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2025:GUJHC:42639

Reserved On : 16/07/2025
Pronounced On : 29/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17900 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

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Approved for Reporting	Yes	No

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VARSHABEN G. JANI

Versus

LALBHAI DALPATBHAI INSTITUTE OF INDOLOGY & ORS.

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Appearance:

MR MK VAKHARIA, ADVOCATE for the Petitioner

MR MINIR JOSHI, SENIOR ADVOCATE with
MR PARTH CONTRACTOR, ADVOCATE for the Respondent No. 1 - Institute

MR AK CLERK, ADVOCATE for the Respondent No. 2 – the Director

VIKAS V NAIR, ADVOCATE for the Respondent No. 3 – Gujarat University

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

CAV JUDGMENT

1. The present petition, under Article 226 of the Constitution of India, is preferred by the petitioner mainly seeking quashment of the show-cause notice dated 16.02.2003, charge-sheet dated 06.06.2003, inquiry proceedings as well as

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inquiry report and the order of dismissal dated 01.08.2005.

2. The facts of the case are epitomized as under.

2.1 The petitioner was appointed as Lecturer Ancient Indian Culture vide order dated 01.05.1989 on probation for a period of one year from the date of joining. The petitioner was confirmed on the said post on 05.05.1990 by the Institute.

2.2 It is the allegation of the petitioner that after joining the post of Director by respondent No.2 - Shri Jitendrabhai B. Shah in the year 1998, he started harassing the petitioner.

2.3 In the year 2001-02, the petitioner made a complaint to the Department of Women and Children, Central Government for undue harassment at her work place by respondent No.2. The petitioner has also raised a grievance before the UGC & Gujarat Vigilance Commission, New Delhi regarding illegal appointment of respondent No.2.

2.4 Respondent No.2, being a Director of the Institute has issued show-cause notice to the petitioner on 21.02.2003 under Section 51(A) of the Gujarat University Act. The

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petitioner has replied the said show-cause notice on 14.04.2003.

2.5 Respondent No.2 issued charge-sheet to the petitioner on 06.06.2003. The petitioner asked for the supporting documents as alleged in the charge-sheet by letter dated 16.07.2003. The petitioner submitted her reply to the charge-sheet on 02.08.2003.

2.6 Since the documents asked for by the petitioner were supplied by the Institute on 14.10.2004, the petitioner has requested to cross-examine the witnesses of the Institute based on those documents, however, no permission was granted to the petitioner by the Inquiry officer to cross-examine them. Ultimately, Inquiry officer has given report of the departmental inquiry on 02.12.2004.

2.7 On the basis of the said inquiry report, the Institute has issued second show-cause notice to the petitioner on 20.12.2004, which was replied by the petitioner on 25.01.2005.

2.8 Thereafter, the Institute has sent proposal for approval/ dismissal to the University and on 30.07.2005, the University granted approval. Accordingly, the Institute has

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passed the impugned order of dismissal on 01.08.2005.

2.9 It is this order of dismissal impugned as well as the proceedings of inquiry from its initiation, which is challenged by the petitioner in this petition.

3. Heard learned advocate Mr. Mehul K. Vakhariya for the petitioner, Mr. Mihir Joshi, senior advocate with Mr. Parth Contractor, learned advocate for respondent No.1 – Lalbhai Dalpatbhai Institute of Indology ('the Institute' for short) , learned advocate Mr. A.K. Clerk for respondent No.2 – Mr.Jitendrabhai B. Shah (Director), and learned advocate Mr. Vikas Nair for respondent No.3 – Gujarat University ('the University' for short).

4. It is noted that respondent No.1 – Institute has filed a caveat on 02.08.2005 i.e. after passing the impugned order on 01.08.2005. This Court has issued notice to the respondents. The contesting respondents have filed their respective replies. After considering the pleadings of the parties, this Court has issued 'rule' and kept the matter for final hearing.

5. Since the pleadings are completed, with consent of the learned advocates for the respective parties, the matter is

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taken up for hearing and final disposal today.

6.1 Learned advocate Mr. Mehul K. Vakhariya for the petitioner has submitted that respondent No.1 – the Institute is recognized as Research Institute under the Gujarat University and is a 100% grant-in-aid institute; and that the Institute is funded by the State Government to carry out its day-to-day activities and is, therefore, a 'State' within the meaning of Article 12 of the Constitution of India.

6.2 He has further submitted that the petitioner has raised grievance against respondent No.2 – Director regarding harassment at work place and other allegations, even though respondent No.2 – Director himself has issued show-cause notice and ordered initiation of department Inquiry by appointing Inquiry officer, which is illegal and against the provisions of law as the very person against whom the allegations are made cannot issue any show-cause notice or cannot initiate departmental Inquiry. He has submitted that the said initiation of departmental proceedings is biased and therefore, the entire proceedings for dismissal of the petitioner is based on bias mind and therefore, vitiates the said proceeding and therefore, null and void.

6.3 He has also submitted that during the course of

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departmental proceedings, from initiation, the petitioner was asking for relevant documents for submitting her reply to the charge-sheet, reply to the Inquiry, for cross-examination of the Institute's witnesses, etc. But the respondent No.1 Institute did not provide the same to the petitioner in time and some time, not all the documents are supplied. The authorities have not following the principles of natural justice. Therefore, the inquiry proceedings itself is vitiated.

6.4 In support of his submissions, he has relied upon the decision of the Division Bench of this Court in the case of Sindhu Resettlement Corporation Ltd., versus Regional Provident Fund Commissioner-II & Officer in Charge recorded on Letters Patent Appeal No.3 of 2017 in Special Civil Application No.2208 of 2009 with Civil Application No.24 of 2017, dated 27.11.2017, more particularly paras : 8 to 8.5 thereof, which read as under.

> *"8.0 It is required to be noted that despite the statutory alternative remedy available by way of appeal, the original petitioner straightway preferred petition under Article 226 of the Constitution of India alleging violation of principle of natural justice. As the violation of principle of natural justice was alleged despite the statutory alternative remedy of appeal available the very*

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learned Single Judge who passed the impugned order issued the Rule and even expedited the same. That thereafter, after the period of 8 years when petition came up for final hearing, the learned Single Judge has without entering into the merits of the case and / or without considering the allegation of principle of natural justice on merits has disposed of the petition relegating the petitioner to avail statutory remedy of appeal before learned Tribunal. Therefore, in the facts and circumstances of the case, once the petition was admitted and the Rule was issued by observing that as the violation of principle of natural justice is alleged, thereafter the learned Single Judge is not justified in not considering the same on merits and in disposing of the petition relegating the original petitioner to avail alternative statutory remedy available, which as such was available even at the time when petition was admitted and that too after a period of 8 years. We do not propose to enter into a larger question whether despite the alternative statutory remedy available the petition could have been admitted or not. However, once the petition was admitted and Rule was issued after bipartite hearing observing that as the violation of principle of natural justice is alleged, thereafter the learned Single Judge ought to have considered the petition on merits and ought not to have dismissed / disposed of the petition

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relegating the original petitioner to avail statutory remedy available which as such was available even at the time when petition was admitted.

8.1 In the case of L. Hirday Narain Versus IncomeTax Officer, Bareilly, reported in AIR 1971 S.C. 33, the Hon'ble Supreme Court has observed and held that once the High Court entertained the petition and gave hearing on merits, thereafter the petition cannot be rejected on the ground that statutory remedy was not availed of.

8.2 In the case of Dahyabhai Devjibhai Vasava Versus Dy. Dist. Dev. Officer (Rev.) Broach, reported in 1979 (2) GLR 678, the learned Single Judge of this Court refused to reject the petition after a period of more than 3.1/2 years of filing of the petition on the objection that alternative remedy was not availed. In the aforesaid decision, the learned Single Judge has observed that once the petition was admitted and thereafter when more than 3.1/2 years have passed, petition cannot be dismissed on the ground that alternative remedy is not exhausted. In support of the above, the learned Single Judge observed that the said question, however, was prominently before this Court when the matter was at the admission stage and once the petition was admitted after bi-parte hearing, thereafter the same cannot be dismissed on the

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ground of not availing the alternative remedy.

8.3 Identical question came to be considered by this Court in the case of D.S. Vasavada, Vice President. G.R.C. Employee Union Versus Chief Inspector, Bombay Shops & Establishments Act and others, reported in 1985 GLH 623. In the said decision, after considering the decision of the Hon'ble Supreme Court in the case of Hirday Narain (supra), the Division Bench refused to reject the petition on the objection that the petitioner did not avail alternative remedy, and held that once High Court entertained the petition and gave hearing on merits, petition cannot be rejected on the ground that the petitioner did not avail alternative remedy.

8.4 Identical question came to be considered by the Division Bench of this Court in the case of Reliance Industries Limited (supra) rendered in Letters Patent Appeal No. 764 of 2016 relying upon the aforesaid decisions, Division Bench of this Court has set aside the similar order passed by the learned Single Judge passed by the learned Single Judge dismissing the petition after a period of 8 years relegating the original petitioner to avail statutory alternative remedy available which as such was admitted after bi-partite hearing.

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> *8.5 Applying the law laid down by the Hon'ble Supreme as well as this Court in the aforesaid decision, we are of the opinion that in the facts and circumstances of the case narrated herein above, learned Single Judge is not justified in disposing of the petition relegating the original petitioner to avail statutory alternative remedy of appeal available before the learned Tribunal and not deciding the petition on merits, more particularly, allegation of violation of principle of natural justice. As learned Single Judge has not entered into the merits of the case, matter is remanded to the learned Single Judge to decide the petition on merits, more particularly, allegation of violation of principle of natural justice."*

6.5 He has submitted that this petition may be allowed by this Court. He has not made any other submissions before this Court except which are stated hereinabove.

7.1 *Per contra*, learned senior advocate Mr. Mihir Joshi with learned advocate Mr. Parth Contractor for the Institute has vehemently opposed this petition. He has drawn the attention of this Court towards the affidavit in reply filed by the Institute and has submitted that respondent No.1 is

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not a 'State' under Article 12 of the Constitution of India. He has submitted that merely because the Institute receives grant in respect of salary of the staff from the Government or that it is recognized as a Research Institute by the University, it cannot be said that the Institute is a 'State'. He has submitted that this petition is not maintainable on this ground only.

7.2 He has further submitted that the action taken by the Institute is under the provisions of Section 51 of the Gujarat University Act. The entire departmental proceedings are as per the Act and there is no lapse on the part of the Institute. He has submitted that all the procedure of departmental Inquiry are in accordance with law.

7.3 He has also submitted that the petitioner has an alternative remedy under Section 52A of the Gujarat University Act, which should be availed by her before approaching this Court directly, which is not availed by the petitioner at that time. Therefore, on this ground also, this petition may be rejected.

7.4 He has also submitted that the petitioner was given sufficient opportunity to present her case before the authority during the entire proceeding in question. The

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Institute has followed the principles of nature justice. There were 75 sittings, about 220 documents were produced and 6 witnesses were cross-examined. The documents asked for by the petitioner have been supplied by the Institute to the petitioner.

7.5 In support of his submissions, he has relied upon the following decisions :

7.5.1 The decision of the Hon'ble Apex Court in the case of Genpact India Private Limited versus Deputy Commissioner of Income Tax reported in Manu/SC/1610/2019, more particularly para : 38 thereof, which reads as under.

> *"38. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari vs. District Supply Officer, AIR 1992 All 331 that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the headnote of All India Reporter (p. 331), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court. The relevant para 2 of the decision reads thus: (Suresh Chandra Tewari case, AIR p. 331)*

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> "2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed."

Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to

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have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner.*"*

7.5.2 The decision of this Court in the case of Dr. C.A. Shah versus Gujarat Cancer & Research Institute, Ahmedabad reported in 1991 SCC OnLine Guj. 140, more particularly paras : 25, 33 and 34 thereof, which read as under.

"25. From the aforesaid decision, it can be held that an employee in a privately managed college which is being aided by the educational grants would only be entitled to a decree for damages if the dismissal order was wrongful and not to an order of reinstatement or a declaration that notwithstanding the termination of services he or she continue to be in service.

33. The conspectus of the aforesaid decisions and the facts narrated hereinabove leave no doubt that the respondent-Institute is not a 'State' or 'Other Authority' as envisaged by Article 12 of the Constitution of India:

[(1) The Institute does not owe its

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existence to any statute. It is a creation of contract between the Guj. Cancel- Society and the State Government, therefore, it is not a statutory body;]

[(2) It is registered under the Societies Registration Act, 1860, and under the Bombay Public Trust Act, 1950;]

[(3) Its funds consist of properties belonging to Gujarat Cancer Society, gifts, donations and also grants by the Government. The Institutions owned by the State are normally not funded by gifts and donations. It is Web Edition: www.aijel.co.in © 2025 Hyperlink E Solutions Pvt. Ltd. an admitted fact that donations to the Cancer Society are substantial. The Institute is entitled to receive contributions or gifts from any indigenous source without government sanction;]

[(4) It is administered by the Governing Board consisting of three members nominated by the Guj. Cancer Society, three members nominated by the Government and by the Director appointed by the Governing Board;]

[(5) It does not enjoy any monopoly status. Any private individual, any society or any public trust can open or start such type of cancer institution at any moment without any hindrance;]

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[(6) As per the rules framed by the Institute, the State Government has no power to give any general directions or to have supervision over the functioning of the Institute. Therefore, it is not subject to the directions which may be issued by the Government from time to time;]

[(7) The respondent-Institute is not an agency or instrumentality of the Government for carrying out governmental functions.]

34. Not only this, but it also should not be forgotten that it is part and parcel of the culture of this country particularly of this State to maintain Charitable Institutions, piously for the benefit of the public at large. In most of the cases these institutions are autonomous bodies functioning effectively and efficiently mainly with charitable objectives. By making it part of the bureaucratic set-up these Institutions would be affected by cancer which may be a death-blow to this type of charitable activities which are meant for the society at large. It also should be borne in mind that it is easy to destroy any Institution on minor issues but is difficult and painful to establish and sustain it."

7.5.3 The decision of this Court in the case of N.N.

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Patel versus Gujarat Cancer & Research Institute reported in 2015 SCC OnLine Guj. 3619, more particularly paras : 3 and 4 thereof, which read as under.

> *"3. Respondent Nos. 1 and 2 are Gujarat Cancer & Research Institute and Gujarat Cancer Society against which prayer has been made for issue of writ of mandamus to improve the condition and grant free treatment to cancer patients as per the government policies. A Division Bench of this Court in C.A. SHAH, DR VS. GUJARAT CANCER AND RESEARCH INSTITUTE, AHMEDABAD, reported in 1992(1) GLR 687 has held that Gujarat Cancer and Research Institute, Ahmedabad, is not a "State" within the meaning of Article 12 of the Constitution of India and therefore is not amenable to writ jurisdiction of this Court. This Division Bench decision has been followed by another Division Bench of this Court in PRAVINCHANDRA M. PATEL & 1 ANOTHER VS. DIRECTOR OF GUJARAT CANCER AND RESEARCH INSTITUTE & 4 OTHERS decided on 21.9.2011 in Letters Patent Appeal No. 446 of 2003 and other cognate matters. In PRAVINCHANDRA M. PATEL, the Division Bench has also noticed a Full Bench decision of this Court in RAMBHAI ISHWARBHAI PATEL AND ANOTHER VS. GUJARAT STATE FERTILIZERS AND CHEMICALS LTD., reported*

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in 2011 (2) GLR 1197 wherein the view taken by this Court is that Gujarat State Fertilizers & Chemicals Ltd., is not an instrumentality of the State and is not a "State" within the meaning of Article 12 of the Constitution of India. Therefore, we are of the concurred opinion that this writ petition in the nature of public interest litigation is not maintainable. Learned counsel for the petitioner has relied on a decision of the Apex Court in the case of CONSUMER EDUCATION & RESEARCH CENTRE & OTHERS VS. UNION OF INDIA & OTHERS reported in (1995) 3 SCC 42 wherein the view taken is that health and medical aid of workers during service and thereafter is a fundamental right of the workers who are working in hazardous industries. The Apex Court widened the scope of Article 21 of the Constitution of India. We have carefully considered this decision. In our opinion, this decision is not applicable to the facts of the present case.

4. For the aforesaid reasons, in our opinion, Gujarat Cancer & Research Institute, Ahmedabad, is not a "State" within the meaning of Article 12 of the Constitution of India and is not amenable to the writ jurisdiction of this Court. This writ petition in the nature of public interest litigation is dismissed as not maintainable."

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7.5.4 The decision of the Hon'ble Apex Court in the case of Ramakrishna Mission and Another versus Kago Kunya and others reported in (2019) 6 SCC 303, more particularly paras : 23 to 39 thereof, which read as under.

> *"23. In VST Industries Ltd v. VST Industries Workers' Union, (2001) 1 SCC 298, a two judge Bench of this Court held that a mere violation of the conditions of service will not provide a valid basis for the exercise of the writ jurisdiction under Article 226, in a situation where the activity does not have the features of a public duty. This Court noted:*
>
> > "7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law e.g. the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest... After detailed discussion, the

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learned authors have summarised the position with the following propositions:

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a `public' or a `private' body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions."

"(3) ...In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a

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special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute." (Emphasis supplied)

24. In G. Bassi Reddy v. International Crops Research Institute, (2003) 4 SCC 225, a two judge Bench of this Court dealt with whether the International Crop Research Institute for the Semi-Arid Tropics ("ICRISAT") which is a non-profit research and training centre, is amenable to the writ jurisdiction under Article 226. The dispute concerned the termination of employees of ICRISAT. The Court held that only functions which are similar or closely related to those that are performed by the State in its sovereign capacity qualify as `public functions' or a `public duty':

"28. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty...ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can

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> reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities."

Applying the above test, this Court upheld the decision of the High Court that the writ petition against ICRISAT was not maintainable.

25. A similar view was taken in Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331, where a two judge Bench of this Court held that a private body can be held to be amenable to the jurisdiction of the High Court under Article 226 when it performs public functions which are normally expected to be performed by the State or its authorities.

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26. In Federal Bank Ltd. v. Sagar Thomas, (2013) 10 SCC 733 this Court analysed the earlier judgements of this Court and provided a classification of entities against whom a writ petition may be maintainable:

> "18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (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." (emphasis supplied)

27. In Binny Ltd. v. V Sadasivan, (2005) 6 SCC 657, a two judge Bench of this Court noted the distinction between public and private functions. It held thus:

> "11...It is difficult to draw a line between

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public functions and private functions when they are being discharged by a purely private authority. A body is 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. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest."

28. The Bench elucidated on the scope of mandamus:

"29. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action...There cannot be any general definition of public

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authority or public action. The facts of each case decide the point." (emphasis supplied)

29. More recently in K.K. Saksena v. International Commission on Irrigation and Drainage, (2015) 4 SCC 670, another two judge Bench of this Court held that a writ would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus:

"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between

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> individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

30. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

31. Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The nature of the work which is rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is purely voluntary.

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32. Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an `authority' within the meaning of Article 226. State governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of state control in the management

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of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.

33. It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body- Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226. Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organisations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In Federal Bank (supra), while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the court held thus:

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"33. ...in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank..." (emphasis supplied)

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34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K K Saksena (supra) this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. The Act, inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the Hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved.

36. For the above reasons, we are of the view that the Division Bench of the High Court

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was not justified in coming to the conclusion that the appellants are amenable to the writ jurisdiction under Article 226 of the Constitution as an authority within the meaning of the Article.

37. For the reasons that we have adduced above, we hold that neither the Ramakrishna Mission, nor the hospital would constitute an authority within the meaning of Article 226 of the Constitution.

38. Before concluding, it would be necessary to also advert to the fact that while the learned Single Judge had come to the conclusion that the appellants are `State' within the meaning of Article 12, the Division Bench has not accepted that finding. The Division Bench ruled, as we have noticed earlier, that the appellants do not fall within the description of `State' under Article 12. This finding has not been challenged before this Court by the State of Arunachal Pradesh.

39. Even otherwise, we are clearly of the view that the tests which have been propounded in the line of authority of this Court in Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 and Jatya Pal Singh v. Union of India, (2013) 6 SCC 452

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> support the conclusion of the High Court that the appellants are not `State' within the meaning of Article 12 of the Constitution of India."

7.6 He has submitted that this petition may be dismissed.

8.1 *Per contra,* learned advocate Mr. A.K. Clerk has also vehemently opposed this petition and supported the submissions made by learned senior advocate Mr.Joshi for the Institute. He has also drawn the attention of this Court towards the affidavit in reply and has submitted that the petitioner is making wild allegations against respondent No.2 with a vindictive attitude just to harass him; and that the petitioner was given a show-cause notice by respondent No.2 for dissatisfaction of work, dereliction in duty, indiscipline, negative approach, misbehaviour with the academic advisor and plagiarism; and that the petitioner was given sufficient opportunity to place her case.

8.2 In support of his submissions, he has relied upon the decisions rendered by this Court in Special Civil Application No.14385 of 2021, Special Civil Application No.8564 of 2017, Criminal Revision Application No.323 of 2015, M.Case No.1 of 2013 and Special Civil Application

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No.13338 of 2021. He has submitted that this petition may be dismissed.

9. Learned advocate Mr.Vikas Nair for the University has submitted that respondent No.1 – Institute is recognised as a Research Institute by the Gujarat University and is governed under the Gujarat University Act, therefore, respondent No.1 – Institute it is not a 'State' under Article 12 of the Constitution of India. The departmental proceedings initiated by respondent No.1 – Institute against the petitioner is between the petitioner and respondent No.1. The University is the approval authority only. He has submitted that the University has rightly approved the proposal made by respondent No.1 regarding dismissal of the services of the petitioner. The proposal is supported with the inquiry report and the inquiry report does not support the case of the petitioner. Except it, there is no active role of the University in this matter. He has submitted that there is an alternative remedy available to the petitioner, which is not availed by her. He has submitted that this petition may be dismissed.

10. Learned advocate for the petitioner has also drawn the attention of this Court towards the affidavit in rejoinder and has submitted that the documents, which were asked for by the petitioner during the departmental proceedings so as

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to enable her to reply and respond to, were not supplied by the Institute to the petitioner; and that the same are supplied by the Institute after the report is submitted by the Inquiry Officer knowingly, so that the petitioner cannot reply or respond to in the departmental Inquiry. He has submitted that respondent No.2, with an intention to harass the petitioner, issued show-cause notice, that too after about service of almost 15 years. He has submitted that after found satisfactory performance of the petitioner during the probation, her services were confirmed by the authority in the year 1990. He has submitted that even the work of the petitioner was appreciated by the Honorary Professors in the year 1995-96. He has submitted that the petitioner was not allowed to cross-examine the witnesses of the Institute. He has submitted that this petition may be allowed.

11.1 I have considered the rival submissions made by the learned advocates for the respective parties. I have perused the relevant documents available on record. From the record, it transpires that the petitioner has made mainly two grievance; (i) she raised grievance regarding departmental proceedings and its consequences including dismissal and (ii) she raised grievance regarding illegal / improper appointment of respondent No.2. However, the petitioner has approached this Court by way of this petition only for departmental

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proceedings, its validity and her dismissal. There is no other prayer made by the petitioner in this petition.

11.2 Additionally, the petitioner has raised a contention that the Institute is a 'State' under Article 12 of the Constitution of India; and that respondent No.2 cannot issue show-cause notice and/or order departmental inquiry and/or appoint Inquiry Officer, more particularly the allegations in prior point in time made by the petitioner are against respondent No.2 regarding harassment and inquiry is pending regarding harassment before the Committee formed by the Gujarat University.

12.1 With regard to the contention that the Institute is a 'State' under Article 12 of the Constitution of India is concerned, as submitted by respondent No.1 – Institute that the Institute is a recognized Research Institute, recognized in accordance with Section 35 of the Gujarat University Act, 1949, which confers power on the Executive Council, after consultation with the Academic Council, to recognize as recognized institution of research or specialized study other than a college. This has to be read in contradistinction with Section 33 of the Act, which provides for affiliation of a college. Further, Section 33(5)(j) of the Act expressly provides for compliance with the Statutes, Ordinances and Regulations

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providing for conditions of service for the staff related to affiliated colleges, there is no such provision under Section 35 of the Gujarat University Act which relates to recognized institutes. Under the circumstances, this Court has weighed with the following factors to hold that the Lalbhai Dalpatbhai Institute of Indology is a 'State' under Article 12 of the Constitution of India.

i. It is a Research Institute affiliated with the Gujarat University.
ii. The Institute is in receipt of Government grant-in-aid.
iii. The Institute discharges a public function of imparting research / education to students in a similar manner as Government Institutions.
iv. The Institute is governed by the rules and regulations of the affiliating University i.e. Gujarat University.
v. Its activities are closely supervised by the Gujarat University.
vi. There is some control of the State being Government Aided Institute.

The Hon'ble Apex Court, time and again, observed in catena of decisions that the control of the State was not

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merely regulatory but it was established that the body was functionally and financially under some control of the Government and such control must be particular to the Institute, which is there *qua* the Institute in question. Article 12 of the Constitution of India reproduced as under.

> *"12. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*

It is fruitful to refer to the recent decision of the Hon'ble Apex Court in case of Dileepkumar Pandey versus Union of India reported in Manu/SC/0754/2025, more particularly paras : 42, 43, 44 and 46 thereof. It is also relevant to refer to the decision of the Hon'ble Apex Court in the case of Rajkumar Singh versus Union of India reported in Manu/SC/0917/2024, more particularly paras : 22 to 27 thereof.

However, it is noted that the petitions preferred by respondent No.2 – Director – Shri Jitendrabhai B. Shah entertained by this Court keeping aside the issue that whether the Institute is a 'State' or not. Therefore, though

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this Court has passed appropriate orders on those petitions, under the circumstances, *mutatis mutandis* this Court finds that the issue raised by the petitioner that respondent No.1 – Institute is a 'State', is required to be accepted on that count also. Consequently, the present petition needs to be considered.

The decision of the Hon'ble Apex Court in the case of Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others versus V. R. Rudani and others reported in AIR 1989 SC 1607 has observed that public money paid as Government aid plays a major role in the control, maintenance and working of educational / research institutions. The aided institutions like Government institutions discharge public function by way of imparting education/research to the students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. The Hon'ble Apex Court has also observed that to be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. Mandamus is a very wide remedy which must be easily available to reach injustice whenever it is found. Technicalities should not come in the way of granting that relief under Article 226 of the Constitution of India.

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12.2 At this stage, it would be fruitful to refer to the decision of the Hon'ble Apex Court in the case of M/s. Godrej Sara Lee Ltd., versus The Excise and Taxation Officer cum Assessing Authority reported in 2023 LiveLaw (SC) 70, wherein the Hon'ble Apex Court has observed that, it is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. It must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the higher court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition 'not maintainable'. The objection as to maintainability goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication.

In this regard, it is noted that after passing the dismissal order on 01.08.2005, respondent No.1 – Institute has filed a caveat before this Court on 02.08.2005 with a prayer that no orders of admission and/or granting ad-interim relief or interim relief be passed in Special Civil Application that may be filed by the respondent i.e. present petitioner challenging the order of dismissal dated 01.08.2005. The

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present petition is filed thereafter by the petitioner. Considering the peculiar facts of the case, this Court has called upon the respondents by issuing notice. The Institute as well as respondent No.2 have filed the affidavit in reply before this Court. Ultimately, after considering the pleadings of the respective parties, this Court has admitted the matter by issuing 'rule' and kept for final hearing on 14.03.2006.

13.1 Since the Institute is a 'State' instrumentality within the meaning of Article 12 of the Constitution of India, this petition need to be entertained and accordingly decided by this Court. One of the contention of the respondent No.1 – Institute is that there is an alternative remedy under Section 52 of the Gujarat University Act and the petition need not be entertained on that ground. However, considering the fact that respondents No.1 and 2 have filed caveat and thereafter also appeared and filed affidavit in reply and thereafter, after hearing the parties, this Court has issued rule in this matter and therefore, this contention cannot be considered at this stage of final hearing and at the stage of disposal of this petition. Article 226 of the Constitution of India needs to be reproduced hereunder.

> *"226. Power of High Courts to issue certain writs.—*

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(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court

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for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]"

13.2 At this stage, it is required to be considered the legality and validity of the departmental proceedings and consequently, order of dismissal. From the facts noted above as well as from the record, this Court finds as under :

- The petitioner is aged about 67 years by this time, as reported by the learned advocate for the petitioner.

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- The petitioner was appointed as Lecturer in Ancient Indian Culture vide order dated 01.05.1989 on probation for one year.
- After completion of probation period satisfactorily, the Institute has confirmed the petitioner on the said post on 05.05.1990.
- Respondent No.2 - Shri Jitendrabhai B. Shah appointed as a Director of the Institute in the year 1998.
- Respondent No.2 had started harassment to the petitioner, as alleged, which is excruciating.
- In the year 2001-02, in a valour attempt, the petitioner made a specific complaint to the Department of Women and Children, Central Government for undue harassment at her work place and about the certificates of experience produced by respondent No.2. She has raised a grievance before the UGC & Gujarat Vigilance Commission, New Delhi regarding appointment of respondent No.2, which has been made by violating settled principles of law.
- Pursuant to the said complaint, the Under Secretary of the Government of India called

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upon the Registrar of the University to inquire into the harassment.

- Respondent No.2, being a Director of the Institute has issued show-cause notice to the petitioner on 21.02.2003 under Section 51(A) of the Gujarat University Act.
- There were exchange of communication between the petitioner and respondent No.2 regarding details/documents/evidence to be provided to the petitioner. Respondent No.2 has provided some of the details. Ultimately, the petitioner has replied the said show-cause notice on 14.04.2003 and denied the allegations levelled by respondent No.2.
- Thereafter, respondent No.2 has informed the petitioner regarding initiation of departmental Inquiry on 06.06.2003 and on the same day i.e. on 06.06.2003, respondent No.2 issued charge-sheet to the petitioner.
- Consequently, respondent No.2 has appointed Inquiry officer in the said departmental Inquiry and informed the petitioner on 09.06.2003.
- The formation of committee was objected by the petitioner vide communication dated

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01.07.2003, mainly on the ground that the Inquiry committee ought to have been formed consisting three members; and that the person appointed as Inquiry officer is not qualified to decide the charges levelled against the petitioner as the said person is from the another field i.e. Sanskrit and the petitioner is from the different field i.e. Ancient Indian Culture.

- The petitioner has asked for the supporting documents as alleged in the charge-sheet on 16.07.2003, which were not provided fully by the Inquiry officer to the petitioner and therefore, cannot consider as iridescent process.
- The petitioner submitted her reply to the charge-sheet on 02.08.2003.
- Though the petitioner has asked for various documents, the same were not supplied by the authority, the petitioner could not cross-examine the various witnesses of the Institute. Since the documents asked for by the petitioner were supplied by the Institute on 14.10.2004, the petitioner has requested to cross-examine the witnesses of the Institute

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based on those documents, however, no permission was granted to the petitioner by the Inquiry officer to cross-examine them. Ultimately, Inquiry officer has given report of the departmental Inquiry on 02.12.2004.

- On the basis of the said Inquiry report, the Institute has issued second show-cause notice to the petitioner on 20.12.2004, which was replied by the petitioner on 25.01.2005.
- Thereafter, the Institute has sent proposal for dismissal to the University and on 30.07.2005, the University granted approval. Accordingly, on the basis of the said approval, the Institute has passed the impugned order of dismissal on 01.08.2005.

13.3 From above, it transpires that respondent No.2 has issued show-cause notice with a view to have strangehold on petitioner, after the petitioner has made a grievance against him regarding undue harassment at work place. As noted above, the petitioner was appointed in the year 1989. She was confirmed by the respondent No.1 – Institute after satisfactorily completion of probation period. There is no grievance at all by respondent No.1 – Institute against the petitioner. Respondent No.2 was appointed as a Director in the year 1998. He started harassment to the petitioner at

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work place. Therefore, a complaint was given by the petitioner to the authority against respondent No.2. Further, the petitioner has raised grievance against the appointment of respondent No.2 also, which is made against the UGC Rules. Respondent No.2 has issued show-cause notice to the petitioner under Section 51(A) of the Gujarat University Act, that too after a period of 15 years of satisfactorily service. It shows the bias mind of respondent No.2. The issue is cropped up from here. The matter did not rest there. There were exchange of communication between the petitioner and respondent No.2 regarding details/documents/ evidence to be provided to the petitioner. Respondent No.2 has provided some of the details/documents, but not provided the relevant documents to the petitioner. Ultimately, the petitioner has replied the said show-cause notice on 14.04.2003 and denied the allegations levelled upon her by respondent No.2. Thereafter, respondent No.2 has informed the petitioner regarding initiation of departmental Inquiry on 06.06.2003 and on the same day i.e. on 06.06.2003, respondent No.2 issued charge-sheet to the petitioner. This also shows the bias mind of respondent No.2. Consequently, respondent No.2 has appointed Inquiry officer in the said departmental Inquiry and informed the petitioner on 09.06.2003.

Rule 51(A) of the Gujarat University Act is reproduced hereunder.

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"51 A. Dismissal, removal, reduction and termination of service of staff of college, etc.

(1) No member of the teaching, other academic and non teaching staff of [***] recognised or approved institution shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and until-

(a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him, and

(b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf.

(2) No termination of service of such member not amounting to his dismissal or removal falling under sub-section (1) shall be valid unless-

(a) he has been given a reasonable opportunity of showing cause against the proposed termination, and

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(b) such termination is approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf:Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.]

13.4.1 It is required to be noted at this stage, it is the respondent No.2 – Director – Shri Jitendrabhai B. Shah, against whom the petitioner has made a complaint for harassment at work place before the concerned authorities; and that it is the respondent No.2 against whom the petitioner has made a grievance regarding his appointment before the concerned authorities. It transpires from the record that keeping grudge in mind, respondent No.2 has issued show-cause notice to the petitioner and in turn, initiated departmental inquiry. This Court has posed a question that when any allegation is made against a particular higher officer, that too the allegations are regarding harassment at work place to a lady, can such higher officer issue show-cause notice on one ground or the other and can such higher officer initiate departmental inquiry ? The answer would be 'no'. It should be other than the higher officer and not the same higher officer when particular allegations are made by a lady for harassment against such higher officer. Under the

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circumstances, it is obvious that such higher officer acts with bias mind. In the present case, the same scenario has happened. The petitioner has made a complaint regarding harassment by respondent No.2 at work place. The said respondent No.2 has issued show-cause notice and thereafter also initiated departmental proceeding, which ultimately led to dismissal and that dismissal is challenged by the petitioner before this Court in this petition. Further, respondent No.2 has not provided sufficient documents to the petitioner as asked for by the petitioner at the relevant time and therefore, the petitioner could not present her case before the authority properly. Thus, the respondent/s has violated the principles of natural justice by not providing sufficient and relevant material to the petitioner.

13.4.2 At this stage, it would be fruitful to refer to the decision of the Hon'ble Apex Court in the case of Kumaon Mandal Vikas Nigam Ltd., versus Girja Shankar Pant and Others reported in AIR 2001 SC 24, more particularly Paras : 10 and 28 thereof, which read as under.

> *"10. The word 'Bias' in popular English parlance stands included within the attributes and broader purview of the word 'malice', which in common acceptation mean and imply 'spite' or 'ill-will' (Stroud's Judicial Dictionary (5th Ed.)*

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Volume 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

28. The Court of Appeal Judgement in Locabail (2000 QB 451) (supra) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the Judgement itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient."

13.4.3 It would also be fruitful to refer to the decision of the Jharkhand High Court in the case of Devprabha Construction Pvt. Ltd., versus Coal India Limited reported in 2019 SCC OnLine Jhar 1049, more particularly paras : 24 thereof, which reads as under.

"24. It is not in doubt that if anything would be initiated by any authority with malice or

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malicious act with biasness, the same would not be allowed to be continued."

13.5 At this stage, it would also be fruitful to refer to the decision of this Court in the case of Gulabsinh Devusinh Jhala versus State of Gujarat reported in Manu/GJ.0744/2025, wherein this Court has taken into consideration the decision of the Hon'ble Apex Court in the case of State of Andhra Pradesh versus S. Sree Rama Rao reported in AIR 1963 SC 1723, whereby the Hon'ble Apex Court has observed that the High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or by allowing themselves to be influenced by irrelevant considerations. In the present case, the allegations of the petitioner against respondent No.2 – Director, who has issued show-cause notice and also initiated departmental proceedings, is on record and is a written complaint by the petitioner against respondent No.2 for harassment at work place and for insisting to go to the residence of respondent No.2 who was unmarried at that time, at odd hours. The said complaint was sent to the Department of Women and Child Development, Ministry of Human Resources Development, Government of India by the petitioner and thereafter as a counterblast, respondent No.2 has issued

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show-cause notice and initiated departmental inquiry against the petitioner, who is influenced by irrelevant consideration and biasness.

13.6 It would also be fruitful to refer to the decision of the Delhi High Court in the case of Reshmawati versus Managing Committee and others reported in 2019 SCC OnLine Del. 8985, more particularly paras : 25 to 27 thereof, which read as under.

> *"25. Regarding the issue of biasness is concerned, she was appointed in the year 1989 and till 2012, there was no complaint against the petitioner. It cannot be believed that after succeeding the petitioner and other employees in the said suit, biasness has not come in mind of the administration because the school is private and unaided and has to pay salary to he employees as per 6th Pay Commission in future, in addition to the amount paid as per the settlement. Before the settlement, they were not paying such amount, therefore, on this ground, it cannot be ruled out that there was no biasness against the petitioner. Therefore, the dismissal order dated 05.03.2013 deserved to be set aside on this count. Moreover, the allegations against the petitioner have not been proved by independent witnesses. The total case rest upon mere allegations based upon the documents*

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generated by the respondent school. The petitioner has denied the allegations during enquiry.

26. In case of Baikuntha Nath Das versus Chief District Medical Officer, (1992) 2 SCC 299, the Hon'ble Supreme Court has held that the court may interfere with the order of the punishment if the court is of the opinion that no reasonable person would form such opinion on the given material.

27. In the present case, all allegations are made against the petitioner only after the suit was decreed in favour of the class IV employees including the petitioner. Thus, the respondent school made such allegations and were determined to remove the petitioner from service. If it is accepted that the charges are proved, even then the charges are not so serious. The disciplinary authority would have given to the other punishment lesser than removal from service."

14.1 There cannot be any dispute with regard to the law enunciated in the decisions of the Hon'ble Apex Court as well as this Court relied upon by the learned advocate for respondent No.1 - Institute, however, it cannot be helpful to respondent No.1 any further in view of the peculiar facts and circumstances of the present case. The present case does not

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fall within the purview of these decisions with such facts. Therefore, the present petition deserves to be allowed on its merit.

14.2 The decisions cited by learned advocate for respondent No.2 do not have bearing on the present case. In the present petition, the petitioner has prayed the departmental proceedings and dismissal order only. She has not prayed for any other prayer. Respondent No.2 has cited the decisions regarding his appointment and other proceedings related to his appointment. Therefore, it cannot be helpful to respondent No.2 any further in view of the prayers made in this petition. The present case does not fall within the purview of these decisions with such facts. Therefore, the present petition deserves to be allowed on its merit.

15. In view of the peculiar facts and circumstances of the case and considering the settled principle '*Ubi jus ibi remedium'* as well as observations made by the Hon'ble Apex Court as well as this Court and other High Courts noted above, this Court finds that; (i) respondent No.1 - Lalbhai Dalpatbhai Institute of Indology is a 'State' instrumentality within the meaning under Article 12 of the Constitution of India; (ii) since the basis of the departmental proceedings has serious prejudice and biasness, the entire departmental

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proceeding is vitiated and therefore, null and void; (iii) the authorities have not followed the principles of natural justice during the entire departmental proceedings and (iv) the impugned order of dismissal dated 01.08.2005 passed against the petitioner needs to be quashed and set aside, as it is found against the settled principles of law.

16. For the reasons recorded above, the following order is passed.

16.1 This petition is **allowed**. The impugned dismissal order dated 01.08.2005 is quashed and set aside.

16.2 Consequently, the petitioner is required to be reinstated in service with continuity and full backwages. However, the petitioner is at present aged about 67 years, as reported, there is no question of reinstating her in service. Accordingly, the respondents are directed to pay full backwages to the petitioner for the period from 01.08.2005 till the date of her superannuation within a period of six weeks from the date of receipt of this order.

16.3 The respondents are also directed to pay all retirement benefits i.e. provident fund, gratuity, leave encashment, etc., accordingly, within a period of six weeks from the date of receipt of this order.

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16.4 The respondents are also directed to fix the pension of the petitioner accordingly and pay the same to the petitioner, forthwith.

16.5 Rule is made absolute accordingly.

Direct service is permitted.

(SANDEEP N. BHATT,J)

At this stage, after pronouncement of this judgment, learned advocate Mr.Parth Contractor for respondent No.1 prayed for stay of this judgment for some period. Considering the fact that the petition is pending since the year 2005; the petitioner is fighting against the biasness of the authorities; and during the pendency of this petition, the petitioner has retired, the request for stay is not acceptable and accordingly, is rejected.

(SANDEEP N. BHATT,J)

M.H. DAVE