

IN THE HIGH COURT OF JHARKHAND AT RANCHI**L.P.A. No. 63 of 2025**

Nirmala College through its Secretary, Governing Body, Nirmala College, Sister Sushma Beck, aged about 55 years, Daughter of Late Tarcicius Beck working at of Nirmala College, Parastoli, Doranda, P.O. Box No. 15, P.O. & P.S. Doranda, District Ranchi, Jharkhand -834002 and resident of Taldanga, Dhanbad P.O. & P.S. Dhanbad, District Dhanbad, Jharkhand-828206

... **Respondent No. 3/Appellant**
Versus

1.State of Jharkhand through its Secretary, Project Bhawan, P.O. & P.S. Dhurwa, District Ranchi, Jharkhand, PIN-834004.

2.Jharkhand Public Service Commission through its Secretary, P.O. G.P.O, P.S. Kotwali, District Ranchi, Jharkhand-834001.

3.Ranchi University through its Registrar, Shahid Chowk, P.O. G.P.O., P.S. Kotwali, District Ranchi, Jharkhand-834001.

... **Respondents No. 1, 2 & 4/Respondents**

4.Dr. Anjana Singh, daughter of Late Narayan Singh, aged about 43 years, Assistant Professor, Head of Department, Department of History, Nirmala College, resident of Flat No. 3/B, Neelam Apartment, Amethiya Nagar, Mahua Toli, Namkum, Ranchi-834010.

... **Petitioner/Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Sumeet Gadodia, Advocate
 Mr. Nipun Bakshi, Advocate
 Mr. Shubham Sinha, Advocate
 Mr. C. Vijay, Advocate
 Mr. Nillohit Choubey, Advocate
 Ms. Shruti Shekhar, Advocate
 Ms. Sanya Kumari, Advocate
 Mr. K. Hari, Advocate

For the Resp.-State : Mr. Ashutosh Anand, AAG-III
 Mr. Sahbaj Akhtar, AC to AAG-III

For the Resp.-JPSC : Mr. Abhay Prakash, Advocate
 Mr. Amritanshu Singh, Advocate
 Mr. Durgesh Agarwal, Advocate

For the Resp. No.3 : Mr. Anoop Kr. Mehta, Advocate
Mr. Manish Kumar, Advocate
Mr. Pratyush, Advocate

For the Resp. No.4 : Mr. Indrajit Sinha, Advocate
Mr. Shubhashis Rasik Soren, Adv
Ms. Shobha Gloria Lakra, Advocate
Ms. Mrinalini Adela Tete, Advocate
Ms. Preeti Hembrom, Advocate
Ms. Singi Sharon Devita, Advocate

CAV on 25/02/2025 Pronounced on 04/04/2025
Per Sujit Narayan Prasad, J:

Prayer

1. The instant *intra-court* appeal, under Clause 10 of the Letters Patent, has been preferred for quashing and setting aside order dated 04.10.2024 passed by learned Single Judge in W.P. (S) No. 5791 of 2022 whereby and whereunder the preliminary objection raised by the appellant-Nirmala College [respondent no. 3 in the writ petition] has been rejected by holding the writ petition to be maintainable.
2. This Court, before entering into the issue on fact, needs to refer herein that the office had pointed out the issue of maintainability of the instant intra-court appeal on the ground that the instant appeal has been filed against order dated 04.10.2024 passed in W.P. (S) No. 5791 of 2022, from perusal of which it transpires that the writ petition is still pending, as such in view order dated

05.07.2010 passed in L.P.A. No. 195 of 2010, the instant intra-court is not maintainable.

3. This Court, therefore, first heard the matter of maintainability of the instant intra-court appeal and after having heard learned counsel for the parties had decided the 'issue of maintainability' of the instant intra-court appeal vide order dated 19th December, 2024 and held that the objection raised by the office on the issue of maintainability of the instant appeal is over-ruled.
4. It further needs to refer herein that the writ petitioner-respondent no. 4 herein had filed Caveat being Caveat No. 264 of 2024, which is on record. The caveator-writ petitioner has put his appearance in the instant appeal, as would be evident from order dated 12th February, 2025. On that date, the direction was passed to supply the copy of memo of appeal to the writ petitioner-respondent no. 4 herein for hearing the matter on merit that is regarding the order maintainability of the writ petition, which is impugned in the instant appeal.
5. Accordingly, the copy of memo of appeal was handed over to writ petitioner, who is being represented by Mr. Indrajit Sinha, assisted by learned counsel Mr. Shubhashis Rasik Soren.

6. This Court before further delving into the issue needs to refer herein the factual aspect as per the pleading on behalf of the appellants.

Factual Matrix:

7. The facts, as per the pleading made in the writ petition, is that the writ petitioner joined Nirmala College in the year 2005 as Lecturer in the Department of History and was confirmed on the post of Lecturer in History with effect from 01.07.2006 and was working as Assistant Professor and Head, Department of History with Respondent-Nirmala College
8. Further case of the writ petitioner is that there was inordinate delay in release of arrears of her salary due to 6th Pay Revision with effect from 01.01.2006 and as such the writ petitioner repeatedly made representation to Respondent-College but her grievances were not addressed by the College and, on the contrary, departmental proceedings vide Memorandum dated 21.10.2022, whereby departmental proceedings was initiated against the petitioner by respondent No. 3-Nirmala College. Aggrieved thereof, the petitioner approached this Court by filing writ petition challenging Memorandum dated 21.10.2022, whereby departmental proceedings was initiated against the petitioner as well as order contained

in letter dated 14.11.2022, whereby Respondent-3 Nirmala College declined to supply relevant documents to the writ petitioner.

9. However, during pendency of the writ petition, an order was passed by Respondent No. 3-College imposing punishment of dismissal of service dated 03.03.2023 in the departmental proceedings and even Respondent-Jharkhand Public Service Commission (JPSC) granted *post facto approval* to the same vide order dated 28.06.2023, which was challenged by filing Interlocutory Application before this Hon'ble Court and the said amendment application being I.A. No. 7549 of 2023 was allowed vide order dated 14.09.2023. Consequent upon the said amendment being allowed, amended writ application was filed by writ petitioner in which following reliefs were sought, which are quoted as under:

(i).For issuance of an appropriate Writ/Rule/Direction particularly a Writ in the nature of Certiorari for quashing and setting aside the Memorandum Ref: 102/NCR/2022 dated 21.10.2022 [ANNEXURE-5] along with the charges framed against the petitioner issued by the Respondent No. 3

II.For issuance of an appropriate Writ/Rule/Direction particularly a Writ in the nature of Certiorari for quashing and setting aside the Memorandum Ref. No.108/NCR/2022 dated 14.11.2022 [ANNEXURE-7] whereby and whereunder the Respondent No. 3 had

declined for supply of relevant documents thereupon and granted only three days' time to reply;

ii a) *For issuance of an appropriate Writ/Rule/Direction particularly a Writ in the nature of Certiorari for quashing the letter Ref. No. 111/NCR/2022 dated 22.11.2022 [ANNEXURE-8] issued by the Secretary, Governing Body, Nirmala College.*

ii b) *For issuance of an appropriate Writ/Rule/Direction particularly a Writ in the nature of certiorari for quashing the Letter Ref. No.25/NCRA/2023 dated 03.03.2023 [ANNEXURE-17] whereby and whereunder the Respondent College had passed punishment order dismissing the Petitioner from service;*

ii c) *For issuance of an appropriate Writ/Rule/Direction particularly a Writ in the nature of Certiorari for quashing the Letter No.-1/VV/RU/JPSC-01/2023/2212 dated 28.06.2023 [ANNEXURE-21], whereby and whereunder the JPSC had given approval on the dismissal order passed by Respondent College;*

ii d) *Direct the Respondent College to reinstate the Petitioner in service with all consequential benefits.*

iii) *Direct the Respondent No. 3 to declare the Disciplinary Authority before proceeding against the Petitioner;*

iv) *Direct the Respondent No. 3 to seek sanction from Respondent No. 2 before taking any disciplinary action as mandated under Section 57A of Jharkhand State Universities Act, 2000;*

v) *Direct the Respondent No. 3 to supply all relevant complaints against the Petitioner before seeking any reply/defence;*

vi) *And for any other relief or reliefs to which the petitioner may be entitled in the facts and circumstances of the case.*

- 10.** The writ application was listed before the learned Single Judge for hearing on 23.09.2024 and, on the said date, Mr. Sumeet Gadodia, learned counsel appearing for Respondent No. 3/appellant herein raised preliminary objection regarding maintainability of the writ petition and request was made to decide the said preliminary objection at the first instance before delving into the merits of the writ petition.
- 11.** Accordingly, the matter was heard by learned Single Judge on the preliminary objection regarding maintainability of the writ petition.
- 12.** Submission was made on behalf of appellant-College that the college is 'Private Minority Aided Educational Institute' and it receives grant-in-aid from the State Government for payment of salary to some of its teachers. Submission has been made that the Nirmala College, the appellant herein, is not the State within the meaning of Article 12 of the Constitution of India or even authority amenable under Article 226 of the Constitution of India.
- 13.** Further submission was made that the writ petitioner has an alternative remedy under Section 8 of the Jharkhand Education Tribunal Act, 2005 ['JET Act, 2005'] to challenge initiation of departmental proceedings and/or the final order of dismissal from service, and, in view of

existence of such alternative remedy, writ petition should not be entertained.

14. It was further contended that even if writ petition under Article 226 of the Constitution of India is maintainable against a Private Minority Institution, then also a service dispute in the private realm involving a Private Educational Institution and its employees cannot be adjudicated in a writ petition filed under Article 226 of the Constitution of India.

15. In support of his submission, learned counsel for the appellant-college has relied upon the judgment rendered in the case of ***St. Mary's Education Society & Ors v. Rajendra Prasad Bhargava & Ors*** reported in **(2023) 4 SCC 498** and in the case of ***Army Welfare Education Society, New Delhi v. Sunil Kumar Sharma & Ors.*** reported in **2024 SCC OnLine SC 1683**.

16. While on the other hand, Mr. Indrajit Sinha, learned counsel for the writ petitioner submitted that mere existence of an alternative remedy under the JET Act, 2005 cannot be treated as a bar upon the Court in entertaining a writ petition. He has further submitted that the case laws cited by the appellant-college are not applicable in this case and in support of his submitted, he relied upon the judgment rendered in the case of ***Marwari***

Balika Vidyalaya v. AshaSrivastava & Ors. reported in
(2020) 14 SCC 449.

17. The writ Court, having heard learned counsel for the parties, held that the instant writ application is maintainable and is required to be heard by this Court on its own merit. Accordingly, the matter was directed to be listed after two weeks' to enable the parties to get themselves prepared for adjudication on merits of the instant writ petition.

18. Being aggrieved with the said order by which the writ petition was held to be maintainable, the appellant has approached this Court.

Submission on behalf of appellant-college

19. Mr. Sumeet Gadodia, learned counsel for the appellant-Nirmala College has taken the following grounds in assailing the impugned order.

20. The college in question has been registered under the Society Registration Act and having no pervasive control either of the State or Ranchi University and as such in absence thereof, the institution in question, the Nirmala College, cannot be said to be 'State' within the meaning of Article 12 of the Constitution of India or even 'Authority' said to be amenable under Article 226 of the Constitution of India.

21. Further submission has been made that the writ petition can be said to be maintainable against the private entity as per the judgment rendered in the case of ***St. Mary's Education Society & Ors v. Rajendra Prasad Bhargava & Ors (supra)*** but that is only with respect to the issue if there is involvement of public element but herein the issue of public element is lacking rather for the individual grievance, regarding the issue of termination order passed against the writ petitioner, it has been questioned, as such the college being the private entity, the writ will not lie agitating the issue of individual grievance pertaining to the issue of termination.

22. Learned counsel for the appellant-college has further submitted that the learned Single Judge has erred in passing the order by differentiating the view taken by the Hon'ble Apex Court in the case of ***St. Mary's Education Society v. Rajendra Prasad Bhargava & Ors. (supra)*** and distinguishing the same by putting reliance upon the judgment rendered by Hon'ble Apex Court in the case of ***Marwari Balika Vidyalaya v. Asha Srivastava & Ors (supra)***.

23. It has been contended, by referring to paragraph 57A(1) of the Jharkhand State Universities Act, 2000, upon which the learned Single Judge has also relied upon, that even

the aforesaid statutory provision does not mandate any interference of anybody said to be State within the meaning of Article 12 of the Constitution of India, which would be evident from perusal of Section 57A(1) of the Jharkhand State Universities Act, 2000 [hereinafter referred to as 'Act, 2000'].

24. Learned counsel, based upon the aforesaid ground, has submitted that the order passed by the learned Single Judge, therefore, suffers from infirmity and as such is not sustainable in the eye of law.

Submission on behalf of Resp. no. 4-writ petitioner

25. While on the other hand, Mr. Indrajit Sinha, learned counsel for the writ petitioner, respondent no. 4 herein, has submitted that the writ petition is well maintainable. He has defended the order passed by the learned Single Judge by taking the following grounds.

26. Submission has been made that the writ petition is well maintainable if the provision of Section 57A(1) of the Act, 2000 will be taken into consideration. It has been contended that the aforesaid statutory provision provides that prior to initiation of departmental proceeding approval of the Jharkhand Public Service Commission [hereinafter referred to as 'Commission'] is mandatorily required and even at the stage of appointment or dismissal

or removal or compulsory retirement approval of commission is required.

27. The contention therefore has been raised that since in absence of approval of the Commission the order passed, after conclusion of departmental proceeding of either of the nature i.e., either dismissal or removal or compulsory retirement, will not attain its finality and the Commission being the constitutional body, any decision taken by the college in question will be within the domain of High Court under the power of judicial review as conferred under Article 226 of the Constitution of India.

28. The contention has been raised that the college in question is the minority institution based upon the religion, as such it is coming under the fold of Section 57 (1) of its first proviso and that even before initiation of departmental proceeding the approval of the Jharkhand Public Service Commission is required and even after its conclusion and even at the time of appointment of one or the other employee.

29. The argument has been advanced that the appointment of the writ petitioner is against the sanctioned post and for the aforesaid particular post, the Government has also facilitated by giving the financial aid by way of grant-in-aid and in that view of the matter it is incorrect on the part of

college in question to take the ground that the order passed by the college in question is not amenable under Article 226 of the Constitution of India.

30.It has been argued that the learned Single Judge after considering the judgment rendered in the ***Marwari Balika Vidyalaya v. Asha Srivastava & Ors. (supra)*** and distinguishing it with the case of ***St. Mary's Education Society v. Rajendra Prasad Bhargava (supra)*** has come to the conclusive finding by holding that the writ petition is maintainable which cannot be said to suffer from error reason being that the judgment rendered in the case of ***St. Mary's Education Society v. Rajendra Prasad Bhargava (supra)*** upon which much reliance has been placed by the learned counsel for the appellant is totally the minority school wherein the ***Marwari Balika Vidyalaya***, the subject matter in the judgment rendered in the case of ***Marwari Balika Vidyalaya v. Asha Srivastava & Ors. (supra)*** is within the control of the State said to be pervasive control and as such the reliance of the judgment rendered in the case of ***St. Mary's Education Society v. Rajendra Prasad Bhargava (supra)*** in the facts and circumstance of the present case will not be applicable rather the ratio of the judgment rendered in the case of ***Marwari***

Balika Vidyalaya v. Asha Srivastava & Ors. (supra) is applicable.

31. Learned counsel for the writ petitioner-respondent no. 4 on the aforesaid ground has submitted that there is no infirmity in the impugned order.

Submission on behalf of respondent-University

32. Mr. Anoop Kumar Mehta, learned counsel appearing for the respondent-Ranchi University has submitted that the writ petition is well maintainable in view of the fact that the college in question is governing under the Jharkhand State Universities Act, 2000 particularly Section 57A and the statute as contained under Statute 32 which deals with the management and constitution of the governing body of the religious minority colleges.

33. The reference of the provision as contained under Statute No. 32 as available under Rule 24 thereof has been made, where it has been provided that the teachers of every admitted college shall be appointed within budget provision and may be suspended, dismissed or discharged by the Governing Body in accordance with the provision as contained in the ordinance or statutes.

34. Learned counsel for the University has further submitted that in view of the specific provision in this regard to have a control of the University, the Statute is there in the

University Act and as such it is incorrect on the part of the college to take the ground that the college in question is not under the pervasive control of the University and/or the State.

Submission on behalf of respondent-JPSC

35. Mr. Abhay Prakash, learned counsel appearing for the Jharkhand Public Service Commission, has submitted that as per mandate as contained under Section 57A and proviso thereto, the approval of the Commission is required to be there.

Analysis

36. We have heard learned counsel for the parties at length and gone across the finding recorded by learned Single Judge as also the relevant provisions of Jharkhand State University Act, 2000 and the Statute as also the case laws cited by learned counsel for the parties.

ISSUES FOR DETERMINATION

37. This Court on the basis of argument advanced on behalf of learned counsel for the parties, deems it fit and proper to frame following issues for adjudication of *lis* involved herein:

I. *Whether the appellant-Nirmala College comes under the fold of Article 12 of the Constitution of India*

so that a writ petition under Article 226 of the Constitution can be held to be maintainable against it?

II. *Whether the appellant-Nirmala College is said to be an “authority”, so as to be amenable under the writ jurisdiction of this Court under Article 226 of the Constitution of India?*

III. *Whether the dispute between the writ petitioner and appellant-College warrants interference under the judicial review jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India on the ground that it involves public element?*

38. This Court, before considering the issue of maintainability of the writ petition assailing the order of termination passed by the Nirmala College, the appellant herein, is of the view that the some admitted facts are required to be referred herein.

39. The college in question, Nirmala College, has been established under the Society of Registration Act, 1860 document to that effect has been filed in the supplementary affidavit showing the registration of the college in question bearing registration no. 46/1973-74. Further, the college in question, the appellant herein, is the minority religious institution and the affiliation has been granted by the University and as such the appellant,

the college in question, is an affiliated college under the fold of Jharkhand State Universities Act, 2000.

40. The affiliated college has been defined under Section 2(c), which says that affiliated College means educational institution having received privileges of the University according to the provisions of this Act and University Statutes relating thereto.

41. The reference of University Grants Commission Act, 1956 is also required to be made. The said Act has come into being on 3rd March, 1956 for the purpose of making provision for the co-ordination and determination of standards in Universities across the country. Section 26 thereof mandates that all the colleges are to follow the UGC Regulation. For ready reference, Section 26 of the UGC Act, 1956 is quoted as under:

26(1).The Commission [may, by notification in the Official Gazette, make regulations] consistent with this Act and the rules made thereunder–

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9;

(c) specifying the terms and conditions of service of the employees appointed by the Commission;

(d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of sub-section 2;

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

[“(h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;

(i) specifying the matters in respect of which fees may be charged, and scales of fees in accordance with which fees may be charged, by a college under sub-section (2) of section 12A;

(j) specifying the manner in which an inquiry may be conducted under sub-section (4) of section 12A;”]

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) 2 [or clause (h) or clause (j) or clause (j)] of sub-section (1) except with the previous approval of the Central Government.

[(3) The power to make regulations conferred by this section [except clause (i) and clause (j) of subsection (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.”]

42. The fact about regulation by the UGC Act has not been disputed and it cannot be disputed reason being that in absence of the regulation having not been formulated under the UGC Act, 1956 no college can be allowed to run particularly if a college in question is affiliated one and the institution is minority based institution.

43. Herein, learned counsel for the appellant-college has admitted the fact that the post of the teaching and non-teaching staff has also been sanctioned by the State Government. The post, from which the writ petitioner has been dispensed with from service by passing the order of termination on conclusion of the departmental proceeding, is also stated to be sanctioned one and the salary was backed by the grant-in-aid against the aforesaid particular post, which the writ petitioner was holding.

44. Further, herein the reference of the Jharkhand State Universities Act, 2000 requires to be made, in particular Statute 32, which is statute regarding Governing Body, which takes care of the management and constitution of the governing body of the religious linguistic minorities, which says that there shall be a Governing Body constituted for management and administration of every admitted college other than college owned and maintained by the State Government or College established and administered by religious linguistic minorities or admitted as Technical or Medical Colleges.

45. It is evident from Statute 32 of the Manual of Bihar Universities Laws that the details condition which is mandatorily to be followed has been provided therein under the caption head 'Management and constitution of

Governing Body'. For ready reference, extract of provision of statute No. 32 is being referred herein along with the relevant provision:

“32.STATUTES REGARDING GOVERNING BODY

Management and constitution of Governing Body

1. There shall be a Governing Body constituted for management and ad-ministration of every admitted college other than college owned and maintained by the State Government or College established and administered by religious linguistic minorities or admitted as Technical or Medical colleges which shall consist of the following members:— (i) Principal of the College-Ex-officio.

(ii) One teacher elected from and by the teachers of the College.

(iii) One representative of the University nominated by the Syndicate.

(iv) One Government Officer of the State Government not below the rank of the Sub-divisional Magistrate posted in the district nominated by the Syndicate.

(V) One member elected from amongst themselves by Donors who have donated not less than Rs. 25,000/- to the college.

(vi) One member either of Parliament or the State Legislature residing in the district preferably of the locality where the college is situated nominated by the Syndicate.

(vii) One member co-opted by the Governing Body from amongst the educationist or persons noted for their academic interest residing in the district where the college is situated:

Provided that in the case of colleges owned and maintained by the Government, the Governing Body consisting of seven members shall be constituted by the Syndicate in consultation with the State Government:

Provided further that in the case of colleges established and administered by minorities based on religion or language or Medical/Engineering colleges other than those maintained by the Government the Governing Body shall be constituted by the Syndicate after considering the advice of the sponsors authorities of the college concerned. But where however the Syndicate is not able to satisfy itself about the bonafides of sponsors authorities of any such college or for any other reason it may constitute an Ad-hoc committee consisting of not more than 5 members.

(2) (i) If for any reason the Governing Body of an admitted college is not constituted, the Syndicate shall constitute an Ad-hoc committee of not more than five members until the Governing Body is constituted. The President and the Secretary of the Ad-hoc committee shall be nominated by the Vice-Chancellor.

(ii) If any difficulty arises in the formation or the filling up of any seat in the Governing Body of any admitted college for any reason what-so-ever, the Syndicate shall on its own initiative or on reference to it shall decide the issue. If anybody, however, is dissatisfied with the decision of the Syndicate, he shall have the right of appeal to the Chancellor within thirty days of the decision whose decision thereon shall be final and binding on the persons concerned.

(i) Every admitted college shall maintain a separate register in which names and addresses of such persons as have donated not less than Rs. 25,000 to the college shall be entered. The register so maintained shall be kept up-to-date by endorsing, from time to time, all additions or corrections thereto.

(ii) The list of donors who have donated Rs. 25,000 or more shall be prepared by the principal and scrutinised by the University Auditor and approved by the Syndicate.

(iii) The list of donors containing names of all such donors from whom do-nations have been received up to 31st July shall be published every year by 31st August and put up on

college and University Notice Boards and intimation thereof shall be notified in a newspaper.

(iv) Every objection relating to inclusion or non-inclusion of the name of any person in the list of donors shall be filed before the Registrar within 15 days of the publication of the Notice in the Newspapers and the Syndicate, after considering the objections, if any, shall decide the matter.

(v) The list of donors, as finally approved by the Syndicate shall form the basis for election, if any, to be held before the publication of the next list.”

46.It is evident from the aforesaid provision that for constitution of Governing Body for management and administration of every admitted college, other than owned and maintained by the State Government or college established and administered by religious linguistic minorities college or admitted as Technical or Medical Colleges, the members will be principal of the college, one teacher, one representative of the University, one Government officer of the State Government not below the rank of Sub-divisional Magistrate and other members. Thus, it is evident that in the Governing Body there are members from the State Government as also from the University.

47.It further needs to refer herein that the terms of the members has been provided under statute no. 32(3). ‘Functions of the Governing Body’ has been provided under statute 32(5). The submission of returns and reports is also to be provided as provided by the syndicate

of the University. All other parameters like issue of submissions of returns and reports; inspection; games and physical training; medical; fees and annual charges; library; committee for free studentship; vacation and Holidays; professor-in-charge of the college; stock taking; grant-in-aid; college fund and accounts; college building & furniture and the college staffs have been referred therein.

- 48.** So far grant-in-aid is concerned, it has been provided thereunder that all applications for grant-in-aid shall be made by the Governing Body and the admitted college in the manner prescribed by the rule made by the syndicate. So far as the issue of college staff is concerned, it has been provided under provision 24(1) of the Statute 32 that teachers of every admitted college shall be appointed within the budget provision and may be suspended, dismissed or discharged by the Governing Body in accordance with the provisions laid down in the Ordinance and the Statutes. For ready reference, provision 21 and 24 are being quoted as under:

“21. All applications for grant-in-aid shall be made by the Governing Body of an admitted college in the manner prescribed by rules by the Syndicate.

24(1). Subject to the provisions of the Statute made in that behalf, teachers of every admitted college shall be appointed within the budget provision and may be suspended, dismissed or discharged by the Governing Body in accordance with the provisions laid down in the Ordinance and the Statutes.

(2)The non-teaching and ministerial staff of every admitted college shall be appointed on sanctioned posts and within the budget provision and may be suspended, dismissed or discharged by the Governing Body.

The non-teaching staff shall have the right of appeal to the Syndicate within thirty days of receipt of any such order.

(3)The inferior staff of every admitted college shall be appointed on sanctioned posts and within the budget provision and may be suspended, dismissed or discharged by the Principal, subject to a right or appeal by the aggrieved person to the Governing Body of the college within 30 days of receipt of any such order.”

49. The purpose of making reference of these provisions as referred hereinabove is to have consideration regarding the control over the college said to be pervasive control by the State and the university concerned.

50. It further needs to refer herein the provision of Section 57-A of the Jharkhand Universities Act, 2000 along with its proviso, which is quoted as under:

‘57. Appointment of teachers and officers.-

57A. (1) Appointment of teachers of affiliated Colleges not maintained by the State Government shall be made by the Governing Body on the recommendation of the Jharkhand Public Service Commission. Dismissal, termination, removal, retirement from service or demotion in rank of teacher of such colleges shall be done by the Governing Body in consultation with the Jharkhand Public Service Commission in the manner prescribed by the Statutes:-

Provided that the Governing Bodies of affiliated minority Colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them with the approval of the Jharkhand Public Service Commission:

Provided further that the advice to the Jharkhand Public Service Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed.

3(a) [x x x]

3(b) [x x x]

[(c) For the purpose of absorbing the services of the teacher of the affiliated colleges, who were appointed by the governing body of the colleges against the sanctioned posts before the establishment of the College Service Commission and whose services have been approved by the University as also the services of such teachers who were appointed by the governing body on the recommendations of the University Service Commission (Dissolved College Service Commission) as the case may be, approval of the Bihar State University (Constituent Colleges) Service Commission shall be necessary, and such teachers shall be absorbed in the University Service from the date of making the College constituent and their seniority shall be determined according to the rules prescribed in the Statutes.]

Legislative changes (after 1982)-In this section clause (c) of sub section (2) was substituted by Ordinance 4 of 1985 which continued by successive Ordinances till Act 3 of 1990 was enacted. Prior to its substitution, this clause read as follows:-

"(c) the consent of University Service Commission shall not be required for the meager of services of teacher of affiliated colleges appointed against the posts created by the Governing Bodies before the formation of the College Service Commission and whose services are approved by the University on the recommendation of University Service Commission/College Service Commission. Service of such teachers shall be merged in the University Service, as they are from the date of conversion shall be determined in accordance with the procedure laid down in the Statutes."

51. It is thus evident from the provision of Section 57A(1) of the Act, 2000 that the appointment of teachers of affiliated Colleges not maintained by the State Government

shall be made by the Governing Body on the recommendation of the Jharkhand Public Service Commission. Dismissal, termination, removal, retirement from service or demotion in rank of teacher of such colleges shall be done by the Governing Body in consultation with the Jharkhand Public Service Commission in the manner prescribed by the Statutes.

52. From the proviso of Section 57A(1), it is evident that the Governing Bodies of affiliated minority Colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them with the approval of the Jharkhand Public Service Commission and further that advice to the Jharkhand Public Service Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed.

53. The provision of Section 57-A of the Jharkhand State University Act, 2000 speaks that the appointment of teachers of affiliated Colleges not maintained by the State Government shall be made by the Governing Body on the recommendation of the Jharkhand Public Service Commission. Dismissal, termination, removal, retirement from service or demotion in rank of teacher of such

colleges shall be done by the Governing Body in consultation with the Jharkhand Public Service Commission in the manner prescribed by the Statutes. Provided that the Governing Bodies of affiliated minority Colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them with the approval of the Jharkhand Public Service Commission; provided further that the advice to the Jharkhand Public Service Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed.

- 54.** Therefore, from the aforesaid provision it is evident that it deals with the issue of appointment of teachers of affiliated Colleges, which are not maintained by the State Government. The first proviso clearly stipulates that the Governing Bodies of affiliated minority Colleges, which are based on religion and language, shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them with the approval of the Jharkhand Public Service Commission whereas the second proviso speak that the advice to the Jharkhand Public Service Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of

efficiency bar and suspension till investigation of charges is completed.

55. From the above provision it is amply evident that the Governing Body makes these appointments based on recommendations from the Jharkhand Public Service Commission. The Governing Body makes appointments, dismissals and promotions for teachers at affiliated colleges and consults with the JPSC when making decisions about teachers' dismissal, removal and demotion.

56. So far proviso to Section 57A(1) are concerned; in the first proviso consultation of Jharkhand Public Service Commission is mandatory by the Governing Bodies of affiliated minority Colleges to appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them; whereas in the second proviso which deals with the issue involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed in such circumstances, the advice to the Jharkhand Public Service Commission shall not be necessary.

57. The argument which has been advanced on behalf of learned counsel for the appellant that even there is a provision under Section 57A(1) of the Act, 2000 under its

first proviso even then the college in question hereinabove cannot be said to be under pervasive control of the University.

58. Further argument has been advanced that only in a case of public element the writ petition will lie. It has been argued that the learned Single Judge has considered the college in question to be an authority which cannot be said to be proper.

59. Learned counsel for the appellant-college has taken the ground, in order to assail the order passed by learned Judge, that 'with the approval of the JPSC' cannot be said to be the proper approval and approval can be obtained even after final decision having been taken on conclusion of the departmental proceeding in a case of punishing having been inflicted upon the concerned delinquent employee.

60. The reference of the judgment rendered in the case of ***U.P. Avas Evam Vikas Parishad & Anr. Vs. Friends Coop. Housing Society Ltd. [1995 Supp. (3) SCC 456]*** on the issue of approval said to be prior or not.

61. However, we before going through the factual aspect of the aforesaid judgment again need to refer herein the some facts of the present case.

62. The admitted case, as per the pleading and argument advanced by the parties, is that the writ petition was filed initially challenging the decision to initiate departmental proceeding due to want to approval of the JPSC. The college has taken final decision by concluding the departmental proceeding by inflicting the order of termination from service. The said order of termination was challenged by filing Interlocutory Application seeking leave of this Court to allow the writ petitioner to make it part of the writ petition. The said Interlocutory Application being I.A. No. 7549 of 2023 was allowed vide order dated 14.09.2023.

63. It is a fact that in the first proviso to Section 57A (1), there is no reference of the word 'prior approval of the JPSC' rather the word is 'with the approval of JPSC'. Therefore, the emphasis upon the argument has been given that the said approval can be at any stage even after passing of the order of termination.

64. But we are not in agreement with the said argument reason being that the first proviso to Section 57A(1), which is particularly applicable in 'the college' in question being the affiliated minority college based on religion and also come under the fold of Statute 32 wherein at the stage of appointment, dismissal, removal or termination of the

services of the teachers, the Governing Body of the such affiliated college is required to take approval of Jharkhand Public Service Commission. In addition thereto, the word is to take disciplinary action against them which will also be with the approval of the Jharkhand Public Service Commission meaning thereby at the stage of appointment the approval of Jharkhand Public Service Commission is required and at the stage of major punishment to the effect of dismissal, removal or termination of the services of the teachers, the approval of Jharkhand Public Service Commission is required. Even at the time of taking decision of disciplinary against the teachers the approval of the Jharkhand Public Service Commission is required.

65. The first proviso therefore is very much specific that even at the stage of initiation of departmental proceeding the same will be with the approval of the Jharkhand Public Service Commission.

66. Herein, the admitted case is that the decision to initiate departmental proceeding was not with the approval of the Jharkhand Public Service Commission and the disciplinary proceeding has been allowed to continue which ultimately resulted into termination from service of the writ petitioner.

67. Therefore, this Court, on interpretation of Section 57A(1) of the Act, 2000, is of the view that since the specific command has been provided under the aforesaid proviso that even at the stage of taking disciplinary proceeding, the same will be with the approval of the Jharkhand Public Service Commission and once the disciplinary proceeding has been concluded then it is not available for the disciplinary authority to take the ground that the approval can be sought for at any time even after order of termination having been passed on conclusion of departmental proceeding.

68. If the word to the effect that to take disciplinary proceeding against the teachers with the approval of Jharkhand Public Service Commission would not have been there in the first proviso to Section 57A(1) then what has been submitted on behalf of the appellant can be said to be correct but that is not the legal requirement.

69. This Court further is of the view that the moment the learned counsel for the college has started interpreting the statutory provision as contained under Section 57-A (1) of the University Act, 2000, which itself means that the fact about binding nature of the statutory provision as contained under Section 57A(1) is being admitted and the argument has been advanced that is regarding the

interpretation of the issue of approval of the stage of approval by the Commission.

70. The stage of approval of the JPSC can be one aspect of the matter but once it is being admitted regarding the fact about the stage of approval which means that even the appellant is admitting the fact that the provision of Section 57A(1) binds the college under the first proviso to the aforesaid Section.

71. The reliance of the judgment upon which the issue of approval has been taken note by the Hon'ble Apex Court as in the case of ***U.P. Avas Evam Vikas Parishad & Anr. Vs. Friends Coop. Housing Society Ltd. (supra)*** has also been taken.

72. We have gone through the factual aspect and for ready reference, the factual aspect of the said case, as referred in paragraph 3 needs to refer herein, which reads as under:

3. Declaration under Section 3 was published on 3-9-1977. Notification under Section 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (for short 'the Adhiniyam') was published on 7-6-1982. Immediately the appellant had sought for the approval of the Government through the letter dated 27-7-1982. The Government approved the scheme on 24-8-1982. The declaration under Section 32 of the Adhiniyam was published on 28-2-1987. The respondents filed Writ Petition No. 14708 of 1984. The Division Bench following the ratio in Writ Petition No. 17372 of 1987 dated 18-3-1993 titled Narinder Mohan Foundation Trust v. Special Land Acquisition Officer allowed the writ petition declaring that since prior

approval of the Government was not obtained under Exception (iii) to Section 59(1)(a) of the Act, the notification under Section 28, which is equivalent to Section 4(1) of the Land Acquisition Act, 1890 and the declaration under Section 32, which is equivalent to Section 6 declaration, are invalid and inoperative. Thus this appeal by special leave.

73. It is evident from the aforesaid factual aspect that the said judgment is in the pretext of a statutory provision as has been enacted by the State of Uttar Pradesh. The issue was with respect to the issue of acquisition of the land wherein the approval said to be the prior approval is said to be mandatory or was the primary consideration was before the Hon'ble Apex Court and in that respect the Hon'ble Apex Court has held that approval does not mean prior approval. For ready reference, the relevant paragraphs of the judgment is quoted as under:

“5. It is to be seen that the language employed therein is that the approval of the State Government is necessary. Question is whether it would be prior approval or approval given subsequent to the notification under Section 28 or declaration under Section 32 is valid in law. If prior approval would have been a precondition for further steps, the Act would have said so. This not having been done, it seems to us what is material is to obtain approval of the State Government. The reason appears to be that when the schemes have been framed, the land suitably required for effective implementation of the scheme alone should be acquired and not in excess in the guise of framing the schemes

6. This Court in Life Insurance Corpn. of India v. Escorts Ltd. [(1986) 1 SCC 264] , considering the distinction between “special permission” and “general permission”, “previous approval” or “prior approval” in para 63 held that: “We are

conscious that the word ‘prior’ or ‘previous’ may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) of the Act.” Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act. As to the word ‘approval’ in Section 33(2)(b) of the Industrial Disputes Act, it was stated in Lord Krishna Textiles Mills Ltd. v. Workmen [AIR 1961 SC 860 : (1961) 1 LLJ 211], that the Management need not obtain the previous consent before taking any action. The requirement that the Management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in Section 33(1).

7. *It is seen that the approval envisaged under Exception (iii) of Section 59(1)(a), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is given by the Government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval get validated and the publications made under the Act thereby become valid.*

8. *The question then is whether the present is a fit case for our interference under Article 136. On similar facts when the appellant itself has compromised with others and the same has not been extended to the respondents, we think that it is not a fit case for our interference. The respondents' society also consists of the members who need sites for construction of their houses. Right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21 of the Constitution. No doubt their construction has also to be in accordance with the layout and building rules but that would not be a ground to refuse permission to them when they approached the authorities to sanction the same in accordance with law.”*

74. It is relevant to refer herein that the applicability of the judgment particularly in the context of enforcement of the law is to be seen by taking into consideration the law if it is *pari materia* otherwise if the issue of word approval has been taken note by the Hon'ble Apex Court in the context of different rule having not *pari materia* to the provision as contained under Section 57A(1), the said judgment cannot be said to its applicability in the facts of the particular case.

75. Here, we are dealing with the provision of Section 57A(1) having with the first proviso wherein the moment the word has been inserted therein that the disciplinary action has to be taken with the approval of the JPSC, which itself mean that the disciplinary proceeding cannot be allowed to be concluded without the approval of the commission. Herein, the disciplinary proceeding has already been concluded resulting into the order of termination.

76. The JPSC while approving the order of termination has also made a comment that although the same is being approved but the caution is to be taken in future, to have the approval of the commission before taking final decision with respect to dismissal. For ready reference, the part of the comment made by JPSC is quoted as under:

प्रेषक,

सचिव,
झारखण्ड लोक सेवा आयोग, राँची।

सेवा में,

सचिव,
शासी निकाय,
निर्मला कॉलेज, डोरण्डा, राँची।

दिनांक 28/06/23

विषय: डॉ० (श्रीमती) अंजना सिंह, सहायक प्राध्यापक, इतिहास विभाग, निर्मला कॉलेज, डोरण्डा, राँची, के बर्खास्तगी संबंधित अधिरोपित दंड पर आयोग की सहमति/ अनुमोदन के प्रस्ताव के संबंध में।

प्रसंग:- पत्रांक-33/NCRA/2023, दिनांक 20.03.2023

महाशय,

निदेशानुसार उपर्युक्त विषयक प्रसंगाधीन पत्र के संबंध में सूचित करना है कि शासी निकाय, निर्मला कॉलेज, डोरण्डा, राँची द्वारा डॉ० (श्रीमती) अंजना सिंह, सहायक प्राध्यापक, इतिहास विभाग, निर्मला कॉलेज, डोरण्डा, राँची, के सेवा से बर्खास्तगी संबंधित अधिरोपित दंड पर आयोग की सहमति / अनुमोदन के प्रस्ताव पर आयोग की दिनांक-23.06.2023 को सम्पन्न बैठक संख्या-09 में सम्यक् विचारोपरान्त इस शर्त के साथ सहमति/ अनुमोदन संसूचित किया जाता है कि यह सहमति W.P(S) No.-6556/2022 एवं W.P(S) No.-5791/2022 में माननीय उच्च न्यायालय द्वारा भविष्य में पारित किए जाने वाले अन्तिम आदेश से प्रभावित होगा।

पुनः आयोग द्वारा महाविद्यालयों को यह निदेश दिया जाता है कि भविष्य में बर्खास्तगी संबंधी प्रस्ताव कं मामलों पर अंतिम आदेश निर्गत करने के पूर्व आयोग से सहमति प्राप्त कर ही दण्ड अधिसूचित किया जाय।

विश्वासभाजन
सचिव

झारखण्ड लोक सेवा आयोग, राँची।

77. The other argument is regarding the issue of public element and only the writ petition will be allowed to be maintainable. There is no dispute on the said issue. That was the ratio laid down by Hon'ble Apex Court in the case of **St. Mary's Education Society v. Rajendra Prasad Bhargava (supra)** but in the case of **Marwari Balika Vidyalyaya v. Asha Srivastava &Ors.(supra)** the Hon'ble Apex Court has considered the issue of control of the State and thereby distinguished the factual aspect as was

governing the field in the case of ***St. Mary's Education Society v. Rajendra Prasad Bhargava (supra)***. The issue of public element is not very relevant herein.

78. The learned counsel for the appellant-college himself has admitted regarding the applicability of the provision of Section 57A(1) of the Act, 2000, however, his argument is that the issue of approval will be prior to taking the decision or it is *post facto* approval.

79. Further, from the first proviso if taken together with the statute 32 it would be evident that the statute 32 takes care of the first proviso to Section 57A(1) since in the first proviso to Section 57A(1) which speaks with respect to the institution on the ground of religion and language said to be minority institution and for the purpose of governing and managing the statute 32 has been enacted.

80. This Court is further of the view that the moment the approval either of the stage of the initiation of the disciplinary action and at the time of passing the order of dismissal the approval of the same is with the approval of the JPSC meaning thereby the moment the word 'with the approval of the JPSC' has been inserted in the said provision which impliedly mean that the moment decision has been taken by the governing body the same is by way of one transaction needs approval by the JPSC and that

would be the exact meaning of ‘with the approval of the JPSC’.

81. This Court, on the basis of aforesaid discussion, is of the view that the issue as referred hereinabove is being answered in favour of the writ petitioner and hold that the appellant-Nirmala College comes under the fold of Article 12 of the Constitution of India so as to be amenable under Article 226 of the Constitution of India.

82. This Court now coming to the finding recorded by learned Single Judge has found that the learned Single Judge after framing the issue to the effect that ‘Whether the dispute between the Petitioner and Respondent-College is purely in the realm of private dispute having no public element, warranting interference under the judicial review jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India’, has answered that the writ petition would definitely come within the purview of public element and would be amenable to writ jurisdiction of this Court.

83. But, we, on the basis of discussion made hereinabove, and after coming to the conclusion that since the college in question is having under the pervasive control of the University and the State as also in view of the fact as has been admitted by learned counsel for the appellant that the post which was being held by the writ petitioner was

sanctioned one, supported by grant-in-aid which was given by the State and further being regulated under the University Grant Commission Act and further the provision as contained under the 57A(1) read with Statute 32, are of the view that the college in question comes under the fold of Article 12 of the Constitution of India so as to be amenable under Article 226 of the Constitution of India.

84. We are conscious that Article 226 can be amenable against the institution which is coming under the fold of authority. But based upon the aforesaid discussion we are of the view that the college having the pervasive control of the university and the State and as such it cannot be construed to be an authority within the meaning of Article 226 of the Constitution of India rather it comes under the fold and ambit of Article 12 of the Constitution of India being State so as to maintain a writ petition under Article 226 of the Constitution of India on the basis of applicability of the Statute 32 and the University having the pervasive control so far as the initiation of departmental proceeding, dismissal, termination removal, retirement from service or demotion in rank of teacher.

85. This Court therefore is of the view that the finding recorded by the learned Single Judge to that effect

requires to be modified. Accordingly the finding to that effect is modified.

86. The instant *intra-court* appeal accordingly dismissed with the aforesaid modification.

87. Pending Interlocutory Application, if any, stands disposed of.

I Agree

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.) (Pradeep Kumar Srivastava, J.)

Alankar/-

A.F.R.