



VP-4018-24-F

Dilwale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.4018 OF 2024

Suprabhat Lala
S/o. Pranab Kumar Lala,
R/o. C-208, Sungrace, Raheja Vihar,
Mumbai – 400 072.

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}
}
}
....Petitioner

Versus

1. National Stock Exchange Ltd.,
a company registered under
the Companies Act, 1956

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}
}

2. Chairman,
National Stock Exchange Ltd.

}
}

3. Ashish Kumar Chauhan,
Managing Director & CEO,
National Stock Exchange Ltd.

}
}
}

4. Shharad Dhakkate,
Chief Human Resources Officer,
National Stock Exchange Ltd.

}
}
}

Respondent Nos.1 to 4 having their registered
at Exchange Plaza, C-1, Block G, Bandra Kurla
Complex, Bandra (East), Mumbai – 400 051.

}
}
}

...Respondents

...

Mr. K.P. Anilkumar with Mr. Amit Saple, Ms. Priyanka Kumar and
Mr. Chinmay Apte, Advocates for the Petitioner

Mr. Ashish Kamat, Senior Advocate, with Mr. Prathamesh Kamat,
Mr. Ishan Agrawal, Ms. Priyanka Chaddha, Mr. Kush Khandelwal,
Mr. Ashutosh Mishra, Ms. Tanya Hasija and Mr. Divakar Dadhich,
Advocates, i/by Nyaayam Associates, for the Respondents

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The date on which the arguments were heard : 5TH AUGUST, 2025.

The date on which the Judgment is pronounced: 16TH OCTOBER, 2025.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
MANJUSHA DESHPANDE, JJ**

Per, Shree Chandrashekhar, CJ. :

The petitioner seeks to challenge the order of termination of his service issued on 24th July 2023 under the signature of the Chief Human Resources Officer of the National Stock Exchange (for short, 'NSE'). The petitioner has characterized the termination order dated 24th July 2023 as illegal, unjustified, arbitrary and discriminatory and challenges the same issued in violation of his rights guaranteed under Articles 14, 16 and 21 of the Constitution of India. He is seeking reinstatement in service on the original post and in the original workplace consequent upon the quashing of the said termination order. He is also seeking a writ of certiorari to recall the order of his transfer contained in the letter dated 27th June 2022. In the writ petition, the petitioner has made the following prayers:-

“(a) This Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction declaring the Termination letter dated 24.07.2023, (being Exhibit-M) issued by Respondent No.1 and quash the same as being illegal, unjust, discriminatory, arbitrary and in violation of the rights of the Petitioner as guaranteed under Article 14, 16 and 21 of the Constitution of India;

(b) This Hon'ble Court may be pleased to issue a Writ of Certiorari recalling the transfer letter dated 27.6.2022 issued by Respondent No.1 and quash the same as being illegal, unjust, discriminatory, arbitrary and in violation of the rights of the Petitioner as guaranteed under Articles 14, 16 and 21 of the Constitution of India;

(c) This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Writ of Mandamus directing the Respondent to reinstate the Petitioner in his original post and in the original work place before he was illegally terminated, continuity of service, full back wages and continuity of services with consequential benefits;

(d) Pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to issue a Writ of Mandamus, or any other appropriate writ, order, or direction, directing the Respondents to

release the salary arrears due to the Petitioner from 2018, along with interest thereon till the day of actual date of payment, and legal fees, which was illegally withheld in line with other employees without discrimination;

(e) Ad interim prayer in clause (d) above;

(f) Any other or further cost as the court may deem fit.”

2. The petitioner was engaged as a Manager under 1st respondent-NSE with effect from 1st October 2001 on the terms and conditions provided in the letter dated 7th September 2001 which were duly accepted by him. The said letter of appointment included a clause for termination from service on three months' notice on either side on payment in lieu thereof and the same is re-produced herein below:-

“Dear Mr. Suprabhat,

Sept 7, 2001

Further to your application and subsequent discussions that we have had with you, we are pleased to offer you an appointment as a 'Manager' in our Company. The detailed terms and conditions of your appointment are enclosed herewith. If you find the terms and conditions acceptable, we hope you would be able to join us on or before October 1, 2001. Kindly return the duplicate copy of this letter along with the terms and conditions and Annexures duly signed. We look forward to working with you,

*Yours sincerely,
sd.*

TERMS AND CONDITIONS OF APPOINTMENT

“1. Your salary and allowance will be as per details attached to this letter and marked as Annexure I.

2. Probation: You will be on probation for a period of six months from the date of your appointment in the Company which may be extended in case necessary. If at any stage during probation, your work or any aspect of your behavior is found unsatisfactory, your services will be dispensed with, without notice.

3. Confirmation: On successful completion of the probationary period you will be eligible for confirmation as an "Manager".

4. You may be posted in any office of the Company and to work in any of its departments.

5. You will retire from the Company's services after attaining 58 years of age as per the Rules of the Company for the time being in force.

6. All payments to you under the terms of employment are subject to deduction of tax at source under the Income Tax Act and any other enactments that may be in force from time to time. The Company will also be entitled to deduct from the payment due to you, any dues payable by you to the Company.

7. You will be governed by the Staff Rules and Regulations framed by the Company from time to time.

8. Your appointment will be subject to your being found medically fit for service in the Company and satisfactory report thereof being received.

The Company's decision in this regard will be final. You will be required to undergo the medical examination. On receipt of your acceptance of the offer, the company will inform you regarding the necessary steps to be taken for medical examination.

9. You should produce at the time of reporting for duty the attested xerox copies of certificates regarding your age, educational qualifications, experience and results of your medical examination and attach true copies thereof.

10. If any statement, declaration or information given by you is at any time found to be false or untrue or if any material particular is suppressed, your services are liable to be terminated forthwith without any notice or compensation in lieu thereof.

11. During probation period, your services can be terminated at a month's notice on either side or equivalent pay in lieu thereof. After confirmation in the post of Manager' your services can be terminated at three months' notice on either side or equivalent pay in lieu thereof.

12. Your services are liable to be terminated forthwith without any notice or compensation or in the alternative, you shall be liable to disciplinary action and imposition of penalty in accordance with the Company Staff Rules if after your report for duty the Company receives information that you had, prior to joining the company: services, committed any act of misconduct which, in the opinion of the Company renders you unfit to serve in the Company.

13. Your appointment will be subject to your furnishing such information as the Company may require from time to time and subject to your services being acceptable in the light of the information furnished.

14. Please advise us whether the above terms and conditions are acceptable to you. If so, please complete your medical examination and join NSE on or before October 1, 2001.

You will not be reimbursed any travelling expenses on account of your journey for medical examination as also for taking up the appointment."

ANNEXURE-I

You will be eligible for the following :

- | | |
|--------------------------------|---------------------|
| 1. Basic Pay | : Rs. 26,100/- p.m. |
| 2. Special Allowance | : Rs. 2,000/- p.m. |
| 3. Conveyance | : Rs. 2,000/- p.m. |
| 4. Family Allowance | : Rs. 2,000/- p.m. |
| 5. City Compensatory Allowance | : Rs. 2,500/- p.m. |
| 6. House Rent Allowance (HRA) | : Rs. 5,000/- p.m. |

7. Leave Travel Allowance of 1 month's Basic Pay per annum.
8. Medical Allowance of 1 month's Basic Pay per annum.
9. Superannuation will be 15% of the Basic.
10. Company's contributions to Provident Fund would be made at 12% of basic pay and towards gratuity at one month's basic pay per applicable rules.
11. Annum for each completed year of service in the Company and as per Annual Increment in basic pay of Rs. 1,600/- p.m. which will be decided on the basis of your performance as per the policy in force from time to time.
12. Annual Performance Linked Pay upto Rs.1,20,000/- Depending upon your performance.

ANNEXURE-II

You are required to bring the following documents duly attested, on your date of joining the Company:

Certificates in proof of age - School Leaving Certificate and Matriculation/S.S.C. Certificate.

Degree Certificate awarded by University/Institutes for graduate and post graduate level.

Marksheet of SSC, HSC/Intermediate, Degree(s) and post graduation.

Experience certificate indicating clearly the period for which served and capacity in which served from the previous and present employers indicated in the application form.

5 Passport size photographs.

Rs. 500/- cash & 2 copies of proof of residence (ration card / telephone bill etc.) for the purpose of opening Bank Account.”

3. A counter-affidavit has been filed by the NSE taking manifold objections. One of the objections pertain to maintainability of the writ petition on the following grounds:

- “4. At the outset, I submit that the present Writ Petition is liable to be dismissed at the threshold for the following reasons which are without prejudice to each other :
- a. The present Writ Petition is not maintainable :
 - i. For the purposes stated and/or in relation to the Petitioner/the cause of action asserted in the Petition, Respondent No. 1 is not a 'state' or an instrumentality of state' under Article 12 of the Constitution of India ('Constitution). On this ground alone, the present Writ Petition is liable to be dismissed.
 - ii. Respondent No.1 is not State / its instrumentality as it is neither owned nor controlled by the Central Government or the State Government. The shareholding of Respondent No.1 consists of several companies and public sector undertakings. However, that does not make Respondent No.1 amenable to writ jurisdiction of this Hon'ble Court. There is no control exercised by the State on the day to day functioning of Respondent No. 1. Respondent No. 1 does not

discharge any public or sovereign function in the business that it is engaged in.

- iii. *Without prejudice to the above, the Petitioner has vide the present Writ Petition endeavored to enforce his private law and/or contractual rights, which cannot be subjected to judicial review under Article 226 of the Constitution. A writ under Article 226 is a public law remedy and is not generally available as a remedy against alleged private wrongs. Considering that the Petitioner vide the present Writ Petition seeks to enforce his contractual right and/or the reliefs sought, the same are incapable of being asserted / rendered in a present Writ Petition. As such, the Petition deserves to be dismissed at the threshold and with costs.”*

4. Raising the issue on maintainability of the writ petition, Mr. Ashish Kamat, the learned senior counsel for the respondent-NSE contended that the nature of dispute raised by the petitioner is purely a contractual dispute and the writ petition is not maintainable even if invocation of clause-11 of the appointment letter dated 7th September 2001 is held invalid. The learned senior counsel for the respondents referred to the decisions in “*Chanda Deepak Kochhar*”¹, “*K. K. Saksena*”² and “*St. Mary’s Education Society and Anr.*”³ and contended that any dispute to the order of termination from service issued on 24th July 2023 falls purely in the realm of private law and not in public law domain and, the prayers seeking reinstatement in service with back-wages, continuity in service and other consequential benefits which are in the nature of specific performance of a contract of personal service cannot be granted by the writ Court. There is no statutory regime under which service conditions of the petitioner were regulated and the Court cannot compel an unwilling employer to continue with a strained employment relationship. The learned senior

1. *Chanda Deepak Kochhar v. ICICI Bank Ltd. Mumbai and Anr.* 2020 (5) Mh.L.J. 219

2. *K. K. Saksena v. International Commission on Irrigation and Drainage and Ors.* (2015) 4 SCC 670

3. *St. Mary’s Education Society and Anr. v. Rajendra Prasad Bhargava and Ors.* (2023) 4 SCC 498

counsel submitted that clause-11 of the appointment letter reserves a right in the NSE to terminate the petitioner's employment with three months' notice and the petitioner accepted the cheque dated 20th July 2023 for Rs. 21,58,104/- in lieu of three months' notice period. He also received gratuity and endorsed such receipt showing full and final settlement on 9th August 2023. Mr. Ashish Kamat, the learned senior counsel for the respondent-NSE further raised an issue on delay and laches in laying challenge to the termination order after a delay of one year.

5. In "*St. Mary's Education Society & Anr.*", the Hon'ble Supreme Court held that a right originating from private law cannot be enforced taking aid of writ jurisdiction irrespective of the fact that such institution, authority or body is discharging public duty or public function. In "*St. Mary's Education Society and Anr.*", the Hon'ble Supreme Court has held as under:-

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

6. On the other hand, Mr. K. P. Anilkumar, the learned counsel for the petitioner contended that clause-11 in the letter of appointment dated 7th September 2001 is illegal and the termination order dated 24th July 2023 could not have been issued by the employer-NSE by resorting to clause-11. The learned

counsel for the petitioner referred to the decisions in “*K. C. Sharma*”⁴ and “*Central Inland Water Transport Corporation Ltd. and Anr.*”⁵ and submitted that the NSE which has been held to be an “authority” falling under Article 12 of the Constitution cannot act in an arbitrary manner and terminate the petitioner from service.

7. Briefly stated, the petitioner who was appointed on 7th September 2001 as a Manager and posted in the Capital Market Operation Division of the NSE received promotions to the post of Assistant Vice President and Vice President. The petitioner states that he demonstrated ability to manage high-level responsibilities and was transferred to the Regulatory Function and made Deputy Head of Regulatory on 1st April 2015. He was given further promotion on 25th April 2018 and became the Senior Vice President, CKYC and Mutual Funds. Around the same time, a show cause notice was issued to him on 3rd July 2018 by the SEBI based on two complaints regarding relocation and governance issues at NSEIL on the allegation of violating the provisions under section 12(A)(b) and (c) of the SEBI Act, 1992 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003. Following the advice of the SEBI received on 23rd August 2018, an internal inquiry was initiated by the NSE against the petitioner and he was transferred out of his existing regulatory role. His annual performance-linked bonus and unpaid bonus were withheld until the conclusion of the internal inquiry. The decision to start an inquiry proceeding against the petitioner was taken in light of the decision of the Board of NSE in its

4. *K. C. Sharma v. Delhi Stock Exchange and Ors.*” (2005) 4 SCC 4

5. *Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr.*” (1986) 3 SCC 156

meeting held on 30th August 2018 and the Ethics Committee in the meeting held on 6th September 2018. It is pleaded that the Nomination and Remuneration Committee decided in its meeting held on 28th March 2019 that the variable pay of the petitioner for 2018-19 and the increment effective from 1st April 2019 shall be withheld. The said decision could not be reviewed because the inquiry proceedings against the petitioner were kept in abeyance at his instance and remained inconclusive. The SEBI passed an order against the petitioner and others on 13th April 2019 which was challenged by the petitioner in Appeal (L) No.232 of 2019 before the Securities Appellate Tribunal, Mumbai (in short, SAT) and an order of interim stay was granted in favor of the petitioner by the SAT vide order dated 7th May 2019 and he was transferred on 23rd August 2022 to the Western Regional Office without any specific portfolio allocation. This is the case set up by the petitioner that his outgoing emails were blocked in the new office and he was not assigned any work for nearly one year. The NSE has taken several objections to the writ petition including the issue of maintainability. Taking note of the penalty of Rupees One crore imposed upon the petitioner by the SEBI and the pending inquiry proceedings against him, the petitioner was based out of the Western Regional Office and he was to report to Mr. Hari K, Head Business. The NSE has pleaded that no suitable position or specific responsibility could be found within the restructured organization for the petitioner even after a thorough evaluation. The letter of termination was issued on 24th July 2023 accompanied by a cheque bearing no.559690 dated 20th July 2023 for Rs.21,58,104/- as payment in lieu of three months' salary and an amount of Rs. 58,09,400/- was also provided to the petitioner

as gratuity which he accepted and received. The letter of termination dated 24th July 2023 is reproduced herein below for a ready reference :

“Ref. : NSE/HR/23-24/318

Date :24th July, 2023

“Mr. Suprabhat Lala,

Employee No: N0000000859

Sr. Vice President

Western Regional Office, Kurla (W)

Mumbai – 400070

Dear Mr. Lala,

This refers to your appointment letter No. HRD/1896 dated 7th September 2001 wherein you were appointed in the employment of NSE to render your services as entrusted by the Company from time to time.

As you have been intimated vide email dated 24th September 2018, the company pursuant to an advisory from SEBI in 2018, had divested you of your roles and responsibilities from your then role in the Regulatory Department and moved you to CKYC & Mutual Funds Department.

Subsequently, in view of the pending proceedings, the Company vide letter No. NSE/HRD/22-23 dated 23rd August 2022 transferred you to the Company's Western Regional Office (WRO) located at Kurla, Mumbai.

During the ensuing period the organization has undergone significant changes across various functions in order to meet Company's business and regulatory requirements and in view of the same, the Company does not foresee any particular role where any responsibility can be entrusted to you.

As a result of this redundancy, as per Clause 11 of Terms and Conditions of Appointment Letter No. HRD/1896/EP dated 7th September 2001, it is decided to terminate your services from the Company with immediate effect i.e. at the end of business hours on 24th July 2023. Please find enclosed Cheque No. 559690 dated 20.07.2023 drawn on HDFC Bank for Rs. 2158104/- towards pay in lieu of three months' notice period.”

8. The termination order dated 24th July 2023 refers to significant changes in the NSE's various functions to meet the business and regulatory requirement of the NSE. It is pleaded that in the NSE there was no particular role or responsibility contemplated for the petitioner in view of the changes in the business and regulatory requirements of the NSE. In that factual background, the NSE decided to terminate his services with

immediate effect on 24th July 2023. This order of termination was issued under clause-11 of the terms and conditions of the appointment letter No.HRD/1896/EP dated 7th September 2001 and the petitioner was offered Rs. 21,58,104/- through the cheque dated 20th July 2023 in lieu of three months' notice period.

9. If a body of persons or authority is "State" within the meaning of Article 12 of the Constitution of India then it may be amenable to the writ jurisdiction under Article 226 of the Constitution of India. Still, the aggrieved person has to satisfy the Court that the action of the authority was within the domain of public law and not private law. The aggrieved person has to demonstrate that he can maintain the writ petition and seek writ of mandamus given the nature of cause of action which was under challenge. In "*Binny Ltd. & Ors.*"⁶, the Hon'ble Supreme Court observed that the scope of mandamus is limited to enforcement of public duty even though a writ can be issued against the private body or person. In "*K.K. Saksena*", the Hon'ble Supreme Court observed that a writ petition under Article 226 of the Constitution of India would lie against a person or body but even in such cases writ would not lie to enforce the private law rights. We may also refer to the decision in "*Federal Bank Ltd.*"⁷ wherein the Hon'ble Supreme Court observed as under:-

"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 (Govt); (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."

6. *Binny Ltd. & Ors. v. Sadasivan & Ors.* (2005) 6 SCC 657

7. *Federal Bank Ltd. v. Sagar Thomas & Ors.* (2003) 10 SCC 733

(emphasis in original)”

10. The petitioner came under employment of the NSE as a Manager on the terms and conditions of appointment in the letter dated 7th September 2001. Clause-11 of the letter of appointment dated 7th September 2001 provided that the petitioner’s services can be terminated at three months’ notice on either side and equivalent pay in lieu thereof. Under the said letter of appointment, the petitioner was to undergo medical examination and join the post of Manager under the NSE on or before 1st October 2001. Before that, the petitioner was required to confirm his consent whether the terms and conditions of appointment were acceptable to him. That was the time when the NSE was largely perceived as not falling under the definition of ‘State’ under Article 12 of the Constitution of India. It was only when the decision in “*K. C. Sharma*” came, the Delhi Stock Exchange has been held amenable to the writ jurisdiction. The term ‘authority’ under Article 12 of the Constitution of India has received a liberal meaning and, while exercising jurisdiction under Article 226 of the Constitution of India, the High Court can issue writs for enforcement of non-fundamental rights. But even in the changed scenario, there is a well known exception to writ of *mandamus* that the rights claimed by the aggrieved party are purely of a private character. This is also well remembered that a party who acquiesces and accepts the terms and conditions of appointment cannot turn around and cry foul and challenge the order of termination. The email dated 19th June 2023 from the petitioner reads as:-

“Suprabhat Lala <suprabhatlala@gmail.com>
To: <shharad@nse.co.in>
Mon, 19 Jun at 9:46
Cc: Suprabhat Lala <suprabhatlala@gmail.com>

12/22

Bcc: Suprabhat Lala <suprabhatlala@gmail.com>

Dear Shharad,

Good Morning !

Further to the two discussions we had, I am ready to resign from my position as Senior Vice President subject to the acceptance of the following terms discussed :

- I. NSE will provide access to the data if requested in future to defend / initiate any case which may arise due to my employment with NSE such as any Information related to the case, emails etc.*
- II. Clear all payment of past dues which were withheld from 2018-2019 namely bonus payouts and the Interest thereof, outstanding salary increments and Interest thereof, payments under other heads such as leave encashment and reimbursement of legal fees paid to the lawyers till date.*
- III. Pay retirement benefits such as Provident Fund, Gratuity and Superannuation.*
- IV. All the above payments would need to be made after taking into account my revised salary along with my increments which had been stalled. NSE will compensate all future payments related to ongoing case filed against me during my capacity as an NSE employee including legal fees and SEBI penalty.*

Please note that on receipt of confirmation from you on the above said terms, I will formally put my resignation into the system.

Additionally, as discussed, I have two requests for your consideration:

- a. All pending payments (Item II above) to be cleared immediately*
- b. And the notice period to end on Oct 31, 2023*

I would like to take this opportunity to thank the team at NSE for the knowledge and experience that I have gained by working here. I am very grateful for the time I have spent with our team and the professional relationships I have built. It has been a pleasure working as a part of NSE and I remain loyal to the organization in spite of the hardships I have undergone since 2017 owing to being a part of the NSE family.

Regards”

11. In “K. K. Saksena”, the employee was appointed as the Secretary of International Commission on Irrigation and Drainage (in short, ICID) and, later on, terminated from service on the ground that his services were no longer required by the ICID. On receiving the letter of termination, K.K. Saksena made demand for

payment of Provident Fund and three months' salary for the notice period. He challenged the order of termination from service on the ground that no inquiry was held, no reason was given to dispense with the inquiry as mandated under Rule 33(b) of the ICID Employees Conduct Rules, 1967 and, that, the termination order was arbitrary and unreasonable. The Hon'ble Supreme Court held that all the decisions of an authority which performs public duty and is amenable to writ jurisdiction are not subject to judicial review. The Hon'ble Supreme Court further held that the contract of personal service cannot be enforced in a writ jurisdiction provided (i) the employee is public servant working under the Union of India or State, (ii) the employee is employed by an authority/body which is a "State" within the meaning of Article 12 of the Constitution of India and (iii) the employee is a "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding the termination by invoking the machinery under the said Act. On merits, the Hon'ble Supreme Court held that the impugned order of termination of service did not involve public law element and no public law right had accrued in favor of K.K. Saksena that he could claim to have been infringed. In "*K.K. Saksena*", the Hon'ble Supreme Court held as under:-

"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 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.”

12. The decision in “*St. Mary’s Education Society and Anr.*” on which the learned senior counsel for the respondent-NSE laid emphasis, the Hon’ble Supreme Court elucidated the law on subject as under:-

- “43. *In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of.*
44. *A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of Appellant 1 herein are to impart education, which is a public function. However, the issue herein is with regard to the termination of service of Respondent 1, which is basically a service contract. A body is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.*
45. *In Delhi Public School v. M.K. Gandhi, this Court held that no writ is maintainable against a private school as it is not a "State" within the meaning of Article 12 of the Constitution of India.*
46. *In Trigun Chand Thakur v. State of Bihar, this Court upheld the view of a Division Bench of the Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management.*
47. *In Satimbla Sharma, this Court held that the unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not "State" within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority private schools.*
48. *The Full Bench of the Allahabad High Court in Roychan Abraham v. State of U.P. after taking into consideration various decisions of this Court, held as under: (SCC OnLine All para 38)*

"38. *Even if it be assumed that an educational institution is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which confers a right upon the aggrieved to invoke extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.*" (emphasis supplied)

49. *We may refer to and rely upon one order passed by this Court in S.K. Varshney v. Our Lady of Fatima Higher Secondary School, in which the dispute was one relating to the retirement age of a teacher working in an unaided institution. This Court, while dismissing the appeal preferred by the employee, held as under: (SCC p. 523, paras 4-8)*

"4. *Both the petitions were dismissed by the learned Single Judge on the ground that no writ would lie against unaided private institutions and the writ petitions were not maintainable.*

5. *Aggrieved thereby, writ appeals have been filed before the Division Bench without any result. The Division Bench held that the writ petitions are not maintainable against a private institute. Aggrieved thereby, these - appeals have been filed.*

6. *The counsel for the appellant relied on a decision rendered by this Court in K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. He particularly relied on the observation made by this Court in para 4 of the order that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226.*

7. *This Court in Sushmita Basu v. Ballygunge Siksha Samity in which one of us (Sema, J.) is a party, after considering the aforesaid judgment has distinguished the ratio by holding that the writ under Article 226 of the Constitution against a private educational institute would be justified only if a public law element is involved and if it is only a private law remedy no writ petition would lie. In the present cases, there is no question of public law element involved inasmuch as the grievances of the appellants are of personal nature.*

8. *We, accordingly, hold that writ petitions are not maintainable against the private institute. There is no infirmity in the order*

passed by the learned Single Judge and affirmed by the Division Bench. These appeals are devoid of merit and are, accordingly, dismissed. No costs." (emphasis supplied)"

50. *We may also refer to and rely upon the decision of this Court in Vidya Ram Misra v. Shri Jai Narain College. The appellant therein filed a writ petition before the Lucknow Bench of the High Court of Allahabad challenging the validity of a resolution passed by the Managing Committee of Shri Jai Narain College, Lucknow, an associated college of Lucknow University, terminating his services and praying for issue of an appropriate writ or order quashing the resolution. A learned Single Judge of the High Court finding that in terminating the services, the Managing Committee acted in violation of the principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order. A Division Bench of the High Court found that the relationship between the college and the appellant therein was that of master and servant and that even if the service of the appellant had been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a writ or order in the nature of certiorari and that, in fact, no principle of natural justice was violated by terminating the services of the appellant. The writ petition was dismissed. In appeal, this Court upheld the decision of the High Court holding that the lecturer cannot have any cause of action on breach of the law but only on breach of the contract, hence he has a remedy only by way of suit for damages and not by way of writ under Article 226 of the Constitution.*
51. *In Vidya Ram Misra, this Court observed thus: (SCC p. 629, paras 12-13)*
 - "12. Whereas in *P.R.K. Jodh v. A.L. Pande*, the terms and conditions of service embodies in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract. So, Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant's remedy lay elsewhere.
 13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in *S.R. Tewari v. District Board, Agra*, might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or

the Managing Committee in question, is not a statutory body and so the argument of Mr Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in P.R.K. Jodh, and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."

52. *In the case on hand, the facts are similar. Rule 26(1) of the Affiliation Bye-laws, framed by CBSE, provides that each school affiliated with the Board shall frame Service Rules. Sub-rule (2) of it provides that a service contract will be entered with each employee as per the provision in the Education Act of the State/Union Territory, or as given in Appendix III, if not obligatory as per the State Education Act. These rules also provide procedures for appointments, probation, confirmation, recruitment, attendance representations, grant of leave, code of conduct, disciplinary procedure, penalties, etc. The model form of contract of service, to be executed by an employee, given in Appendix III, lays down that the service, under this agreement, will be liable to disciplinary action in accordance with the Rules and Regulations framed by the school from time to time. Only in case where the post is abolished or an employee intends to resign, Rule 31 of the Affiliation Bye-laws of the Board will apply. It may be noted that the above Bye-laws do not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract given in Appendix III lay down any particular procedure for that purpose. On the contrary, the disciplinary action is to be taken in accordance with the Rules and Regulations framed by the school from time to time.*
53. *On a plain reading of these provisions, it becomes clear that the terms and conditions mentioned in the Affiliation Bye-laws may be incorporated in the contract to be entered into between the school and the employee concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Chapter VII of the Affiliation Bye-laws have no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract they have no vitality and can confer no legal rights. The terms and conditions mentioned in the Affiliation Bye-laws have no efficacy, unless they are incorporated in a contract. In the absence of any statutory provisions governing the services of the employees of the school, the service of Respondent 1 was purely contractual. A contract of personal service cannot be enforced specifically. Therefore, Respondent 1 cannot find a cause*

of action on any breach of the law, but only on the breach of the contract. That being so, the appellant's remedy lies elsewhere and in no case the writ is maintainable.

54. *Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.*
66. *Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action."*

13. The prerogative of writ of *mandamus* is confined only to compel performance of a public duty and a private body with some public duty is amenable to writ jurisdiction under Article 226 of the Constitution of India. Under Article 226 of the Constitution of India, a writ can be issued to any person or authority for the enforcement of any of the fundamental rights and for any other purpose and it is the nature of the duty imposed on the body or authority that is relevant. However, merely because the activity of the NSE has been held to be of a public character, the same is not a guiding factor to entertain this writ petition. In "*Sohanlal*"⁸, the Hon'ble Supreme Court held that a mandamus shall not lie to secure performance of the obligations by a private body towards

8. *Sohanlal v. Union of India & Anr.*(1991) 1 SCC 124

his workmen or to resolve any private dispute. In “*Praga Tools Corpn*”⁹, the Hon’ble Supreme Court held that a writ of *mandamus* cannot be issued against an action which is essentially of a private character. In that case, the employee was seeking reinstatement in service and the Court held that the action under challenge had no public element involved. This is well settled that the contractual and commercial obligations are enforceable by ordinary civil action and not by judicial review under Article 226 of the Constitution of India. It is not only the nature of function performed by an authority that shall decide the jurisdiction of the writ Court under Article 226 of the Constitution of India. This is also not necessary that the powers of judicial review under the writ jurisdiction must be exercised once it is found that the authority is a ‘State’. The terms and conditions of appointment of the petitioner bear a purely private character. The service conditions such as the pay package and incentives of the petitioner are not regulated through a statutory Rule. In “*K. K. Saksena*”, the Hon’ble Supreme Court observed that even in cases where the body or authority is a ‘State’ within the meaning of Article 12 of the Constitution of India, a writ shall not lie to resolve a private dispute. The Hon’ble Supreme Court further held that the High Court must satisfy itself that the impugned action of the authority is in the domain of public law even if the writ petition is maintainable against that authority. There is a clear distinction on facts in “*Central Inland Water Transport Corporation Ltd.*” wherein Rule 9 of the Service, Discipline and Appeal Rules, 1979 of the Corporation was held void as being opposed to public policy and *ultra vires* Article 14 of the Constitution of India.

9. *Praga Tools Corpn v. C.A. Imanuel & Ors.* (1969) 1 SCC 585

14. It is stated that the NSEIL intended to establish a Liquidity Index System (LIS) and a contract was signed by the NSEIL for the development of LIS with the company in which the petitioner's wife was a Director. This is the allegation by the SEBI that the petitioner and others conspired and utilized the confidential data of the NSEIL during the development process. The specific allegation leveled against the petitioner is that he shared confidential information of the NSE with his wife who was a Director in another company and thus committed a serious breach of confidentiality and compromised the securities market integrity. As noticed above, the SEBI initiated the regulatory proceedings against the petitioner and others and the NSE, in turn, issued a show cause notice to the petitioner on 6th September 2018 regarding the inquiry by the SEBI and the adverse findings recorded by the SEBI against him that he deployed a device/scheme artificially to defraud the NSEIL by sharing confidential data through emails exchanged on 22nd February 2009, 5th November 2009, 3rd December 2012, 13th January 2013 and 4th December 2014. The engagement of the petitioner in the establishment of the NSE was purely contractual and not governed by any statutory Rules. The petitioner, who himself demanded payment of salary and other service-linked benefits and accepted the payment as full and final settlement cannot turn around and challenge the order of the letter of his disengagement from service issued on 24th July 2023. He cannot plead that the action of the NSE was arbitrary or discriminatory and his constitutional rights have been violated while issuing the termination letter dated 24th July 2023. Nowhere in the entire writ pleadings, there is even a whisper to controvert the facts and

circumstances narrated in the letter dated 24th July 2023. The petitioner does not challenge the factual matrix of the case and what is contended on his behalf is that the letter dated 24th July 2023 was arbitrary, illegal and discriminatory and was issued in violation of Articles 14, 16 and 21 of the Constitution of India. No question of law or an issue of protection under Articles 14 and 16 of the Constitution of India arises or even if such a question may arise, the same does not arise in the present case. It is well remembered that the High Court does not issue a futile writ. Even in a case where an arguable issue is raised that by itself is not sufficient for the High Court to exercise its writ jurisdiction under Article 226 of the Constitution of India.

15. For the aforementioned reasons, we hold that this writ petition is not maintainable and, accordingly, Writ Petition No. 4018 of 2024 is dismissed.

[MANJUSHA DESHPANDE, J.]

[CHIEF JUSTICE]