IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1942 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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PAWAN KUMAR SHARMA
Versus
ANANDALAYA EDUCATION SOCIETY

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Appearance:
JAIMIN A GANDHI(8065) for the Petitioner(s) No. 1
UDIT N VYAS(9255) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 31/03/2023

CAV JUDGMENT

1. The present petition is filed by being aggrieved and dissatisfied with the impugned order dated 10.10.2022 passed by the respondent – society, by which, the

services of the petitioner is terminated, and therefore, the petitioner has filed this petition under Article 226 of the Constitution of India.

2. Brief facts of the case are as such that the petitioner made an application on 26.08.2019 for appointment as a Principal of Anandalaya Education Society. It is the case of the petitioner that the necessary selection procedures were conducted on 30.11.2019 and 01.12.2019. Consequent to that, the petitioner was selected and appointed as Principal of the college, which is run by the respondent. He was appointed by appointment letter dated 03.12.2019. It is further the case of the petitioner that the letter of appointment states that the petitioner was appointed on probation basis for a period of one year and subsequently by office order dated 29.12.2020, the respondent has confirmed the services of the petitioner. It is the case of the petitioner that various allegations were made against the petitioner and consequently departmental proceedings were initiated, and thereafter, a charge-sheet against the petitioner dated 11.02.2022 has been served to the petitioner and thereafter, the

respondent has passed order dated 11.02.2022 for suspension of the petitioner on temporary basis.

2.2 It is the case of the petitioner that the petitioner has made a detailed reply by denying the charges made in the charge-sheet. It is further the case of the petitioner that the respondent by letter dated 29.04.2022 had intimated the petitioner about appointment of Shri V.C. Patel as Inquiry Officer for conducting the departmental proceedings. It is further the case of the petitioner that additional charge-sheet is also served to the petitioner on 03.08.2022 and subsequently, the respondent - society has lodged an F.I.R. before Anand Town Police Station bearing No.11215002220695 of 2022 under Section 506(1) of IPC. It is further the case of the petitioner in the petition that the respondent – society has passed the order dated 10.08.2022 whereby the suspension of petitioner is extended till the completion of the inquiry proceedings. It is further the case of the petitioner in the petition that subsequently, the respondent has filed second additional charge-sheet dated 11.08.2022, to which, the petitioner by letter dated 23.08.2022 has filed their explanation to the charges

framed in the additional charge-sheet. It is further the case of the petitioner in the petition that since he is visiting to Jaipur from 15.10.2022 till 30.10.2022, he has sent email to the respondent on 06.10.2022 for intimating about his unavailability. Thereafter, the respondent has passed the order on 10.10.2022, by which the services of the petitioner were terminated.

2.3 Thereafter, the present petition is filed.

3. Heard learned advocate Mr. Prithvirajsinh Jadeja assisted by learned advocate Mr. Jaimin A. Gandhi for the petitioner and learned Senior advocate Mr. Dhaval C. Dave assisted by learned advocate Mr. Udit N. Vyas for the respondent.

4.1 Learned advocate Mr. Prithvirajsinh Jadeja for the petitioner has submitted that the impugned order is in compete dis-regard to the principles of natural justices and various settled legal positions of law.

4.2 He has submitted that on successful completion of probation, the services of the petitioner were confirmed and accordingly, the petitioner became a regular

employee of the respondent. He has further submitted that the respondent ought not to have terminated the services of the petitioner without following the requirements of departmental inquiry as per the Anandalaya Education Society (Service conditions, discipline, conduct and appeal) Rules, 1988.

4.3 He has further submitted that though the respondent initiated the departmental inquiry, the respondent did not conclude the departmental inquiry. The respondent has admitted the fact that the departmental inquiry was not concluded as it clearly transpires from the order itself that it is observed that the Inquiry Officer has also refused to proceed with the inquiry proceedings against the petitioner for the reasons stated in the order. He has further submitted that the impugned order is a stigmatic order. The impugned order quotes the lodging of FI.R. and various allegations made in the charge-sheet indicating inappropriate behavior by the petitioner. He has further submitted that the impugned order is made without application of mind as the impugned order does not reflect the submissions of the petitioner.

4.4 He has heavily relied on the aspect that since the respondent is promoted or sponsored by National Dairy Development Board (NDDB) and it is 'State' under Article 12 of the Constitution of India, and therefore, this Court can exercise the powers under powers under Article 226 of the Constitution of India.

4.5 He has further submitted that the inquiry is initiated against the petitioner and without any valid reason, the inquiry proceedings is dropped and straightaway the punishment is awarded, which is against the principals of natural justice and impugned action of the respondent is arbitrary and unreasonable.

4.6 He has relied on the decision of the Hon'ble Apex Court in the case of ***Anoop Jaiswal Versus Government Of India*** rendered in ***1984 (2) SCC 369***. He has further relied on the decision of this Court in the case of ***Sandip Ajitsinh Vaghela Versus State of Gujarat*** rendered in ***Special Civil Application No.12071 of 2018 dated 26.02.2019***, and has submitted that the Court has found the aspect of alternative remedy and the Court has found that there is no absolute bar to exercise

jurisdiction under Article 226 of the Constitution of India in a given case. He has also relied on the decision of this Court in the cases of (i) ***Chetan Jayantilal Rajgor Versus State of Gujarat*** rendered in ***Special Civil Application No.4439 of 2017 dated 19.06.2019***, *(ii)* ***State of Gujarat Versus Hiteshbhai Bahyabhai Chaudhary*** rendered in Letters Patent Appeal ***No.396 of 2020 dated 06.08.2020***, (iii) ***State of Gujarat Versus Chetan Jayantilal Rajgor*** rendered in ***Letters Patent Appeal No.1596 of 2019 dated 24.07.2019***, and has submitted that the order dated 10.10.2022 by terminating the services of the petitioner is against the principals of natural justice and the stigmatic order is required to be interfered with by this Court.

5.1 *Per contra,* learned senior advocate Mr. Dhaval C. Dave for the respondent has raised the preliminary objection by submitting that the writ petition is not maintainable under Article 226 of the Constitution of India in view of the judgment of the Hon'ble Apex Court in the case of ***St. Mary's Education Society Versus Rajendra Prasad Bhargava*** reported in ***2022 SCC OnLine SC 1091***, more particularly, paragraphs 49, 52, 62, 65

and 69 are relevant. The Hon'ble Apex Court has categorically held that an application under Section 226 of the Constitution of India is maintainable against a person or a body discharging public duties or public functions and 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 the matter relating to their service where they are not governed or controlled by the statutory provisions, and therefore, he has submitted that on this ground only, the present petition deserves to be dismissed.

5.2 He has further submitted that assuming for the sake of argument, the petitioner is entitled to invoke jurisdiction under Article 226 of the Constitution in any case, then on merits also, no case is made out. He has further submitted that there is no error committed by the respondent society. He has drawn the attention of this Court towards the affidavit-in-reply filed by the respondent where the Rules of Anandalaya Education

Society (Service conditions, discipline, conduct and appeal) Rules, 1988 and more particularly, Rule 15(ii) is relevant, and the petitioner was rightly terminated by the Chairman of the respondent in view of the powers given under the abovementioned Rules.

5.3 He has further submitted that the attitude of the petitioner during the course of inquiry was uncooperative and non-conducive for conducting disciplinary proceeding by the Inquiry Officer. He has further submitted that the petitioner during the course of inquiry demonstrated totally hostile and despicable behaviour and due to this behaviour, the authority had constrained to issue additional charge-sheet to the petitioner during the course of the inquiry proceedings. He has further submitted that the petitioner was also found to be indulging in threatening the teachers at the School, who were to appear as management witnesses with dire consequences on life and one employee had also caused to register a First Information Report against the petitioner under Section 506 of the Indian Penal Code, 1908. He has further submitted that considering the threatening behaviour of the petitioner during the

course of inquiry, the Inquiry Officer, who appointed by the respondent, refused to proceed with the inquiry against the petitioner by communication dated 30.09.2022, and therefore, in view of the above, the respondent has no other option but to exercise the power under Rule 15(ii) of the Anandalaya Education Society (Service conditions, discipline, conduct and appeal) Rules, 1988 for terminating the services of the petitioner and as the petitioner had adversely affected the security of other employees at the School and that continuation of the services of the petitioner at the School were hazardous and detrimental to the interest of the students as well as other employees of the School.

5.4 He has further submitted that a contract of personal service cannot be specifically enforced and in view of the same, the petitioner cannot seek quashing of the order of termination dated 10.10.2022, and therefore, he has submitted that on this ground also, the present petition deserves to be dismissed. He has further submitted that the petitioner is required to hold a higher standard of conduct and behaviour being the head of an educational institution, however, contrary to the same,

the conduct of the petitioner was completely unbecoming of a Principal of the School, and therefore, there was a complete loss of confidence of the respondent in the petitioner. Hence, the termination of the petitioner is justified. He has further submitted that as the present case involves disputed question of facts as well as the facts about exercise of purely administrative powers by an educational institution, and therefore, this Court may not exercise any extra-ordinary jurisdiction.

5.5 He has further submitted that as such, the petitioner is contractual employee, and therefore, there is no need to go for any departmental inquiry in view of conditions, which are mentioned in the contract itself. Looking to the gravity of the misconduct as well as the highhandedness approach shown by the petitioner during the inquiry proceedings, whereby he has threatened the teachers, who were working in the respondent school, and also as the petitioner was holding the post of Principal of the respondent school in the larger public interest, there is no violation of principals of natural justice as the petitioner is, otherwise, given show cause notice, etc., to give his explanation about the said

misconduct.

5.6 He has relied on the judgment of this Court in the case of ***Shambhavi Kumari vs Sabarmati University*** rendered in ***2022 (0) AIJEL – HC 244267,*** more particularly, paragraphs 9 and 10 of that judgment is relevant and has submitted that if any grievance is there, then the petitioner can avail the remedy under the civil law but the petition is not maintainable, and therefore, he prays to dismiss the present petition as no cause is made out to interfere in this petition.

6. In rejoinder, learned advocate Mr. Prithvirajsinh Jadeja for the petitioner has submitted by pointing out the Anandalaya Education Society (Service conditions, discipline, conduct and appeal) Rules, 1988, whereby he tried to point out that it is promoted by National Dairy Development Board (NDDB) and in view of the Gazette Notification of India, NDDB is constituted by the National Dairy Development Board Act, 1987. He has submitted that since the termination order is apparently stigmatic and the respondent institution can be considered under the provisions of Article 12, the writ petition is maintainable under Article 226 of the

Constitution of India and this Court may exercise the powers by interfering in the impugned order passed by the respondent institution.

7.1 I have considered the rival contentions made at the Bar. I have also gone through the appointment order dated 03.12.2019, whereby the petitioner is appointed only adhoc basis. I have also gone through the charge-sheet, which is issued on 11.02.2022 by the respondent institution. I have also gone through the papers of inquiry, by which, it is found that the Inquiry Officer has refused to carry further inquiry in view of the fact that the petitioner was showing highhandedness and has abused the Inquiry Officer during the inquiry Proceedings. I have also considered the F.I.R. filed by one of the employee against the petitioner under Section 506(ii) of the I.P.C., whereby one Deepak Prabhakar Manjrekar, who was serving as a teacher in the same School, had filed the complaint by saying that the petitioner has threatened him about the dire consequences.

7.2 I have also gone through the other documents annexed with the petition. I have also gone through the

Memorandum as well as Rules of Association, which is not the part of the record, but was shown during the course of argument. I have also gone through the judgments cited by the petitioner. I have also considered the affidavit-in-reply filed by the respondent institution. I have also perused the Anandalaya Education Society (Service conditions, discipline, conduct and appeal) Rules, 1988 and more particularly, Rule No.15(ii) is relevant, which is reproduced as under:-

> "11) Where the Board or the Chairman is satisfied, on receipt of information or otherwise, that the continuance in service of any employee who has been confirmed, would adversely affect the security of the establishment in which he is to function, or is detrimental or hazardous to the public interest, he may, notwithstanding anything contained in these rules, terminate the service of an employee for the reasons to be recorded (which shall be communicated to him at the time of discharge) on giving him three month's pay in lieu of notice.
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> Provided that in every case where it is practicable the employee shall be given an opportunity to show cause before direing the termination:

> Provided further that where the Board or the Chairman, as the case may be, is satisfied that the disclosure of the reasons would be prejudicial to the Anandalaya or to the employee and expose either of them to the civil or criminal proceedings, such information may be withheld for the reasons to be recorded in writing."

7.3 I have also perused the provision No.37 of the said Rule, 1988 for Disciplinary Authority under Rule No.2, which pertains to procedure for imposing major penalty. I have also perused the communicated dated 30.09.2022 written by Inquiry Officer V.C. Patel to the Chairman of the respondent institution. I have also perused the judgment cited at the Bar by learned advocate for the respondent about the maintainability of Article 226 of the Constitution of India.

7.4 The following aspects are undisputed on total consideration of the issue involves in the present petition.

(i) The petitioner was serving as Principal in the School.

(ii) The petitioner was initially appointed on probation by way of contract.

(iii) The petitioner has committed some gross misconduct, and therefore, the respondent institution has followed the necessary procedure by issuing charge-sheet, etc., and thereafter, has initiated inquiry by appointing Inquiry Officer viz., Mr. V.C. Patel. It transpires from the record that during the course of inquiry, the Inquiry Officer has faced several threats from the petitioner and not only that, it also transpires from the record that other teachers, serving in the School had received threats from the present petitioner about the dire consequences and one of the teachers has filed criminal case against the petitioner during the pendency of inquiry.

(iv) When the inquiry was on the verge of its completion, at that point of time, due to non-conduciveness and highhandedness approach of the petitioner, the Inquiry Officer has refused to proceed further with the inquiry proceeding. Thereafter, the chairman of the respondent institution has exercised powers under Clause 15(ii) of the Anandalaya Education

Society (Service conditions, discipline, conduct and appeal) Rules, 1988 and has dismissed the services of the present petitioner.

7.5 In view of abovementioned factual aspects, it transpires that the conduct of the petitioner is apparently unbecoming to the Principal of the School. Not only that, the School has tried to follow the necessary procedure by holding the inquiry, but also the conduct of the petitioner was such that the inquiry could not be proceeded further and inquiry was stopped due to non-willingness of the Inquiry Officer to proceed further. The conduct of the petitioner as Principal of the School was sending a wrong message among the teachers and students as he is expected to behave in most appropriate and discipline manner.

7.6 Further, the judgment cited at the Bar by the learned advocate for the petitioner is not applicable in the facts and circumstances of the present case.

7.7 Moreover, the judgments cited at the Bar by learned Senior advocate Mr. Dhaval C. Dave in the case

of ***St. Mary's Education Society (supra)***, paragraphs 49, 52, 62, 65 and 69 are relevant, which are as under:-

> "49. We may also refer to and rely upon the decision of this Court in the case of Vidya Ram Misra v. The Managing Committee Shri Jai Narain College, (1972) 1 SCC 623 : AIR 1972 SC 1450. The appellant therein filed a writ petition before the Lucknow Bench of the High Court of Allahabad challenging the validity of a resolution passed by the Managing Committee of Shri Jai Narain College, Lucknow, an associated college of the Lucknow University, terminating his services and praying for issue of an appropriate writ or order quashing the resolution. A learned single Judge of the High Court finding that in terminating the services, the Managing Committee acted in violation of the principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order. A Division Bench of the High Court found that the relationship between the college and the appellant therein was that of master and servant and that even if the service of the appellant had been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a writ or order in the nature of certiorari and that, in

fact, no principle of natural justice was violated by terminating the services of the appellant. The writ petition was dismissed. In appeal, this Court upheld the decision of the High Court holding that the Lecturer cannot have any cause of action on breach of the law but only on breach of the contract, hence he has a remedy only by way of suit for damages and not by way of writ under Article 226 of the Constitution. In Vidya Ram Misra (supra), this Court observed thus:

> "12. Whereas in the case of Prabhakar Ramakrishna Jody v. A.L. Pande (1965) 2 SCR 713, the terms and conditions of service embodies 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 found 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.
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> 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 subsilentio 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."

52. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article

226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

62. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.

65. The Full Bench proceeded to answer the

aforesaid question as under: “16. The substance of the discussion made above is that a writ petition would be maintainable against the authority or the person which may be a private body, if it discharges public function/ public duty, which is otherwise primary function of the State referred in the judgment of the Apex Court in the case of Ramakrishnan Mission (supra) and the issue under public law is involved. The aforesaid twin test has to be satisfied for entertaining writ petition under Article 226 of the Constitution of India.

17. From the discussion aforesaid and in the light of the judgments referred above, a writ petition under Article 226 of the Constitution would be maintainable against (i) the Government; (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

18. There is thin line between "public functions" and "private functions" discharged by a person or a private body/authority. The writ petition would be maintainable only after determining the nature of the

duty to be enforced by the body or authority rather than identifying the authority against whom it is sought.

19. It is also that even if a person or authority is discharging public function or public duty, the writ petition would be maintainable under Article 226 of the Constitution, if Court is satisfied that action under challenge falls in the domain of public law, as distinguished from private law. The twin tests for maintainability of writ are as follows :

1. The person or authority is discharging public duty/public functions.

2. Their action under challenge falls in domain of public law and not under common law.

20. The writ petition would not be maintainable against an authority or a person merely for the reason that it has been created under the statute or is to governed by regulatory provisions. It would not even in a case where aid is received unless it is substantial in nature. The control of the State is another issue to hold a writ petition to be maintainable against an authority or a person." (Emphasis supplied)

69. 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 dire nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State"

within the expansive definition under Article 12 or it was found that the action complained of has public law element.

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

(d) Even if it be perceived that imparting education by

private unaided the school is a public duty within the expanded expression of the term, an employee of a nonteaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and nonteaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of nonteaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

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

7.8 In view of the above, it is clearly established that

writ is not maintainable under Article 226 of the Constitution of India against the present respondent institution. Moreover, in view of the judgment of this Court in the case of ***Shambhavi Kumari (supra)***, paragraphs 9 and 10 are relevant, which are as under:-

> "9. The reliance placed on behalf of the petitioner on the decision of the Hon'ble Supreme Court in case of Janet Jeyapaul vs. SRM University and ors (supra) would not be applicable as in the fact of the present case, termination of the petitioner is an issue to be decided in the realm of private contract, as the petitioner has remedy under the Civil Law in view of the decision of the Supreme Court in case of K.K.Saxena vs. International Commission of Irrigation and Drainage reported in 2015 (4) SCC 670 referred to and relied upon by the Co- ordinate bench in case of Mukesh Bhavarlal Bhandari and ors vs. Dr. Nagesh Bhandari and ors (supra). It is, therefore, not necessary to go into the merits of the case with regard to the issue of show-cause notice for providing an opportunity of hearing resulting into breach of principle of natural justice and whether the action of the respondent-University is unfair or not because all such disputes essentially are in the realm of private contract and therefore, if at all there is an alleged arbitrary action

> on the part of the respondent, the same would give cause to the petitioner to initiate civil action before the Civil Court but in the facts of the present case, the writ petition against the private educational institution governed by the Gujarat Private Universities Act, 2009 would not be maintainable.
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> 10. In view of the above conspectus of law, the petition is not entertained as the same would not be maintainable in the facts of the case and petitioner is entitled to take legal remedy by way of an appropriate proceeding before the appropriate forum under the Civil Law for redressal of the grievances raised in this petition."

7.9 From the above judgment, it is clearly established that when there is dispute essentially, which is in the realm of private contract, and therefore, if at all there is an alleged arbitrary action on the part of the respondent, the same would give cause to the petitioner to initiate civil action before the Civil Court but in the facts of the present case, the writ petition against the private educational institution would not be maintainable.

7.10 Further, considering the aspect of inquiry proceeding, which is initiated by the respondent, which is required to be discontinued in view of request of the Inquiry Officer as the petitioner has not cooperated and has shown highhandedness during the inquiry proceedings, and also considering the fact that it is clear from the record that the respondent – authority has appointed the petitioner on contract and his services are governed by the terms of contract and there is valid clause in the contract, whereby if we read the appointment order read with the provisions of the said Rules, 1988, it clearly transpires that the respondent authority though it is not required, as cannot be considered as 'State' under Article 12 of the Constitution of India and looking to the nature of the service, which can be termed as contractual appointment and also considering the fact that even the F.I.R. is filed against the petitioner during the pendency of inquiry by one of the teachers, the termination of the petitioner is found in larger public interest as the petitioner being a Principal of the school has to show more courtesy and respect towards the rules

and regulations, which he has not shown and it is fruitful to refer the judgment of the Hon'ble Apex Court in the case of ***Regional Manager, UCO Bank and Anr. vs. Krishna Kumar Bhardwaj*** reported in ***2022 (5) SCC 695***, whereby the Hon'ble Apex Court has held that the High Court under Article 226 of the Constitution of India has limited scope of judicial review in respect of dismissal whereby the Court has further held that power of judicial review in such circumstances is well circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice in peculiar facts and circumstances of the present case as discussed earlier and it is not akin to adjudication of the case on merits, and therefore in view of that also, considering the peculiar facts and circumstances of the present case, this Court finds that the impugned action of the respondent authority is in consonance with law and by following the Rules, and therefore, no reason is required to be called for by exercising extraordinary jurisdiction in view of the power vested under Article 226 of the Constitution of India.

7.11 This Court finds that there is clear element of loss of confidence in the petitioner by the respondent institution in view of the above stated fact, and therefore, the respondent is justified in its action by exercising the power under Anandalaya Education Society (Service conditions, discipline, conduct and appeal) Rules, 1988 and on legal aspect also, considering the settled legal position also, this Court finds no justifiable reason to interfere in the order passed by the respondent by exercising the powers under Article 226 of the Constitution of India, and therefore, the present petition is not required to be considered, and therefore, the present petition is dismissed.

8. In view of the above, the present petition is disposed of.

(SANDEEP N. BHATT,J)

DIWAKAR SHUKLA