Though much mileage was sought to be drawn from the function incorporated in the MOA of ICID, namely, to encourage progress in design, construction, maintenance and operation of large and small irrigation works and canals etc., that by itself would not make it a public duty cast on ICID. We cannot lose sight of the fact that ICID is a private body which has no State funding. Further, no liability under any statute is cast upon ICID to discharge the aforesaid function. The High Court is right in its observation that even when object of ICID is to promote the development and application of certain aspects, the same are voluntarily undertaken and there is no obligation to discharge certain activities which are statutory or of public character.

49. There is yet another very significant aspect which needs to be highlighted at this juncture. Even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review, as already pointed out above. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. In The Praga Tools Corporation v. Shri C.A. Imanual & Ors. [11], as already discussed above, this Court held that the action challenged did not have public element and writ of mandamus could not be issued as the action was essentially of a private character. That was a case where the concerned employee was seeking reinstatement to an office.

50. We have also pointed out above that in Sata Venkata Subba Rao (supra) this Court had observed that administrative law in India has been shaped on the lines of English law. There are catena of judgments in English courts taking same view, namely, contractual and commercial obligations are enforceable only by ordinary action and not by judicial review. In Queen (on the application of Hopley) v . Liverpool Health Authority & Ors. (unreported) (30 July 2002), Justice Pithford helpfully set out three things that had to be identified when considering whether a

public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are: (i) whether the defendant was a public body exercising statutory powers; (ii) whether the function being performed in the exercise of those powers was a public or a private one; and (iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

51. Even in Anadi Mukta Sadguru (supra), which took a revolutionary turn and departure from the earlier views, this Court held that 'any other authority' mentioned in Article 226 is not confined to statutory authorities or instrumentalities of the State defined under Article 12 of the Constitution, it also emphasized that if the rights are purely of a private character, no mandamus could issue.

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 a State within the meaning of Article 12 of the Constitution of India; and

(ii) 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."

9 Keeping these principles as aforesaid in view, what is evident from the records in the petition is that the petitioners were appointed initially on an adhoc basis, however, thereafter on a regular basis. Their orders of appointment indicated that they were governed by certain terms and conditions. These appointment orders were issued by the GPERI established by the foundation, an autonomous body managed by GPCL. Clause 13 of the Appointment Order would indicate that it was open for the institute to relieve the incumbents from their duties after giving one/three months notice. The petitoners had agreed to the terms of employment and signed the orders. Even in the decision of the Supreme Court in the case of Ramkrishna Mission & Anr vs. Kago Kunya & Ors., reported in (2019) 16 SCC 303, considering the decisions of the Supreme Court in context of maintainability of the writ petitons against the mission hospital, while assessing whether the institute was amenable to a writ under Article 226, the Supreme Court held as under:

"14 The rival submissions fall for consideration.

15 Ramakrishna Mission runs a 263 bedded hospital at Itanagar. The grant in aid which is provided by the State government covers the cost of running 60 beds out of 263 bedded hospital. Relevant factual data in regard to the nature and extent of the grants has been placed on record. About 32.26 per cent of the total income of the hos - pital for 2014-2015, 23.33 for 2015-16 and 22.53 per cent for 2016-17 was from the grants provided by the State government. The revenue expenditure, the audited bal-ance sheets and accounts of the hospital indicate that 35.23 per cent of the expenditure for 2014-2015, 23.83 per cent for 2015-2016 and 20.57 per cent for 2016-2017 was borne from the finances provided by the State

government.

16 In assessing whether the appellants are amenable to the writ jurisdiction under Article 226, we proceed on the basis of the following circumstances which have been pressed in aid both on behalf of the original petitioner before the High Court and, in re - sponse to the present appeal, by the State government:

(i) A portion of the income of the hospital is generated out of the grants which are received from the State; and

(ii) Land has been made available for the construction of the hospital by the State government on a concessional rate.

The grant by the State government covers only a portion, namely, 60 beds out of the 263-beds of the hospital at Itanagar. Significantly, the State government does not con- trol the day to day functioning of the hospital. The management of the hospital is exclu- sively with the Ramakrishna Mission. Since the State government finances through its grants a portion of the income of the hospital, it requires the audited accounts to be submitted to the State government for scrutiny.

17 The basic issue before this Court is whether the functions performed by the hos- pital 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 Sri Ra- makrishna Paramhansa. Service to humanity is for the organisation co-equal with ser- vice 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 Sri 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 development and gen- eral 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 organization. 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, ad- ministration 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

au- thority 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 (supra). Andi Mukta (supra) was a case where a public trust was running a college which was affiliated to Gujarat University, a body governed by 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 govern- ment 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 termi- nal 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:

(i) The trust was managing an affiliated college;

(ii) The college was in receipt of government aid;

(iii) The aid of the government played a major role in the control, management and work of the educational institution;

(iv) Aided institutions, in a similar manner as government institutions, discharge a public function of imparting education to students;

(v) All aided institutions are governed by the rules and regulations of the affiliating University;

(vi) Their activities are closely supervised by the University;

and

(vii) 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 man- agement.

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 recognized 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:

"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 (supra), 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.

23 In VST Industries Ltd v VST Industries Workers' Union3, a two judge Bench of this Court held that a mere violation of the conditions of service will not provide a valid basis for the exercise of the writ jurisdiction under Article 226, in a situation where the activity does not have the features of a public duty. This Court noted:

"7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law e.g. the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest… After detailed discussion, the learned authors have summarised the position with the following propositions:

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a 'public' or a 'private' body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions." (2001) 1 SCC 298 "(3) …In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute." (Emphasis supplied)

24 In G Bassi Reddy v International Crops Research Institute 4, a two judge Bench of this Court dealt with whether the International Crop Research Institute for the Semi-Arid Tropics ("ICRISAT") which is a non-profit research and training centre, is amenable to the writ jurisdiction under Article 226. The dispute concerned the termination of employees of ICRISAT. The Court held that only functions which are similar or closely related to those that are performed by the State in its sovereign capacity qualify as 'public functions' or a 'public duty':

"28. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty…ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world.

While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities." 4(2003) 4 SCC 225 Applying the above test, this Court upheld the decision of the High Court that the writ petition against ICRISAT was not maintainable.

25 A similar view was taken in Ramesh Ahluwalia v State of Punjab5, 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,6 this Court analysed the earlier judgements of this Court and provided a classification of entities against whom a writ petition may be maintainable:

"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." (emphasis supplied)

27 In Binny Ltd. v V Sadasivan7, a two judge Bench of this Court noted the distinction between public and private functions. It held thus:

"11…It is difficult to draw a line between public functions and private functions when they are 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."

28 The Bench elucidated on the scope of mandamus:

"29. 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…There cannot be any general definition of public authority or public action. The facts of each case decide the point." (emphasis supplied)

29 More recently in K K Saksena v International Commission on Irrigation and Drainage8, another two judge Bench of this Court held that a writ would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus:

"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."

30 Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

31 Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The nature of the work which is rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is purely voluntary.

32 Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an 'authority' within the meaning of Article 226. State governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of state control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority."

9.1 Reading the aforesaid judgement, what will be evident is that when there is no governmental control in the functioning, administration and day to day management, and unlike in the case of Andi Mukta Sadhguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust vs. V.R.Rudani., 1989(2) SCC 691, where the teachers were affiliated to the University and the management of the college was run by a Trust, in the present case what is evident is that GPERI was a self sustained semi financed engineering college. In those circumstances, the

employment in the institution is not of a public character as was in the case of Andi Mukta (supra)., and therefore, the contract of employment of a purely private nature would not become statutory. Thus, as held by the Supreme Court in the case of Ram Krishna Mission (supra), even if a public discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

10 Affidavit of the GTU is on record which indicates that preceeding the decision of the Board of Governor to take over GPERI as a constituent college, the college was only affiliated to GTU not in the manner of it being controlled by the University.

11 Events preceeding the notice of cessation would indicate that in January and February 2019, the institute addressed letters to the Government of Gujarat pointing out that the institute is passing through a big financial crisis due to drastically low admissions. Tution fee is the only important and dependable source of income for sustainance of the institute which is dropping as a result of a decreasing trend in admissions. The letter also indicates that the parent body i.e. GPCL / GPERF having continously bailed out GPERI is now finding it difficult and needs to create a rich and a dependable source of funds. Accordingly, looking to the career of about 600 students, it was found that GPERI needed financial support from the government. A meeting of the governing body was held on 17.10.2019 where it was found that the Director of Technical Education, the representative of government expressed its inability to take over GPERI. A deficit of Rs.5.25 crores which included pending payments of the current financial year 2020 existed. A request also was made to the Registrar GTU to take it over as its constituent college as it was performing well. Financial and human resource details were furnished requesting that the GTU take over such facilities with the staff. Total salary liability was shown to be Rs.4,44,56,868/-

12 Minutes of the meeting of the Gujarat Technical University would indicate that the GTU was of the opinion that the human resources were appointed by GPERI and the terms and conditions of service were prescribed by them. The GTU cannot accept the liability of the present employees. On 08.09.2020, considering the viability of taking over GPERI as a constituent college, the GTU proposed to take over GPERI with zero liability.

13 It is in the background of these facts that the notice of cessation was issued which is according to the opinion of this court in the terms of the appointment orders so passed. As opined above, since it was in the realm of private law, this Court in exercise of powers under Article 226 of the Constitution of India and having examined the decision making process as unfolds in the correspondence and the gist of which is reproduced in a nutshell would indicate that if an institution runs into financial difficulties and is compelled to enforce its private law obligation in accordance with the terms of the contract as is so done in the present case, no fault can be found therewith.

13.1 On the question of whether the petitioners have an alternative remedy under the provisions of the Gujarat Educational Services Tribunal Act, since the college was run in accordance with the terms and regulations of the GTU, it could be open for the petitioners to approach the Tribunal.

13.2 Merely because the orders of appointments were endorsed by the University and their terminations have been made in accordance with the provisions of the contract of service, it cannot be said that a fundamental right of the petitioners was

under threat and the decisions therefore cited by the learned counsels for the respective petitioners in the case of DTC (supra) and in the case of Balmer Lawrie & Co. Ltd (supra) would not be applicable.

14 The petitions are accordingly dismissed with no orders as to costs.