

GAHC010268132025



2026:GAU-AS:4392

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7101/2025

ANJUMAN ARA BEGUM
D/O-LATE AYUB ALI, R.O -FLAT NO 1B, DALIMI RESIDENCY,
GHORAMARA, BHETAPARA, SURUJMUUKHI PATH, GUWAHATI, KAMRUP
Metro, PIN -781028

VERSUS

THE ASSAM ROYAL GLOBAL UNIVERSITY
REPRESENTED BY ITS REGISTRAR ADMINISTRATION, BETKUCHI, NH 37,
GUWAHATI 781035, ASSAM

BEFORE

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocate for the petitioner(s): Ms. U. Chatterjee.

Advocate for the respondent(s): Ms. R.S. Chowdhury.

Date of judgment : **17.03.2026**

JUDGMENT AND ORDER (ORAL)

Heard Ms. U. Chatterjee, learned counsel for the petitioner. Also heard Ms.

R.S. Chowdhury, learned counsel for the Assam Royal Global University.

2. Extensive arguments had been heard on the maintainability of this writ petition on 10.02.2026. With the consent of parties, the initial issue is taken up before the merits of the grievance raised by the petitioner are addressed by this Court.

3. The assertions made in the writ petition and the documents annexed thereto reflect that the petitioner had been appointed as an Associate Professor in the Royal School of Law and Administration in the Assam Royal Global University by an appointment letter dated 22.08.2022 issued by the Registrar of the university. The salary of the petitioner was thereafter revised by an order dated 28.11.2022 and her remuneration was further revised by another order dated 04.10.2024, each of the letters/orders being issued by the Registrar of the university.

4. During her service tenure, the petitioner had been recognized/approved as a Ph.D Guide of the Assam Royal Global University as per the terms of sections 15 and 16 of the Royal Global University ordinance. The tenure of the guideship would be valid till the petitioner remained associated as a regular faculty of the Assam Royal Global University.

5. While the petitioner was performing her duties as a guide to different research scholars, one of the scholars among some part-time scholars had made a request to the Chairperson of the Departmental Research Committee (DRC) of the university, asking for a change of guide. The issue was therefore taken up

by the DRC and certain observations were made in the meeting held on 27.06.2025.

6. On 10.10.2025, the petitioner was called to the office of the Registrar (Administration), where it was suggested that she was disassociated from the university, having failed to meet the expectations of the competent authority. Aggrieved by such a suggestion, the petitioner had submitted a request for appointment to the office of the Vice-Chancellor of the university through her personal email, since her official email had been blocked by the administration. The reason for seeking the appointment by the petitioner, as reflected in the email was that, a sudden discontinuance of her services with the university may hamper the research and final submission of thesis by two PhD scholars for whom the petitioner was acting as a guide.

By another communication made through email on 22.10.2025, the petitioner requested the Chancellor of the university not to deprive her of the opportunity to complete the guidance of two research scholars who were at their final stage of submitting their thesis. By the aforesaid communication, the petitioner had submitted that although she had lost her job in the university, allowing her to successfully complete the guidance to the two PhD scholars would help her find another job and also help her in her future career. The writ petition has also referred to an email made by one of the PhD scholars to the head of the department of law of the university to allow the petitioner to continue to be the supervisor till the completion of her PhD.

7. It is the case which was projected in the writ petition that by another

email dated 25.10.2025, the petitioner had again made a request to the chairperson of the DRC, RSLA of the university to allow her to work in absentia if required, to guide the two PhD scholars for submission and pre-submission respectively at the earliest.

8. Thereafter, as per the assertions made in the writ petition, the impugned order dated 25.10.2025 came to be issued by the Registrar (Administration) and Director IQAC of the university, whereby the petitioner was informed that her employment as associate professor in the RSLA, Assam Royal Global University was terminated with effect from 17th of October, 2025. Certain allegations of non-adherence to the expectation of the university, defiance and argumentative conduct etc had been leveled upon the petitioner by the letter dated 25.10.2025. By the aforesaid letter, the petitioner was requested to complete all necessary formalities at the earliest and to return any university property in her possession.

9. The notice in this case was issued on 15.12.2025. On the university putting in their appearance, an affidavit in opposition had been filed through the Registrar of the university. The said affidavit was stated to be confined to the preliminary objections being raised on behalf of the university to the extent of the maintainability of the writ petition in its present form. The petitioner filed an affidavit-in-reply and therefore the matter is taken up today to adjudicate as to whether the writ petition in the present form is maintainable or not.

10. Ms. U. Chatterjee, learned counsel for the petitioner, during the course of her arguments, had submitted that it is an undisputed fact that the university

had been brought into existence by the Assam Royal Global University Act, 2013, read with Section 6 of the Assam Private Universities Act, 2007. The university exercises academic, administrative and supervisory control over the Royal School of Law and Administration, where the petitioner was employed as an associate professor. The university is recognized by the University Grants Commission (UGC) and is included in the list of universities which have been given the authority to confer degrees under Section 22 of the UGC, 1956. The learned counsel for the petitioner had argued that the nature of the functions being performed by the university are public functions in the field of higher education and such activities are regulated, supervised and funded through statutory mechanisms.

11. It is the submission of the learned counsel for the petitioner that in view of the above, the respondent university would be a state within the meaning of Article 12 of the Constitution of India and therefore would be amenable to the writ jurisdiction of this court. Elaborating her submissions, since it was the stand of the respondent university that the writ in the present form is not maintainable, the learned counsel for the petitioner has submitted that there can be no doubt that the respondent university delivers a public function by imparting education and it is a settled position in law that institutions, delivering public function like that of imparting education, are amenable to the writ jurisdiction under Article 226 of the Constitution of India. The learned counsel for the petitioner has referred to several judgments of the Apex Court, namely, ***Dr. Janet Jeyapaul v. SRM University & Ors. in Civil Appeal No. 14553 of 2015, decided on December 15, 2015; Roychan Abraham v. State of U.P. and Others in Writ-A No.63708 of 2014 Decided on February 26,***

2019; K. Krishnamacharyulu and Ors. v. Sri Venkateshwara Hindu College of Engineering and Anr. in Civil Appeal No. 1774 of 1997, decided on February 21, 1997; Army Welfare Education Society New Delhi v. Sunil Kumar Sharma & Ors. etc. in Civil Appeal Nos. 7260-7264 of 2024 (arising out of S.L.P. (Civil) Nos. 3133-3137 of 2021); St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors. in Civil Appeal No. 5789 OF 2022; Indira Gandhi Technological and Medical Sciences University v. State Information Commission in WP(C) No. 347 (AP)/2014; Andi Mukta Sadguru v. V.R. Rudani in 14 (1989) 2 SCC 691; Zee Telefilms Ltd. v. Union of India in (2005) 4 SCC 649; DK Yadav v. JMA Industries Ltd. in (1992) 3 SCC 126 and Ayesha Jain v. Amity University, Noida & ors. in 2025 SCC OnLine SC 2557.

12. The learned counsel for the petitioner submitted that it will not lie in the mouth of the respondents to characterize themselves as a purely private body while simultaneously enjoying the UGC regulation, statutory dignitary powers and regulatory oversight. It is her further argument that since the respondent university is admittedly recognized by the University Grants Commission and is included in the official list of the universities maintained and published by the UGC on its website, the said recognition cannot be said to be symbolic or incidental but has to be necessarily accompanied by a continuous statutory oversight, expert committee inspection, mandatory compliance with the UGC regulations governing appointments, service conditions, research supervision, PhD courses and academic standards and therefore, it has to necessarily follow that there is a pervasive control of statutory authorities on the respondent university and therefore the respondent university would be amenable to the

writ jurisdiction of this Court. By referring to the case of ***Roychan Abraham v. State of Uttar Pradesh and others*** reported in ***(2019) SCC OnLine 3935***, the learned counsel has submitted that the test of direct nexus between the act complained of and the discharge of a public duty was the cornerstone for invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India. The learned counsel submits that since the university was imparting education, which was primarily a state function, a private university like the respondent would also be a necessary ancillary link in execution of the state function while discharging the public duty.

13. The learned counsel for the petitioner has submitted that the termination of the petitioner, who was a PhD supervisor, directly interfered with the statutory research supervision, academic continuity and the student's compliance with the UGC regulations, thereby establishing a clear public law element in the function being discharged by the university and the act of the university terminating the petitioner in the manner in which it has been done would be required to be reviewed by this court while exercising its extraordinary writ jurisdiction.

14. By referring to the judgment of the Apex Court in ***Andi Mukta Sadguru v. V.R. Rudani*** reported in ***(1989) 2 SCC 691***, the learned counsel for the petitioner submitted that appropriate writ may issue against any person and authority performing public duty or public function, irrespective of State ownership. She therefore submits that the stand of the respondent authorities in their affidavit-in-opposition, to the extent that in the absence of state funding or ownership, the respondent university would not be amenable to the writ

jurisdiction, is only misconceived. The learned counsel for the petitioner has referred to the case of the ***Dr. Janet Jeyapaul v. SRM University & Ors.*** reported in ***(2015) 16 SCC 530***. She has asserted that the Apex Court has held that an institution recognized under the UGC framework and discharging the public function of imparting higher education would be amenable to the writ jurisdiction.

15. By referring to the judgment of the Supreme court in the case of ***K. Krishnamacharyulu and Ors. v. Sri Venkateshwara Hindu College of Engineering*** reported in ***(1997) 3 SCC 571***, the learned counsel has submitted that it is a settled law, wherein the institution imparts education which is a constitutional and public function, teachers acquired an element of public interest in the performance of their duties and therefore a writ would be maintainable even against private unaided institution. By emphasizing on violation of the UGC norms, the learned counsel for the petitioner has submitted that her guideship, which was governed primarily by UGC regulation, could not have been terminated in the manner it has been done. She has argued that when the norms of the UGC have been violated, not only while terminating the services of the petitioner but resultantly terminating her guideship for at least two scholars, the actions of the respondent would have to be evaluated by this Court in exercise of powers of the Article 226 of the Constitution of India. It is the submission of the learned counsel for the petitioner that the sudden and arbitrary termination of the petitioner has disrupted ongoing research under the functioning of the SRC and DRC and the academic continuity, rendering the action disproportionate, unfair and contrary to all statutory institutional framework.

16. The learned counsel for the petitioner has further argued that the very fact of issuing a post facto termination order would demonstrate that the respondent have acted in malice and their actions are *ultra vires* and unlawful and in violation of the UGC norms. The learned counsel for the petitioner has submitted that the present case is not one relating to enforcing of a private contract but the present petition challenges the disciplinary action which was taken through breach of UGC mandated procedures, the prescribed standard of proof and the denial of cooperation in the public interest to preserve academic institutional accountability.

17. The learned counsel for the petitioner relied on the judgment of the Apex Court in ***St. Mary's Education Society vs. Rajendra Prasad Bhargava*** reported in **(2023) 4 SCC 498** and has submitted that the grievance relating to the termination from service involves a significant public law element. It was contended that the present dispute is not a mere service matter arising out of a private contract of employment with a private employer. Rather, it pertains to the respondent university's obligation to adhere to binding regulations laid down by the UGC.

18. The learned counsel for the petitioner argues that the issue concerns compliance with mandatory regulatory standards governing PhD supervision, academic governance, grievance redressal, and disciplinary safeguards. Therefore, the dispute transcends a purely private employment matter and enters the realm of public law, as it involves alleged violations of statutory and regulatory obligations imposed on the university in the administration of higher education and research supervision.

19. Ms. R.S. Chowdhury, learned counsel for the Assam Royal Global University has submitted that it may be true that the university had been brought into existence by a statute, however, the core issue to be addressed by this court is whether the act complained of by the petitioner would fall under the realm of “discharge of a public function” by the university concerned. The learned counsel for the respondent has submitted that it is settled law, as reflected in the judgment of ***P. K. Biswas v. Indian Institute of Chemical Biology*** reported in ***(2002) 5 SCC 111*** and other similar judgments, that the determinative test for bringing an entity within the ambit of Article 12 is the existence of deep and pervasive state control, particularly in the matters of funding, administration and functional autonomy. According to the learned counsel for the respondent, mere regulatory control, statutory recognition or incorporation by statute would not be sufficient to clothe a body with the character of a state as enunciated in Article 12 of the Constitution of India. It has been submitted that absence of governmental funding or functional dominance would place the respondent university beyond the definition of state as enunciated in Article 12 of the Constitution of India, and therefore, the university would not be amenable to the writ jurisdiction of this court. She has also referred to the absence of deep and pervasive government control across the domains of finance, function and administration of the university.

20. The learned counsel for the respondent has further submitted that the university is governed by its first statutes, framed under Section 6, read with Section 30 of the Assam Private Universities Act, 2007, and therefore, the university functions within its statutory framework, independent of state control. The service conditions of its employees are regulated exclusively by the Act of

2013, without any interference of any of the entities which can be said to be within the purview of the definition of state. She has submitted that mere legislative incorporation does not equate ownership by the state, but is only a statutory prerequisite for the establishment of the university. It has been submitted on behalf of the respondents that the sponsoring body of the university is a society duly registered under the Society's Registration Act. Therefore, the university bears a completely private character. The university is fully financed as required under the relevant Act. Addressing the argument of the petitioner that the termination of her service involved a public law element, the learned counsel for the respondent has placed reliance on the judgment of the Apex Court in ***St. Mary's Education Society and Another (Supra)***, which had also been relied upon by the learned counsel for the petitioner. By referring to the observations made at paragraph 54 of the judgment in ***St. Mary's (Supra)***, the learned counsel has submitted that it has been specifically held that in the cases of retirement and termination, no public law element is involved. The learned counsel for the respondent has further submitted that mere recognition by the UGC does not in any manner render the respondent university to be a state or other authority within the meaning of Article 12 of the Constitution of India and such recognition is only for the purposes of recognizing the degrees which are conferred by the recognized universities within the territory of India.

21. The learned counsel for the respondent has further submitted that the relationship between the petitioner and the respondent university was purely contractual in nature, governed exclusively by the terms and conditions of appointment, which were elucidated in the contract of employment and which

were also governed by the applicable internal statutes and regulations of the university. The learned counsel for the respondent has also referred to the judgment rendered by the Apex Court in ***Army Welfare Education Society, New Delhi v. Sunil Kumar Sharma and others*** reported in **(2024) 16 SCC 598**. At Paragraph 57 of the judgment, the Apex Court held as follows:

“57. In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the High Court committed an egregious error in entertaining the writ petition. filed by the respondents herein holding that the appellant Society is "State" within Article 12 of the Constitution. Undoubtedly, the school run by the appellant Society imparts education. Imparting education involves public duty and therefore a public law element could also be said to be involved. However, the relationship between the respondents herein and the appellant Society is that of an employee and a private employer arising out of a private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element. The school cannot be said to be discharging any public duty in connection with the employment of the respondents.”

22. The learned counsel for the respondent has referred to the judgments rendered by the Apex Court in ***Ramkrishna Mission and Another v. Kago Kunya*** reported in **(2019) 16 SCC 298** and ***VST Industries Ltd. v. Workers' Union*** reported in **(2001) 1 SCC 298** to assert that the aforesaid judgments have affirmed the principle that contracts of purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they were structured by statutory provisions. The learned counsel for the respondent has accordingly prayed for dismissal of the writ petition.

23. This Court has heard the learned counsel appearing for the parties and has also gone through the different judgments relied upon by the parties. This Court notices that in several cases, the issue as to whether a particular entity could be termed as a state within the definition under Article 12 of the Constitution of India and further, whether any action by an admitted private entity would have an element of public law involved has been discussed. The Apex Court in this regard has answered a specific question as to whether a service dispute, being a dispute of the private realm involving a private educational institution and its employee, can be adjudicated in a writ petition filed under Article 226 of the Constitution of India in the case of ***St. Mary's Educational Society and Another vs. Rajendra Prasad Bhargava and Others (Supra)***. The facts as reflected in that case was that a private unaided educational institution, as appellant, had approached the Apex Court being aggrieved by an order passed by the Division Bench of the High Court when it was held that the challenge to the order of termination of the respondent in the appeal before the Supreme Court was maintainable under Article 226 of the Constitution of India.

24. The respondent before the Apex Court had challenged the order of termination on various grounds before the Single Bench of the High Court and the Learned Single Judge had upheld the preliminary objection raised by the private unaided society and rejected the writ application as not being maintainable. The Learned Single Judge in that case had referred to the judgment of the Apex Court in ***K. Krishnamacharyulu and Ors. v. Sri Venkateshwara Hindu College of Engineering and Anr.*** reported in ***(1997) 3 SCC 571***. The respondent in the appeal before the Supreme Court was a member of the non-teaching staff of the private unaided institution. The

Apex Court, while deciding the issue, had noticed the total absence of governmental control over the functioning and administration of the school and had also noted that the school was affiliated to the CBSE and was thus governed by its rules and regulations. Having further noticed that the appellant society and the school were absolutely private institutions without any aid or control of either the government or any instrumentality of the government, it was held that the institution was not a state within the meaning of Article 12 of the Constitution of India. While deciding the issue, the Apex Court had held that while the unaided private institution may be held to be performing a public duty, yet all its decisions would not be subject to judicial review. It was only those decisions which had a public element therein that could be reviewed judicially under the writ jurisdiction. It was held that if the action challenged does not have a public element, a writ of mandamus cannot be issued as the action could be said to be essentially of a private nature. Referring to the contention canvassed by the terminated employee that the writ petition was maintainable if the Committee of Management controlling the affairs of the institution violated any rule by law laid down by the CBSE, the Apex Court had held that the mere fact that the Board grants recognition to the institution on certain terms and conditions itself would not confer any enforceable right on any person as against the Committee of Management. The Apex Court held to the extent that where a teacher or non-teaching staff challenges the action of a Committee of Management on the ground that it has violated the terms of contract or the rules of the affiliation by laws etc., the appropriate remedy would be to approach the CBSE or to take such other remedy available under the law. The Apex Court had noted that the appellant institution discharged a public duty to the extent of imparting education which was a fundamental right of the citizen.

A very thin line of difference can be drawn here to the extent that while in the case of ***St. Mary's***, the matter related to a school which was imparting education at the school level, which has been held to be a fundamental right under the Right to Education Act, access to higher education has not yet been defined as a fundamental right for the citizens of India.

25. By referring to the case of ***Apollo Tyres Ltd. v. C.P. Sebastian*** reported in ***(2009) 14 SCC 360***, the Apex Court observed that confirmation, suspension, transfer, termination etc. of an employee was a contract of personal service. The Apex Court has also discussed the judgments rendered in the cases of ***K. K. Saksena v. International Commission on Irrigation and Drainage and others*** reported in ***(2015) 4 SCC 670***, ***Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors.*** reported in ***(1989) 2 SCC 691***, ***G. Basi Reddy v. International Crops Research Institute & Anr.***, reported in ***(2003) 4 SCC 225***, ***Pragya Tools Corporation v. Shri C.A. Imanual***, reported in ***(1969) 1 SCC 585*** and ***Federal Bank Limited v. Sagar Thomas***, reported in ***(2003) 10 SCC 733***. Reference also drawn to the case of ***Janet Jeyapaul v. SRM University and others*** reported in ***(2015) 13 SCALE 622*** to notice that when a private body exercises public function, even if it is not a state, the aggrieved person has a remedy not only under the ordinary law but also by way of a writ petition under Article 226 of the Constitution of India. It was also held that a private authority may be discharging a public function and that the decisions to be corrected or enforced must be in the discharge of a public function. At Paragraph Nos. 41 and 42 of the judgment, the Apex Court held as follows:

“41. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an Authority or an Instrumentality of the State but there must be a public element in the action complained of.

42. A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of the appellant No. 1 herein is to impart education, which is a public function. However, the issue herein is with regard to the termination of service of the respondent No. 1, which is basically a service contract. A body is said to be 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.”

26. The Apex Court had then referred to the decision in the case of ***Vidya Ram Misra v. The Managing Committee Shri Joy Narain College***, reported in ***(1972) 1 SCC 623***, wherein it was held as follows:

"12. Whereas in the case of Prabhakar Ramakrishna Jody v. A.L. Pande (1965) 2 SCR 713, the terms and conditions of service embodied in Clause 8(vi)(a) of the 'College Code' had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot find a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract. So, Clause 5 of the contract can, in no event, have even statutory flavour and for its breach, the appellant's remedy lay elsewhere.

13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in S.R Tewari v. District Board, Agra, (1964) 3 SCR 55: AIR 1964 SC 1680, might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub-silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in Prabhakar Ramakrishna Jodh (supra), and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."

27. The Apex Court had thereafter held that in the absence of statutory provision governing the services of the employees of the private and unaided institution, the service of the respondent no.1 in that case was purely contractual. It held that the contract of personal service cannot be enforced specifically. The respondent no.1 was therefore held to be disentitled from finding a cause of action based not on a breach of the law but only on a breach of the contract. It was held that the respondent's remedy in that case would lie elsewhere. Referring to the case of **Marwari Balika Vidhyalaya v. Asha Shrivastaga**, reported in **(2020) 14 SCC 449**, the Apex Court held that in the said case the removal of the teacher from service was subject to the approval of the State Government and therefore in that case the writ petition was held to be

maintainable. It was also noticed that the school in the case of ***Marwari Balika Vidhyalaya(supra)*** was receiving grant in aid to the extent of the Dearness Allowance and that all appointments and removal were required to be approved by the District Inspector of School and if any action was taken towards such mandatory provisions, the same could not come within the realm of the private element. The Apex Court had also held that merely because the State Government had regulatory powers, the same by itself would not confer the status of a State upon the school nor put any such obligations upon it which may be enforced through the issue of writ under Article 226 of the Constitution of India. The final conclusions were summed up at paragraph No. 68 of the judgment which is quoted herein below for easy reference:

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

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

(b)Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element

as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has a public law element.

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

(d) Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by the school to discharge that duty. In any case, the terms of employment or contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be Initiated against a particular employee. It is only where the removal of an

employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

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

28. To evaluate the stand of the petitioner, this Court finds it necessary to refer to the prayers made in the writ petition which are as follows:

In the premises aforesaid, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Quash impugned Termination Order dated 25.10.2025 and direct the Respondent University to reinstate the Petitioner with continuity of service, release of all salary dues, arrears and consequential benefits with interest, and such further reliefs as this Hon'ble Court may deem appropriate for unlawful and mala fide termination.

b. Grant exemplary compensation worth at least 5 crores or any other appropriate amount to the Petitioner in the for the irreversible reputational harm, professional injury, loss of livelihood, cumulative copyright violations and mental agony caused by the arbitrary administrative action of the Respondent.

c. Issue appropriate interim and final directions restraining the Respondent University from utilising, submitting or appropriating any part of the Petitioner's academic work, research material or jointly-owned thesis content through any

other supervisor, and to protect the Petitioner's intellectual property rights under the UGC Regulations and the RGU Ph.D. Regulation, 2024.

d. Issue appropriate directions to the Respondents to bear the costs of the present litigation, as the unlawful termination of the Petitioner's services has compelled the Petitioner to approach this Hon'ble Court.

e. Pass any further orders that this Hon'ble Court may deem fit in the interests of justice.

29. The first prayer is for quashing of the termination order, the second is for compensation, the third prayer is for restraining the university from utilizing, submitting or appropriating any part of the petitioner's academic work research material or jointly their own thesis through any other supervisor and to protect the petitioner's intellectual property rights, the fourth being a direction to the respondents to bear the cost of the litigation and fifth being a general prayer to pass such orders as it deem fit in the interest of justice. If the prayers made are granted, relief would be given to the petitioner. To evaluate the cause of action of the petitioner vis-à-vis the submission that it carries an element of public function, the assertions made in the writ petition have to be perused. From a perusal, this Court finds that the petitioner has emphasized on the discharge of education by the university to be a public function but there is no reference that the service condition of the petitioner, governed by the rules of the university, had any element of public function attached to it.

30. Since this Court has extensively dealt with the observations of the Apex Court in the case of ***St. Mary's (supra)***, it is found relevant to refer to those

judgments also, where the judgment of *St. Mary's* had been discussed and understood.

31. In the case of ***Mridula Konwar Hazarika vs. the Director of Secondary Education, Assam and 3 ors. (WP(C) No.3111/2022)***, this Court held as follows:

19. In paragraph 75.1 of its pronouncement, the Hon'ble Supreme Court provided that an application under Article 226 of the Constitution of India is maintainable against a person or a body discharging public duty or functions. But at the same time, it is circumscribed to an extent that for ascertaining the discharge of public functions, it must be established that the body or the person was seeking to achieve the same for collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

20. From the proposition of the Hon'ble Supreme Court as provided in paragraph 75.1, we answer the first question framed for adjudication as to whether a writ petition would be maintainable against the respondent Montfort High School and accordingly answer that the respondent Montfort High School having discharging a public duty or function, a writ petition otherwise would be maintainable.

21. But having said so, such maintainability would also be circumscribed to the extent that it also must be established that for the discharge of the public functioning the body or the person was seeking to achieve a collective benefit for the public or a section of it and the authority to do so must be accepted by the public. To ascertain the same, we take note as to what issue is raised in this writ petition and what action of the respondent Montfort High School is being assailed.

22. As noted above, a communication dated 04.04.2022 is assailed in this writ petition by which the service of the petitioner had been discontinued. Further, we also take note of the proposition laid down by the Hon'ble

Supreme Court in paragraph 75.2 and 75.3 of its pronouncement in St. Mary's Education Society (supra). In paragraph 75.2, it is provided that even if it is assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty and in paragraph 75.3 it is provided that it must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. In the said paragraph, it had further been held that an educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a public function or public duty be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, but the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognized as being amenable to challenge under Article 226 of the Constitution and in the absence of such conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

23. In the instant case, it is noticed that the petitioner was appointed in the respondent Montfort High School pursuant to a contract between the parties and the Montfort High School being not a non-government educational institution within the meaning of section 2(xv) of the Act of 2006, the service conditions of the petitioner pursuant to such contract arrangement would have to be accepted to be not covered by any statutory provision.

24. A reading of the communication dated 04.04.2022 by which the service of the petitioner had been discontinued makes it further discernible that it is an arrangement between the respondent Montfort High School and the discontinuance of service of the petitioner because of the reasons stated therein, which appears to be more an internal matter between the respondent school and the petitioner would definitely be within the confines of an ordinary contract of a service having no statutory force or backing.

25. Accordingly, the other proposition laid down in paragraph 75.1 of the pronouncement of the Hon'ble Supreme Court in St. Mary's Education Society (supra) circumscribing the maintainability of a petition under Article 226 of the Constitution of India read with the provision in paragraph 75.2 and 75.3 of the said judgment leaves the Court to arrive at a conclusion that although the respondent Montfort High School may be subjected to a writ jurisdiction under Article 226 of the Constitution by virtue of being discharging public duties or public functions, but in respect of the impugned communication dated 04.04.2022 by which the service of the petitioner was

discontinued being within the realm of a ordinary contract of service, a writ petition against the said communication of 04.04.2022 would not be maintainable under Article 226 of the Constitution of India.

26. In view of such conclusion, the writ petition stands dismissed. The interim order passed earlier stands vacated.

32. In another case titled ***Manabendra Kumar Sharma vs. BCCI and 3 ors.*** in ***WP(C) No.5220/2021***. This Court, while understanding the impact of the judgment rendered in St. Mary's, held as follows:

“26. The above quoted paragraphs make it succinctly clear that even if an institution or body is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under [Article 226](#). It was further opined that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by [Article 226](#) of the Constitution in respect of matter relating to service where they are not governed or controlled by the statutory provisions. It was clarified that an educational institution may perform myriad functions touching various facets of public life and in the societal sphere and such functions would fall within the domain of a "public function" or "public duty" and open to challenge under [Article 226](#) of the Constitution But, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognized as being amenable to challenge under [Article 226](#) of the Constitution.

27. Therefore, from the judgments which have been referred herein above, it would clearly show that private bodies which are not State within the meaning of Article 12 of the Constitution, but discharging public duty and

public functions would be amenable to the jurisdiction of the Article 226 of the Constitution so far it relates to discharge of the public duty and public functions by the said private body. However, if dispute arises relating to individual wrongs or breach of mutual contracts not being an integral part of the public duty and public functions performed by the private body would not be amenable to the jurisdiction under Article 226 of the Constitution.

28. In the backdrop of the above analysis of the settled law and applying the same to the facts of the instant case, it would be seen that the respondent ACA purportedly issued work orders in favour of the petitioners for carrying out certain works in a Stadium belonging to the respondent Assam Cricket Association. Some of the petitioners received some amounts against those purported work orders and some did not for which the instant three writ petitions have been filed.

29. From a perusal of the pleadings as well as the documents enclosed to the writ petitions, there is no element of any public law requiring adjudication being made out. The allegations primarily relate to the breach of the contract on the part of the respondent ACA in not making payment of the dues to the petitioners. The said grievances of the petitioners at best would be individual wrongs or breach of mutual contract entered into between the petitioners and the respondent ACA having no public element as its integral part and as such it is the opinion of this Court that the three writ petitions are not maintainable under Article 226 of the Constitution.”

33. In the case of ***M/S New Age Petcoke Private Limited vs. the Numaligarh Refinery Limited and 2 ors. (WP(C) No.2662/2023)***, this Court has held as under :

31. Since the Respondent authorities have seriously raised the issue of

maintainability of the writ petitions on the ground that the contract being private and not statutory contract, no writ would lie, this Court would first proceed to consider the same and refer to the case laws.

32. It is elementary that under Article 226 of the constitution of India, the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is discretionary, but the discretion must be exercised on sound judicial principles. The Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined.

When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the dispute may not appropriately be tried in a writ petition and Court may decline to entertain a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction.

33. The writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of a public body, may not lend itself for being dealt with under the writ jurisdiction.

34. The Hon'ble Supreme Court has time and again held that at the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness. The state in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot act discriminatory. Even in cases where the question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested

satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the court can direct the aggrieved party to resort to alternate remedy of civil suit etc. Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred. Writ petition is not maintainable to avoid contractual obligation of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

35. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities is without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice. If the contract between private party and the State/ instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution and invoking its extraordinary jurisdiction.

36. It has been held that the distinction between public law and private law elements in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in the private field of contract. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and

the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts, whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petition under Article 226 to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

34. On the facts and circumstances of that case, this Court had held the writ petition to be maintainable.

35. What is discernible from the aforesaid judgments is that whether a particular function carried out by a private party could be termed to be a discharge of public function depends on the facts and circumstances of each case. In the present case, this Court finds that the petitioner had been appointed in a private university under certain terms and conditions enunciated in the order of appointment itself and her tenure of guideship was also limited to the period till which she remained associated as a regular faculty of the university. The termination of the petitioner being a private affair between the university and the petitioner, this Court is of the opinion that the same would not fall within the realm of discharge of a public function by the university so as to require this Court to interfere or even to evaluate such action in exercise of powers under Article 226 of the Constitution of India.

36. It is made clear that the dismissal of the present writ petition is not

maintainable in the present form.

37. The instant writ petition, being held to be not maintainable in law, is accordingly dismissed.

38. No order as to cost.

JUDGE

Comparing Assistant