

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14152 OF 2024

Rekha C. Thakare & Ors. ... Petitioners.
Versus
The State of Maharashtra & Ors. ... Respondents.

Mr. Omkar Wangikar h/f. Mr. Saneep Dere, for the Petitioner.

Mr. Kumbhakoni, Sr. Advocate a/w. Mr. Milan Bhise, for Respondent No. 2.

Mr. A.C. Bhadang, AGP for Respondent/State.

Mr. Manish Kelkar, for Respondent No. 3.

CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.

DATE : 6th FEBRUARY, 2025

P.C. :

1. The learned Senior Advocate Shri Kumbhakoni has drawn our attention to *Army Welfare Education Society New Delhi v/s. Sunil Kumar Sharma and Others*¹, more particularly, the following aspects :

“B. ISSUES FOR DETERMINATION”

6. The following two questions of law fall for our consideration:-

a. Whether the appellant Army Welfare Education Society is a "State" within Article 12 of the

¹ 2024 SCC OnLine SC1683

Constitution of India so as to make a writ petition under Article 226 of the Constitution maintainable against it? In other words, whether a service dispute in the private realm involving a private educational institution and its employees can be adjudicated upon in a writ petition filed under Article 226 of the Constitution?”

“42. 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 a "State" within Article 12 of the Constitution. Undoubtedly, the school run by the Appellant Society imparts education. Imparting education involves public duty and therefore 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.”

2. The learned Advocate for the Petitioner submits that his senior (Advocate) is before the Maharashtra Administrative Tribunal and will not be able to reach the High Court, since already it is 5.20 p.m. At his request, list this Petition on **20th February, 2025** in the “Urgent Admissions” category in the supplementary board.

3. Needless to state, the above issue ‘whether this Court could deal with this Petition on the point of Article 12 of the Constitution’, will be decided first.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)