

(1981) 07 CAL CK 0004

Calcutta High Court

Case No: C.R. No. 2347 (W) of 1981

Kalpana Bishui

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 20, 1981**Acts Referred:**

- Constitution of India, 1950 - Article 12, 226, 30, 311
- West Bengal College Teachers (security Of Service) Act, 1975 - Section 9

Citation: 85 CWN 1069**Hon'ble Judges:** B.C. Roy, J**Bench:** Single Bench

Advocate: M. Mukherjee and B.B. Giri, for the Appellant; N.C. Chakraborti and Nirupam Chatterjee for Respondent Nos. 3 and 4 and S. Mukherjee and D.K. Bakshi for Respondent Nos. 8 and 9, for the Respondent

Judgement

B.C. Roy, J.

The petitioner who was appointed as Principal on 12th December, 1974 by the President, Governing Body, Victoria institution has come up with this Writ application challenging the letter issued by the President, Governing Body, of the said Institution on 27th January. 1981, whereby the petitioner was directed to vacate the house occupied by her in the campus of the Institution as also to hand over the charge of administration of the college to Professor R.C. Munshi forthwith and to proceed on leave with full pay as per rule pending further action to be taken after a thorough enquiry into the whole affairs. The facts of the case in short is that the petitioner was selected by the Government of West Bengal as an empanelled candidate for the post of Principal of this college which is a sponsored college and she was given appointment in the post of Principal of the college by the Governing Body in December, 1974. It has been stated that the petitioner has been working in the said post of Principal since then without any blemish. But for some time past the relationship between the petitioner and respondent no. 4 had been deteriorating on

the failure on the part of the petitioner to subscribe to the illegal activities of the respondent No. 4, who is the Joint Secretary, of the Governing Body of the said Institution. It has been stated that the respondent No. 4 asked the petitioner to pay Puja relief and ex-gratia allowances amounting to Rs. 220/- per year to each of the non-teaching staff of the college from the development fund without any approval of the Director of Public instruction-respondent No. 2. The petitioner did not agree to the said proposal and as a result the respondent no. 4 became very much inimically disposed of towards the petitioner. The petitioner made representation before the respondent no. 2 and this created a serious discord between the petitioner and the respondent no. 4. The respondent no. 4 in order to get rid of the petitioner, it has been stated, got an order issued by the President of the Governing Body of the said college, the respondent no. 3, sometime on 20th July, 1980 whereby the petitioner was directed to hand over the charge of the office of the Principal to Shri R.C. Munshi, a senior-most Professor of this college in order to maintain its normal functioning with effect from 28th July, 1980. A copy of the said order was sent to the respondent no. 2 and the respondent no. 2 immediately enquired of the respondent no. 3, the President of the Governing Body to intimate him about the situation which prompted him to take such a drastic action against a confirmed Principal of a college. It has also been stated in the said letter that on receipt of the said reply the matter would be investigated by the Education Directorate pending which the Principal should be allowed to continue. On receipt of this letter it is stated that the said order was not given effect to. Thereafter on 27th January, 1981 the respondent No. 3 made the impugned order asking the petitioner to vacate the house in the campus occupied by her and also to leave the administration of the college with Professor R.C. Munshi forthwith and to proceed on leave with full pay as per rule pending further action to be taken after a thorough enquiry into the petitioner's affairs. The petitioner on receipt of this order/letter from the President of the Governing Body made a representation stating inter alia that allegations which have been levelled against her in this letter are all baseless and unfounded and she was subjected to great injustice and ignominy for the last two years for which she craves for justice. It has also been denied by her that she was in any way connected with the disfiguring of the walls of the college by posting objectionable poster by the non-teaching staff or in the matter of raising objectionable slogans against the authorities of the college. It has also been stated that one of the conditions of her appointment as Principal in this college was the allotment of free quarter to her in consideration of the illness of her husband. The order that was issued to her, it has been stated, was wholly illegal and beyond jurisdiction violating the principles of natural justice and as such the respondent no. 3 was requested to withdraw the said direction contained in the said letter and to allow her to work as Principal as before. No reply was given to the said letter of the petitioner. Therefore the petitioner was compelled to come before this Court with this Writ application.

2. It has been submitted that the impugned order is wholly illegal and unwarranted inasmuch as the petitioner's service cannot be terminated nor can she be compelled to leave Principal's quarter or to take leave of her office as she is entitled to get protection under The West Bengal College Teachers (Security of Service) Act, 1975 (West Bengal Act XXXVI of 1975). It has been further submitted that the impugned order is in the nature of penalty and the same cannot be imposed except in accordance with the procedure laid down in the above Act. The impugned order, it has been submitted, is also bad as the petitioner was not given any opportunity of hearing before issuance of the said order. This Rule was issued and an interim order was made restraining the respondents from giving effect to the order as well as from interfering with the duties of the petitioner as Principal of the college for a period of three weeks with liberty to pray for extension of the interim order on this application upon notice to the respondents. This interim order was extended till the disposal of the Rule by an order dated 18th February, 1981.

3. An affidavit-in-opposition sworn by Mr. Protap Chandra Mitra respondent no. 4, on 22nd May, 1981 was filed it has been stated in the said affidavit that on or about September 18, 1927, a "Trust" was created by Her Highness the Maharani Sunity Devi of Coochbehar, the widow of His Highness the Maharaja Nripendra Narayan Bhup Bahadur (deceased) of 236, Lower Circular Road, whereby a two-storied brick-built building together with dwelling house one storied brick-built building known as Debalaya or Sanctuary together with the piece or parcel of land or ground thereunto, situated on the area of Four Bighas Three Cottahs 5 chataks, and 34 square feet of land, being holding No. 78B (formerly No. 78) Upper Circular Road, was dedicated to "Brahma religious preacher" to commemorate the memory of Brahmananda Keshab Chandra Sen (deceased), the father of the grantor Maharani, and for running the educational institution of the girls of Indian parentage known as "Victoria Institution". It has been further stated that the said institution was run by a Society known as Victoria Institution registered under the Societies Registration Act on March 9, 1926 being No. 249 of 1925-26. The said Trust, it has been stated, has been recognised by the University of Calcutta by granting "Special Representation" of the Governing Body by letter dated June 16, 1959, approving the composition of the Governing Body, with special representation of the Trust Body. It has also been stated that Statute 100 of the Calcutta University First Statute, 1966 is applicable as regards the constitution of the Governing Body of this Institution. It has been further stated that this institution which is a sponsored college under the University of Calcutta since the year 1957 and enjoys the facility of the special constitution as envisaged by Statute 100 (1) of the Calcutta University First Statute, 1966. It has also been submitted that this institution was established for nourishing "Brahma Cult", a Linguistic religious minority, within the meaning of Article 30 of the Constitution of India and as such the provisions of West Bengal College Teachers (Security of Service) Act, 1975 is not applicable to this Institution. It has also been submitted that the Writ application is not maintainable against this college which is a sponsored

college and as such it is neither State nor any other authority within the meaning of Article 12 of the Constitution. It has also been stated that the impugned letter was issued on the basis of some definite allegations made against the petitioner by some members of the non-teaching staff and it has the approval of the Governing Body of the Victoria Institution. It is not necessary to state the other portions of the affidavit-in-opposition as they are not relevant for the purpose of deciding this Rule.

4. An affidavit-in-opposition on behalf of the respondent nos. 8 & 9, i.e., University of Calcutta and Vice Chancellor, University of Calcutta has been sworn by Sri Pratip Kumar Mukherjee, Registrar, Calcutta University, respondent No. 8. In paragraph 5 of the said affidavit it has been stated that respondent no. 6 is a Government sponsored college affiliated to the University of Calcutta and has been functioning and performing as such with effect from the academic session 1957-58. The Government sponsored college are run by Governing Bodies constituted by the State Government. It has been affirmed as true to information received from the Inspector of Colleges of the Calcutta University.

5. An affidavit-in-reply has been sworn by the petitioner on 11th June, 1981. It has been stated that, the Trust was created with a view to benefit the institution for the education of girls of Indian parentage and not for any religious purpose. The sole object of the institution is to promote the education of girls of Indian parentage in Calcutta in such a manner as may be determined by the Trust and approved by the court having jurisdiction in that behalf. It has also been stated that the Governing Body is not run by any special constitution duly approved by the State Government, and the Governing Body that was reconstituted on December 21, 1961 and on 15.8.65 were not approved by the University of Calcutta or by the State Government. It has also been stated that Statute 100 of the Calcutta University First Statute does not apply to this Institution as it is a Government-Sponsored College. It has also been stated that the Trust was not created for promoting Brahma Cult, a linguistic religious minority and as such Article-30 of the Constitution does not apply to this case and The West Bengal Teachers (Security of Service) Act, 1975 is applicable to the teachers of this college. It has also been stated that this college is an agent or instrumentality of the State inasmuch as it being a Government sponsored college its Governing Body is under the control and supervision of the State Government and the approval of the respondent No. 2 i.e. Director of Public Instruction was required for appointment of teachers who had been empanelled by the Central Selection Committee. Therefore this institution is an authority within the meaning of Article 12 and the Writ application against an order issued by the President, Governing Body, is maintainable.

6. Mr. Monotosh Mukherjee, learned Advocate appearing on behalf of the petitioner, has urged that the impugned letter by the respondent no. 3 was issued mala fide and arbitrarily and the allegations made in the said letter are wholly baseless and unfounded. It has also been submitted by Mr. Mukherjee that the same was issued

after the President has come to a finding already that the petitioner was found to be indulging, doing all these illegal acts and misdeeds detrimental to the interest of the college without giving the petitioner any opportunity of hearing. In support of his submission Mr. Mukherjee placed the various representations and letters annexed to the Writ petition as well as to the affidavit-in-reply.

7. Mr. Mukharjee has next submitted that the Victoria Institution is Government Sponsored college and it is an agency and instrumentality of the Government inasmuch as the Government grants a substantial portion of the fund necessary for running the college and also controls the administration of the college inasmuch as the tuition fees, Development fees and the qualification of the teachers and their condition of service as well as method of selection are all laid down by the Government Order. Moreover, appointment of teacher in the college also requires the approval of the Director of Public Instruction, respondent no. 2. In case of re employment of the teacher of this college also an approval of the Education Department is necessary. The Government also regulates the norms of seniority and it is Government who has the authority for creation of new post of teachers in the sponsored college. Therefore it has been submitted by Mr. Mukherjee that the Government Sponsored college is thus a State Agency or instrumentality and the same comes within the expression of "Other authorities" as mentioned in Article 12 of the Constitution of India. This Writ application is therefore maintainable against impugned order issued by the respondent no. 3. Mr. Mukherjee also submitted that the Trust was created for the purpose of promoting the education of girls in India by this institution and not for nourishing or promotion of Brahma Cult, which is alleged to be a linguistic religious minority. As such the West Bengal College Teachers (Security of Service) Act, 1975 is applicable to the teachers of this college. The impugned order which purports to impose penalty on the petitioner being contrary to the procedure prescribed by the Act and the Rules framed there under is wholly bad and without jurisdiction. It has further been submitted by Mr. Mukherjee that the impugned order has been made without giving the petitioner any opportunity of hearing and as such it is in clear violation of the principles of natural justice. The order is, therefore, liable to be quashed and set aside.

8. Mr. Nani Chakraborty learned Advocate appearing on behalf of the respondent nos. 3 and 4 contended that this Writ application is liable to be dismissed in limine, because the Victoria Institution Which is a Government Sponsored college is not a statutory body nor it is an authority coming within the expression "other authority" as provided in Article 12 of the Constitution of India. In support of this sub-mission Mr. Chakraborty has cited several decisions at the Bar. Mr. Chakraborty has also submitted that this college is run by the Victoria Institution which is registered under the Societies Registration Act and as such no Writ is available against such a society. It has been thirdly submitted by Mr. Chakraborty that the Victoria Institution which was created by a Trust for the purpose of nourishing Brahma Cult which is a linguistic religious minority is entitled to get the benefit of Article 30 of the

Constitution and The West Bengal College Teachers (Security of Service) Act, 1975 cannot have any application to the teachers of this college. Mr. Chakraborty has lastly submitted that the impugned letter does not contain any penal order, but it is a mere request by the President of the Governing Body of the Institution to the petitioner and as such the same cannot be made a subject matter of challenge in a Writ petition. The petitioner may or may not comply with the request; it is not a penal order.

9. It is pertinent before considering the merits of the submissions made by the learned Advocate for the parties to deal with the preliminary objection raised on behalf of the respondents as to the maintainability of the writ petition. This involves the determination of the question whether Victoria Institution is a State as defined in Article 12 of the Constitution. Article 12 of the Constitution has clearly provided that for the purpose of Part III of the Constitution the word "State" includes all local or other authorities within the territory of India or under the control of the Government of India. In [Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others](#), it has been held that expression "Other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India or under the control of the Government of India, in other words it will include all constitutional or statutory authorities on whom powers are conferred by law. The State Electricity Board, Rajasthan which was created under the Electricity Act, 1948 and has been vested with power of giving direction disobedience of which is punishable as criminal offence is an authority coming within the expression "Other authorities" under Article 12 of the Constitution. This decision has been followed in the case of [Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation](#), at page 1354. The expression "other authorities" in Article 12 will include all constitutional and statutory authorities on whom powers are conferred by law. In [Hindustan Antibiotics Ltd. Vs. The Workmen and Others](#), it was held that bodies or organisations voluntarily formed under General Statute at large such as the Companies Act or the Societies Registration Act would not come within the expression "Other authorities" under Article 12 of the Constitution. The same view has been reiterated by the later decision of the Supreme Court delivered in the case of [Sabhajit Tewary Vs. Union of India \(UOI\) and Others](#), at page 1330 para 4. The Council of Scientific and Industrial Research registered under the Societies Registration Act is not an authority within the meaning of Article 12 of the Constitution. The Society does not have a statutory character like Oil and Natural Gas Commission or Life Insurance Corporation or Industrial Financial Corporation. The fact that the Prime Minister is the President or that Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than that. Government takes special care that the promotion, guidance and co-operation of Scientific Research etc. and

other activities of the Council towards development of industries in the country are carried out in a responsible manner, it is not an agency of the Government. In [Heavy Engineering Mazdoor Union Vs. State of Bihar and Others](#), it has been observed that where a statute setting up a corporation provides the corporation to be an agent of the State such a corporation can easily be identified as the agent of the State. In the absence of a statutory provision, however, a Commercial Corporation acting on its own behalf will be ordinarily presumed not to be a servant or agent of the State. This view, of course, has been challenged and Supreme Court has held in the case of [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), at page 1641 that a corporation created by a statute and is wholly controlled by Government not only in its policy making, but also in carrying out the functions entrusted to it is an agency or instrumentality of the Government and falls within the expression "Other authorities" under Article 12 of the Constitution. Similar view has been expressed in [Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee](#), and it has been observed that U. P. State Warehousing Corporation constituted by M.P. Warehousing Corporation Act (No. 58 of 1962) is a statutory body wholly controlled and managed by the Government. The Corporation is, therefore, an authority within the meaning of Article 12 of the Constitution. In the case of Som Prakash Rekhi vs. Union of India, reported in AIR 1981 SC 212 at page 218 para 27, it has been held that if a corporate body is found to be a mere agent or surrogate of the State, in fact owned by the State, in truth controlled by the State and in effect an incarnation of the State Constitutional lawyers must not blink on these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of Article 12 that any authority controlled by the Government of India is itself a State. "The Supreme Court has observed in the case of Ajoy Hasia vs. Khalid Mujid Sehravardi, AIR 1981 SC 486 Corresponding to 1981 (1) L. L. J. 12, that the corporation may be a distinct juristic entity with a corporate structure of its own" but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the jurists veil of corporate personality worn for the purpose of convenience of management and administration can not be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the government itself, though in the eye of law it would be a definite and independent legal entity. If the government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the government acting through instrumentality or agency of a corporation should equally be subject to same limitations. The court should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumental of agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad

activities whether through natural persons or through corporate entities, to the basic obligation of the fundamental rights..... The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company or society and in a given case it would have to be decided on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12 of the Constitution. "In making the above observation Bhagwati, J. who spoke for the Supreme Court followed the view expressed by Chinnappa Reddy, J, in the case of [Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, .](#)

10. The Managing Committee of a school affiliated to the West Bengal Board of Secondary Education was held to be not a statutory body by a Division Bench of this Court, even though Rules have been framed by the State Government under the provisions of the West Bengal Board of Secondary Education Act, 1963 providing for composition, powers and funds of the Managing Committee. It has been held that the Managing Committee of any such recognised institution being not created by the Act, it cannot be said that the Managing Committee of a school is a statutory body as the statute itself does not bring the body into existence. It was also held that there is no element of public employment in regard to the employment of teachers in such a school is concerned and there is nothing in the West Bengal Board of Secondary Education Act, 1963 which confers any kind of status of the teachers of such a school. Therefore, no Writ lies for termination of the service of a teacher. This observation was made in the case of Ajit Kumar Mahanta vs. The Managing Committee of Jhilmil High School, reported in 1974 (2) S. L. R. 425. In the case of [Sm. Ena Ghosh Vs. State of West Bengal and Others](#), Sinha, J. held that the Vice Principal of Sorojini Naidu College for Woman at Dum Dum, which is a Government sponsored College is not a civil servant and Article 311 does not apply and as such if there is a wrongful termination of service she cannot agitate against the same in a Writ court. In this case, however, the question whether the Government sponsored college is an authority within the meaning of Article 12 of the Constitution was neither raised nor considered at all. It has been held by this court in the case of Aruna De vs. Sarojini Naidu College for Woman reported in 1977 CHN 353, that the Governing Body of a sponsored college is not a statutory body as it is not created by the statute even though it is affiliated to the Calcutta University and is regulated by the provisions of the University Act and the statute made thereunder. Therefore no Writ lay against the Governing Body of the college for issuing a notice striking out the names of the petitioners from the college roll. This judgment was pronounced by A. K. Mukherjee, J. In [Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others](#), at page 892 para 9 it has been observed as follows :--
It seems to us that before an institution can be statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary

thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character.

The Executive Committee of Vaish Degree College registered under the Registration of Cooperative Societies Act and affiliated to the Agra University is not a statutory body. Similar view has been expressed in the case of [Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra](#), it has been held that the termination of service of the respondent serving as an Assistant Teacher in the basic section of the College was not in exercise of any statutory duty and the basic section was not a statutory body. It cannot be challenged in a Writ petition. The basic section of the college is not governed by any Act and it has its own Rules and Regulations to conduct the basic section.

11. Jwala Devi Vidyamandir, Kanpur which was raised to the status of an Intermediate College is a society registered under the Societies Registration Act, 1890. It has been held by the Supreme Court that this college is a private body and not a public body or a statutory body, though regulations of University and education code are applicable to it. Principal of this college even if wrongfully dismissed is not entitled to get a declaration of being deemed to be in service or a decree for reinstatement. No Writ application is maintainable and his only remedy is by way of suit for a decree for wrongful termination of his contract of service and for damages. This decision has been rendered in [Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others](#), .

12. Similar question cropped up before this court in the case of In re: Badri Narain Thakur, reported in 98 C.H.N. 321. In this case question arose whether Sri Mandari High School Kanchrapara, District-24-Parganas, which has been recognised by the West Bengal Board of Secondary Education and which receives grants from the Government is an instrumentality or agency of the Government and so an authority within the meaning of "other authorities" in Article 12 of the Constitution. It has been held that this school is recognised by the West Bengal Board of Secondary Education and it is more or less an autonomous body in the matter of running of the administration of the school, in the matter of appointment and dismissal of its teachers as well as members of the non-teaching staff and in disbursement of its fund other than Government grants. Hence a recognised school is not an authority coming within the expression "other authorities" in Article 12 of the Constitution of India and no Writ is maintainable against such institution.

13. On a conspectus of the decisions referred to hereinbefore the position now seems to be well established that in order to be an authority and so state within the meaning of the expression "other authorities" in Article 12 of the Constitution of

India the institution or the corporation or the corporate body must be created by the statute and it must owe its existence to the statute or in other words such an institution or corporate body must be a statutory body. Secondly, a corporate body though not created by a statute but formed under a general statute such as the Companies Act or under the Societies Registration Act will be an authority coming within the expression "other authorities" in Article 12 of the Constitution, if it is an agency or instrumentality of the Government. In other words if such a corporate body or company or association is created at the instance of the Government, in fact owned by the Government, is a surrogate of the State and is entirely controlled by the State and financed entirely by the State. In other words, such a corporate body is entirely under the control and supervision of the State and though outwardly such a corporate body has a separate personality of its own yet if the veil is lifted, it is clear and apparent that it is in fact the State which owns and controls, manages and finances such a corporate body or a society or a company. It is so an instrumentality or agency of the Government and it is an authority within the meaning of Article 12 of the Constitution, and it is subject to the same Constitutional limitation as provided in Part III of the Constitution as Statutory bodies are subject to. Therefore a Writ application is maintainable against it. In this context it is required to be seen whether the Victoria Institution which was created by a Trust in the year 1927 and the Victoria Institution was registered under the Societies Registration Act on March 9, 1926, is an instrumentality or agency of the State, so that the instant Writ application can be held to be maintainable against this institution. It has been urged on behalf of the petitioner that this college was sponsored by the Government in 1957 and it receives aid from the Government and the appointment of the teachers are made by the Central Selection Committee and approval of the appointment are to be made by the Director of Public Instruction, Government of West Bengal, respondent no. 2. It has been submitted that major portion of the fund of the college are provided by the Government and extension of service after attainment of superannuation age of teachers of the sponsored college requires approval of the Government. It has also been stated that Government has full control over all financial matters. Bulk of capital expenditure and the maintenance grants are being regularly sanctioned and released by the Government. Therefore it has been submitted that it is an agency or instrumentality of the Government and so it is an authority falling within the expression "other authorities" under Article 12 of the Constitution. It appears that all these averments were made in paragraphs 10, 11, 12 and 13 of the affidavit-in-reply affirmed by the petitioner on 11th June, 1981 as her submission before this Court. Not a single scrap of paper has been produced before this Court in support of her contention. Moreover, in order to be a Government agency the requisites tests which are to be satisfied have been clearly and lucidly laid down in the case of [Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others](#), at page 496 para 9. All these tests laid down thereunder have not been proved to have been satisfied in this case. Merely because this college is a sponsored college and receives grants in aid from the Government does

not necessarily indicate or establish that this college is under the administrative Control of the Government. On the other hand there is a Governing Body, which is vested with the power of managing the affairs of the college in the matter of appointment of Principal and other teachers and members of the non-teaching Staff and also in the matter of running the day to day administration of the college. Merely because the Central Selection Committee prepares a panel from which the colleges have to appoint teachers in their colleges and also merely because appointments made by the college is subject to the approval of the Director of Public Instruction, the respondent no. 2, and the extension of the service of a teacher similarly requires approval of the respondent no. 2 they do not in any way lead to the conclusion that this Government sponsored college is owned by the State or a surrogate of the State or an agent of the State and an instrumentality of the State and in fact and in reality owned by the State itself. It has got no state complexion or colour. Therefore in my opinion this submission of Mr. Mukherjee that the Victoria Institution is an agent of the State or an instrumentality of the State, and so an authority within the meaning of "other authorities" under Article 12 of the Constitution does not bear any merit and hence it is overruled.

14. This Writ application therefore is not maintainable against the respondent no. 5 and 6 i.e. the Governing Body of the Victoria Institution and the Victoria Institution respectively.

15. The next question that poses itself for consideration in this connection is even though the Victoria Institution is not an authority under Article 12 of the Constitution yet if it is proved that it is under an obligation to observe and/or to conform to the provisions contained in the West Bengal College Teachers (Security of Service) Act, 1975 and in case of an infraction of the procedure prescribed by the provisions of the said Act in the matter of termination of the service of a college teacher including the Principal or in the matter of imposition of any penalty as provided in Section 9 of the said Act does any Writ application lie for such infraction or infringement of the statutory right or status confer on the teachers including the Principal of this college. Connected with this another question arises whether this Victoria Institution which has been brought into being by a Trust and is run by the Victoria Institution, a society registered under the Societies Registration Act is an institution established by the religious minority i.e. by the Brahmas for nourishment of the "Brahma Cult". It has been stated in para 4 of the affidavit-in-opposition that the Trust was created by Her Highness the Maharani Sunity Devi of Coochbehar in respect of property being holding No. 78B, Upper Circular Road in the North Division of the town of Calcutta, dedicating the same for "Brahma religious preacher" to commemorate the memory of Brahmananda Keshab Chandra Sen (deceased), the father of grantor Maharani, and for running of the educational institution of the girls of Indian parentage known as "Victoria Institution". It has therefore been stated that the institution being established by a religious minority is entitled to the benefit of Article 30 of the Constitution of India

and The West Bengal College Teachers (Security of Service) Act, 1975 has no application to this institution. Before considering the first question it is necessary to consider the second question first and if it is found that this institution is entitled to the benefit of Article 30 of the Constitution of India then the first question will not be required to be considered, because the said Act cannot be made applicable to this institution. The Trust Deed which was created by Her Highness the Maharani Sunity Devi of Coochbehar on 18th September, 1927 has been produced before this Court. It appears that this property was dedicated for the purpose of perpetuating the memory of her deceased father--Brahmananda Keshab Chandra Sen and the Trust was created to transfer this property to the Trustee for the use and benefit primarily of the said Institution which had been started by the grantor's father with the object of imparting education of girls of Indian parentage. It has also been stated in the Trust Deed that in case the said institution be discontinued then the said premises and all other properties and moneys shall be applied towards promoting the education of girls of Indian parentage in Calcutta". It also appears that most of the members do not hail from the Brahama sect. Considering the object of the Trust stated hereinbefore as well as the members of the Governing Body most of whom did not belong to the Brahma sect it is difficult to hold that this institution had been established and it is now being administered by the religious minority, i.e., members of the Brahma sect. Therefore I am constrained to hold that this institution can not get the benefit of Article 30 of the Constitution of India.

16. The next question that requires to be considered is, as the said Act applies to the Teachers including the Principal of this Institution, whether a writ application can be maintained against an order made in contravention of the provision of section 9 of the said Act and inviolation of the procedure prescribed by the Rules under the said Act. While considering the scope of Article 226 of the Constitution of India Gajendragadkar, J. Who spoke for the Supreme Court observed as follows :- "Under Article 226 of the Constitution of India, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said Article even for the purpose other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Act. 226 is wide in that sense, the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened The existence of a right is thus the foundation of a petition under Article 226." This observation has been made in the case of [State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo](#), at page 688 paragraph 8. Similar view has been reiterated in the recent decision of the Supreme Court in the case of Fertiliser Corporation, Kamagar Union (Regd.) Sindhri vs. Union of India reported in AIR 1981 S.C. 344 at 347 para 10. It is pertinent to refer in this connection the

decision of the Supreme Court in the case of [Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another](#), where a similar question cropped up. In that case Ramkrishna Jodh, appellant, was a teacher of a college affiliated to the University of Saugar and managed by the Governing Body established under Clause 3 of the College Code, which is an ordinance made under the provisions of the University of Saugar Act. The service of the petitioner as a teacher was terminated. Against that a Writ application was moved. The High Court rejected the application on the ground that the conditions of service of the appellant were not governed by the College Code, but by the contract made between the Governing Body and the appellant and this contract did not create any legal right in favour of the teachers of the affiliated colleges against the Governing Body. The matter came up in appeal before the Supreme Court. It was held that the contract that was entered into between a teacher and the Governing Body under Clause 7 of the Ordinance do not mean that the teacher had merely a contractual remedy against the Governing Body of the College. It was held that the provisions of the Clause 8 of the Ordinance relating to the security of tenure of the teachers were part and parcel of the teacher's service condition. It was further held that the provisions of ordinance 20 in other words called College Code had the force of law and it conferred legal rights on the teachers of the affiliated college. As such a Writ application is maintainable for infraction of their right. Of course in that case the contention that the Governing Body of the college was not a statutory body and so no writ in the nature of Mandamus might be issued against it being not pressed before the High Court was not allowed to be raised before the Supreme Court. This decision was referred to and followed in the case of Vidyaram Misra vs. The. Managing Committee of [Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College](#), . It was held in this case that a Lecturer appointed by the Managing Committee of a college affiliated to the Lucknow University did not hold any office of public employment or status. Section 51 framed under the Lucknow University Act, 1920 merely provided that the terms and conditions mentioned therein had to be incorporated in the contract to be entered into between the college and the lecturer concerned, but it did not say that this terms and conditions would have any legal force until and unless they were embodied in the contract. Without the contract they had no vitality and could not confer any legal rights. It was held further that as the service of the lecturer appointed by reason of a contract between himself and the Managing Committee which was not a statutory body and no formal contract as required had been made between the parties no writ lay against the termination of the service of a teacher by the Governing Body of the College. It has also been held that no writ would lie to quash an order terminating a contract of service unless the order was the order of a statutory body acting in breach of mandatory obligation imposed by a statute. The Managing Committee of the College is not a statutory body and so the writ application against such an order would fail. In the case of [Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others](#), at page 905 para 32 while considering the cases where the writ application will be

maintainable and a declaration that the employee shall be deemed to be in service can be made it has been observed as follows :--

It may be a possible view and some day this Court may have to consider it--that where law as distinct from contract imposes a mandatory obligation prescribing the kind of contract which may be entered into by an employer and the manner in which alone the service of an employee may be terminated any termination of service effected in breach of such statutory obligation would be invalid and ineffective and in such a case the court may treat it as null and void.

17. A similar question was considered by the Allahabad High Court in the case of [Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others](#), at 544 paragraphs 28 and 29, it was held by the Full Bench of the Allahabad High Court that Committee of Management of a recognised Intermediate College is not a statutory body. It was further held while considering the scope of Article 226 that even if the Committee of Management of a recognised Intermediate College is not a statutory body, such a committee will still be amenable to the writ jurisdiction of the High Court, where such committee was entrusted with the performance of statutory duties or was conferred with statutory powers. It was therefore held that writ petition filed against the Committee of Management of the Intermediate College for enforcement of or the performance of any legal obligation or duties imposed on such committee by statute is maintainable.

18. Undoubtedly, the letter issued by the President as mentioned in Annexure "C" to the petition asking the petitioner who is duly appointed Principal of the College to vacate the quarter and also to hand over the charge of office of the Principal to Sri R. C. Munshi, senior Professor of this college amounts to imposition of punishment and it is bad for two reasons. Firstly such type of punishment is not envisaged in Section 9 of the West Bengal College Teachers (Security of Service) Act 1975 and secondly the said punishment has been imposed in utter contravention of the provisions of Sub-section 2 of Section 9 of the said Act, and thirdly it is also in utter violation of the principle of natural justice as no opportunity of hearing was given to the petitioner before issuance of such letter imposing such penalty. Therefore this order is ex facie, illegal and unwarranted and so it is liable to be quashed and set aside by this Court as the said Act conferred a statutory status on the petitioner.

19. In the premises aforesaid, I hold that the instant writ application is maintainable as it purports to affect the petitioner's legal rights conferred by The West Bengal College Teachers (Security of Service) Act, 1975 even though I have held that this institution is not a statutory body or an agency or instrumentality of State. The Rule is therefore made absolute. Let a writ of Mandamus be issued commanding the respondents to forebear from giving effect to the order-passed by the respondent no. 3 on 27th January, 1981 as mentioned in Annexure "G" to the petition. Let a writ of Certiorari be also issued directing the respondents to quash and set aside the impugned order dated 27th January, 1981 issued to the petitioner by the

respondent no. 3 as mentioned in Annexure "G" to the petition.

In the facts and circumstances of the case, I do not think it fit and proper to make any order for costs.