

Supreme Court, Division Bench
Honorable Justice Anil Kumar Sinha
Honorable Justice Hari Prasad Phyuall
Order

Date of Order: 2079/7/27 (corresponding to 13 November, 2022)

073-WO-0134

Case: Certiorari including Mandamus

Petitioner: Purna Maya Khadka (Karki), resident of Sarlahi District, Shankarpur V.D.C. Ward No. 4, who was serving in an Assistant Post at Micro Farmer Agriculture Cooperative Limited, Shankarpur, Sarlahi and was unlawfully terminated from service

Vs.

Respondent: Micro Farmer Agriculture Cooperative Limited, Shankapur, Sarlahi et.al.

- With the progressive evolution of constitutional jurisprudence recognizing “State-like” bodies, it is now well settled that writ jurisdiction may, in appropriate cases, be invoked where there is an alleged violation of constitutionally guaranteed economic, social, or cultural rights, even when such violation is attributable to private or community-based institutions, or to business institute or organizations discharging functions akin to those of the State

Para No. 10

- The definitional contours of the “State” and of entities possessing State-like character and functions, for the purpose of violation of fundamental or legal rights, are undergoing a gradual transformation. With the progressive development and expansion in the nature and content of fundamental rights, and considering the potential for arbitrariness that may arise when State or State-like bodies discharge, or fail to discharge, their duties and obligations, it is evident that where such arbitrariness results in infringement of individual rights and an efficacious remedy is not available under ordinary law, the court may extend relief in exercise of its writ jurisdiction

(Para No. 11)

- In the case of a cooperative institution, writ jurisdiction may be attracted only if there is direct or indirect involvement of the Government in the institution. The functions and character of such institutions must be of a public nature and capable of affecting fundamental rights. The acts performed by a cooperative society should be of public significance, aligned with government policies or programs and the institution should not entirely be autonomous but operated, funded, or subsidized by the State. Consideration must also be given to the State’s role or influence in the institution’s financial and administrative management, the extent of its economic investment, and the public duties and obligations entrusted in the institution.

- Except in cases where a cooperative society's formation, membership, or financial structure involves direct participation or control by the State or any of its agencies, ordinary cooperative societies operate independently and manage their internal affairs autonomously, including the appointment, transfer, promotion, disciplinary action, and dismissal of their employees, as well as the provision for review or appeal of such decisions. Writ jurisdiction may be invoked only where the cooperative exhibits characteristics akin to the State, undertakes functions or assumes public obligations, or, under the guise of a cooperative, implements State policies and programs, and where alternative remedies are either unavailable or ineffective in providing meaningful relief

On Behalf of the Petitioner: Learned Senior Advocate Mr. Hari Prasad Uprety and Mr. Jagganath Mahato

On Behalf of the Respondent: Learned Senior Advocate Harihar Dahal, Mr. Yubaraj Bhandari and Learned Advocate Mr. Raju Katuwal

Precedents Cited:

- Nepal Law Reporter 2067, Decision No. 8379
- Nepal Law Reporter 2052, Decision No. 5078
- Nepal Law Reporter 2047, Decision No. 4076
- Nepal Law Reporter 2060, Decision No. 7236, Unit 5
- Nepal Law Reporter 2072, Decision No. 9488, Unit 10
- Nepal Law Reporter 2067, Decision No. 8379, Unit 5
- Nepal Law Reporter 2059, Decision No. 2606
- Nepal Law Reporter 2062, Decision No. 7032, Unit1/2

Relevant Laws:

- Cooperative Act, 2048
- Cooperative Regulation, 2049
- Indian Constitution
- Constitution of Nepal
- Labor Act, 2048

Honorable Justice Anil Kumar Sinha: The brief facts and findings of the writ petition filed within the jurisdiction of the court pursuant to Articles 46 and 133 (2) of the Constitution of Nepal, are as follows:

Fact Section

The writ petition filed by Purna Maya Khadka before this court on 2073/5/5 (corresponding to 21 August, 2016) is as follows: Under the Cooperative Act, 2048 and the Cooperative Regulation, 2049, the Micro Farmer Savings and Credit Cooperative Limited was established in the year 2063

BS. According to the resolution passed in the General Assembly of the cooperative dated 2064/7/16 (corresponding to 2 November, 2007) the name of the institution was amended, and it was reconstituted as Micro Farmer Agriculture Cooperative Limited *Sana Kisan Krishi Cooperative Limited*). The petitioner was appointed to the position of Assistant of the institution on a one-year probationary period commencing from 2063/4/16 (corresponding to 1 August, 2006) and successfully completed the probation period, becoming a permanent appointee on 2064/5/19 (corresponding to 5 September, 2007). During this period, an issue arose regarding the loss of the bunch of keys of the institution, which led to the formation of an investigation subcommittee. Based on the report submitted by the subcommittee, a joint meeting of the Board of Directors, Audit Committee, Inter-Group Representatives, and Advisory Committee held on 2073/1/29 (corresponding to 11 May, 2016) unanimously decided to terminate the service of the petitioner. The petitioner, having filed an appeal against the termination under Rule 6.6 of the Employee Regulations of the Agricultural Cooperative, had the matter placed before the Board of Directors in its meeting held on 2073/3/3 (corresponding to 17 June, 2016). The Board reaffirmed its decision dated 2073/1/29 to terminate the petitioner's service and, for further discussion, convened a Special General Assembly on 2073/3/19 (corresponding to 3 July, 2016). The Assembly informed the petitioner on 2073/3/24 (corresponding to 8 July, 2016) that the decision of termination was deemed appropriate. Aggrieved by this action and seeking judicial remedy, the petitioner has approached this honorable court. It is noted that the termination letter does not specify the legal provision under which the termination was effected. Termination of service cannot lawfully be effected on the basis of a decision taken by a joint meeting of the Board of Directors, Audit Committee, Inter-Group Representatives, and Advisory Committee, as such authority vests exclusively in the Board of Directors. Further, while imposing punishment under Rule 6.2 of Chapter 6 of the Institution's Employee Regulations, it is mandatory to strictly comply with the procedure prescribed under Rule 6.3. Pursuant to the said rule, prior to imposing any punishment, the competent authority is required to seek an explanation from the concerned employee regarding the allegations levelled against the person. If the explanation so submitted is found to be unsatisfactory, or if no explanation is submitted, the employee concerned must be asked to provide a second explanation regarding the proposed punishment for the alleged charge. However, in the present case, a decision to terminate the petitioner's service was taken without seeking any explanation whatsoever, which is contrary even to the principles of natural justice. Moreover, the key of the institution customarily remained under the responsibility of the office assistant, Gopi Prasad Kafle, who was entrusted with the duty of opening and closing the office at the designated times. Since the key was not under my responsibility, the question of my having lost it does not arise at all. It has been observed that, in my absence, the office assistant entered my office room while swinging the bunch of keys clasped in his mouth. The lost key ring contained more than fifteen keys, and once the said key ring was recovered, the allegation levelled against me automatically became baseless. The decision and actions taken by the respondents to terminate my service are contrary to the principles of natural justice and constitute a clear violation of my fundamental right to practice a profession and to employment. Furthermore, as there exists no other alternative remedy available to me, I have approached this honorable court in pursuit of justice. The petitioner prays that the honorable court issue an order of certiorari to quash the decision dated 2073/1/29 taken by the joint committee to terminate my service and the letter issued on the same date; the decision of the Board of Directors dated 2073/3/3 and the letter issued pursuant thereto; the information letter dated 2073/3/14; the decision of the Special General Assembly dated 2073/3/19; and the information letter dated 2073/3/24, along with all other related

decisions and communications. The petitioner further prays that the honorable court issue an order of mandamus or any other appropriate order in the name of the respondents, directing that the petitioner be reinstated to her former post, assigned to resume her duties, and paid all salaries, allowances, and attendant benefits for the period from the date of termination until the date of reinstatement, thereby granting complete justice.

An order had been set aside by this court on 2073/5/10 (corresponding to 26 August, 2016) which reads as follows: What has transpired in this matter? Why should the order sought by the petitioner not be issued? Provided there are any grounds and reasons for not issuing such order, the respondent No. 7 is hereby ordered to submit a rejoinder through the Office of the Attorney General within 15 days excluding the period of travel and the other respondents are hereby ordered to submit their rejoinder in person or through their legal representative. It is hereby ordered to execute summon along with a copy of this petition and to submit the same upon receipt of the rejoinder or expiry of the limitation period.

The rejoinder submitted by Division Cooperative Office, Sarlahi through the Office of the Attorney General on 2073/7/12 (corresponding to 28 October, 2016) is as follows: Pursuant to Section 7 (1) of the Cooperative Act, 2049, a association or society is an autonomous and body corporate with perpetual succession, and pursuant to Section 20 (1) thereof, for the operation of a cooperative or union, the committee may, as required, approve rules or bylaws and appoint employees and advisors in accordance with the procedure approved by the General Assembly. Accordingly, matters relating to the appointment or removal of employees of Micro Farmer Agriculture Cooperative Limited, Shankarpur, fall within the authority of its Board of Directors and General Assembly, and this office has no role whatsoever in the appointment or dismissal of employees. Therefore, since the petitioner has made this office a respondent, which has no concern or involvement in the matter, the writ petition is liable to be dismissed, and it is respectfully prayed that the writ petition be quashed.

The rejoinder submitted by the Board of Directors, Audit Committee, Inter-group, Advisory Committee and Chairman of the institution before this court on 2073/7/23 (corresponding to 8 November, 2016) is as follows: Since the opponent petitioner had repeatedly been involved in irregularities relating to financial matters, a joint meeting of the Board of Directors, Audit Committee, and Inter-Group Representatives held on 2072/4/23 (corresponding to 8 August, 2015) decided to seek an explanation and accordingly initiated disciplinary proceedings against her. While acting under the Employee Service, Facilities, and Conditions Regulations, 2065 of the institution, the opponent petitioner refused to receive the explanation letter dated 2072/4/24 (corresponding to 9 August, 2015) and therefore, the same was sent to her by registered post on 2072/4/27 (corresponding to 12 August, 2015). As the opponent petitioner disregarded the notice and failed to submit any reply to the explanation sought, the joint committee, in its meeting held on 2072/5/7 (corresponding to 24 August, 2015) decided to suspend the opponent petitioner pursuant to Rule 6(4) of Chapter 6 of the Employee Regulations, 2065, and duly informed her of the same. Subsequently, the opponent petitioner submitted an application dated 2072/5/9 (corresponding to 26 August, 2015) seeking revocation of the suspension. Upon conditional acceptance of her undertaking that she would faithfully and honestly discharge the responsibilities assigned to her, and upon execution of a written undertaking (*kabuliyatnama*), a decision was taken to lift the suspension with effect from 2072/7/1 (corresponding to 18 October, 2015). Accordingly, after the opponent petitioner affixed her signature on 2072/10/14 (corresponding to 28 January,

2016) she was allowed to resume her duties. However, she failed to bring any improvement in her conduct and behavior, and continued to repeatedly violate the code of conduct. In the meantime, in relation to the theft of the institution's bunch of keys, the petitioner did not cooperate with the investigation and instead gave evasive and negative responses. During the course of the inquiry, the Investigation Committee, upon reviewing CCTV footage, observed the respondent placing the institution's bunch of keys into her bag. As it became clear that the respondent herself had stolen and taken away the bunch of keys, a decision was made to suspend her for the purpose of further investigation. Since she refused to receive the suspension letter, the same was repeatedly sent by post; however, she continued to refuse to accept it, and the letters were returned. For further investigation into the matter, a decision was made on 2073/1/23 (corresponding to 5 May, 2016) to constitute a three-member committee under the coordination of Ramdev Singh. Upon completion of the investigation, the opponent petitioner, Purna Maya Khadka, was found guilty, and accordingly she was terminated from the post of Assistant of the institution. Upon the opponent petitioner's application seeking review of the decision terminating her service, a meeting of the institution's Board of Directors held on 2073/3/7 (corresponding to 21 June, 2016) concluded that the action taken to terminate her service was appropriate and resolved to place the matter before a Special General Assembly for discussion. The respondent was duly informed and invited to attend the said Special General Assembly. The decision to terminate the petitioner's service was thereafter approved by the Special General Assembly, along with the Board of Directors. The respondent submits that the petitioner failed to comply with the code of conduct prescribed by the institution's bylaws and employee regulations, repeatedly engaged in unlawful and irresponsible acts, and, despite being given multiple opportunities to reform her conduct, was unable to do so and continued to act adversely. Consequently, the institution was compelled to dismiss and remove the petitioner from her position. Therefore, it is respectfully prayed that the present writ petition be dismissed.

The rejoinder submitted by Micro Farmer Development Limited, Area Office, Janakpur before this court on 2073/11/2 (corresponding to 13 February, 2017) is as follows:

It appears that the petitioner, being an employee of Micro Farmer Agriculture Cooperative Limited, Shankarpur, Sarlahi, has filed the present petition alleging that she was unlawfully terminated from service, thereby resulting in the violation of her constitutional and legal rights. Accordingly, she has sought the quashing of the decision of termination dated 2073/1/29 and the letter issued on the same date, the decision of the Board of Directors dated 2073/3/3 and the information letter dated 2073/3/14, as well as the decision of the Special General Assembly dated 2073/3/19 and the information letter dated 2073/3/24, along with all related decisions and communications. However, throughout the entire pleadings of the opponent petitioner, there is no mention whatsoever of any decision or action taken by this Bank that has resulted in the violation of her constitutional or legal rights. Despite the absence of any such allegation, this Bank has been made a respondent in an unfounded manner. Therefore, no order as sought should be issued against this Bank and that the writ petition should be quashed.

An order had been set aside by this court on 2075/3/4 (corresponding to 18 June, 2018) which reads as follows: That the attested copies of the minutes of the decisions dated 2073/1/29 regarding the decision of termination, decision of the Board of Directors dated 2073/3/3 and the decision of the Special General Assembly dated 2072/3/19 be presented before the Bench during the hearing

and that the original minutes of those dates be submitted through the Micro Farmer Agriculture Cooperative Limited and to be returned thereafter.

Order

In accordance with the law, the present petition had been duly listed in the cause list and presented before the Bench for final adjudication. The file including the investigation report recommending the removal of the petitioner from service and the decision of the General Assembly of Micro Farmer Agriculture Cooperative Limited relating to the termination of the petitioner's service was studied.

Learned Senior Advocates Mr. Hari Prasad Upreti and Mr. Jagannath Mahato, appearing on behalf of the writ petitioner, argued that the petitioner was an honest employee working in the institution. They submitted that the decision of Micro Farmer Agriculture Cooperative Limited to remove the petitioner from service, without affording her an opportunity of hearing amounts to a violation of the principles of natural justice. It was further argued that the authority to decide on the removal of the petitioner vested solely in the Board of Directors, and that the action taken on the basis of a decision of a joint committee meeting held in the presence of unauthorized persons and office-bearers is legally flawed and unsustainable. Since the Cooperative Societies Act, 2048, continued the operation of institutions previously registered under the now-repealed Cooperative Institutions Act, 2041, it is evident that institutions such as Saja Yatayat Limited, registered under the earlier Act, are governed and directed in accordance with the Cooperative Societies Act, 2048. In line with this, the rules and regulations of institutions operating under the Cooperative Societies Act, 2048, including Saja Prakashan Central Office, Saja Health Service, and cooperative societies are to be accorded legal recognition. This position has been interpreted and affirmed by this honorable court through an order of certiorari and mandamus in the writ petition No. 2279 of 2052, *Ramesh Joshi v. Saja Prakashan Central Office* and *Jhalak Bahadur Sapkota v. Saja Yatayat*. Therefore, the rules and regulations of such institutions are entitled to legal validity. Accordingly, it is respectfully prayed that an appropriate order be issued in the names of the respondents directing the reinstatement of the petitioner to service, along with the payment of all salary and attendant benefits, thereby granting the relief as sought.

On behalf of the Board of Directors, Audit Committee, Inter-Group Representatives, Advisory Committee, and the Chairperson of Micro Farmer and Agriculture Cooperative Limited, Senior Advocates Mr. Harihar Dahal, Mr. Yubaraj Bhandari, and learned Advocate Mr. Raju Kutuwal argued that the petitioner repeatedly neglected her official duties. Regarding the matter of the missing keys, the investigation committee had submitted a report holding the petitioner responsible. Even after being reinstated following the execution of a written undertaking (*kabuliyatnama*), there was no improvement in her conduct and behavior. Consequently, disciplinary action was taken against her. Since the notice of disciplinary action was sent to the petitioner but remained unacknowledged, it was subsequently sent by post. Even the letters sent by post were returned unaccepted by her, and therefore it cannot be said that she was denied an opportunity of hearing. As the institution was established under the Cooperative Societies Act, 2048, any remedies concerning employee matters ought to be sought under the Labor Act. However, since the petitioner has approached this honorable court seeking relief under writ jurisdiction, the present petition is liable to be dismissed. In the case of *Sudarshan Deuja (073-WO-0295)*, the writ petition was dismissed on the ground that provisions of the Labor Act apply to such disputes. Similarly, based on the legal principle established in the case of *Som Prasad*

Pudasaini (Nepal Law Reporter 2052, Vol. 4, No. 5078), the rules and regulations of this institution pertain solely to internal management and, therefore, do not possess independent legal standing. Consequently, the petitioner cannot seek relief under writ jurisdiction in this matter.

Learned Senior Advocate Mr. Poshanraj Lamichhane, appearing on behalf of Micro Farmer Development Bank among the respondents, submitted that the petitioner has not alleged anywhere that any decision or action by this Bank resulted in the violation of her constitutional or legal rights. Moreover, the Bank had no involvement whatsoever in the termination of the petitioner from service. Accordingly, he argued that the present writ petition should be dismissed.

Learned Deputy Attorney Mr. Lok Bahadur Katuwal, appearing on behalf of the Division Cooperative Office among the respondents, submitted that the Division Cooperative Office had merely granted permission to Micro Farmer Agriculture Cooperative Limited to operate its business. All operational matters of the institution are carried out in accordance with the statutes and regulations approved by its General Assembly. Therefore, the Division Cooperative Office had no involvement in the termination of the service of the petitioner, and he argued that the present writ petition be dismissed.

In this matter, the petitioner, Purna Maya Khadka, had been serving as an Assistant at Micro Farmer and Agriculture Cooperative Limited with permanent appointment from 2063/4/16. Regarding the issue of the missing keys of the institution, a joint committee meeting held on 2073/1/29 decided to terminate her service. The petitioner subsequently filed a review application. Thereafter, the Special General Assembly of Micro Farmer Agriculture Cooperative Limited, in its meeting dated 2073/3/19, upheld the decision to terminate her service, finding the termination appropriate. However, the termination letter does not specify the legal basis under which the service was terminated. The petitioner, Purna Maya Khadka, had filed the petition before this court, seeking a writ of mandamus directing the cancellation of all decisions and correspondence related to her termination, including: the decision of the Joint Committee dated 2073/1/29 and the accompanying letter; the decision of the Board of Directors dated 2073/3/3 and its letter; the notice dated 2073/3/14; the decision of the Special General Assembly dated 2073/3/19 and the notice dated 2073/3/24. The petitioner contends that the authority to terminate her service vests solely with the Board of Directors, and that the Joint Committee meeting held in the presence of unauthorized persons or office-bearers was therefore flawed and prayed that she be reinstated to her previous position with full salary and benefits.

The petitioner had repeatedly caused irregularities in the institution's financial matters, prompting the Joint Committee to decide to seek an explanation from her. The petitioner refused to accept the explanation letter, which was returned unacknowledged, and did not submit the required explanation. Consequently, she was suspended pursuant to Rule 6 (4) Chapter 6 of the Employee Regulations, 2065, and was duly informed of the suspension. Upon her subsequent request for reinstatement, a written undertaking (*kabuliyatnama*) was executed, and her suspension was lifted. However, the petitioner failed to improve her conduct and behavior, and was also found to be involved in the theft of the bunch of keys of the institution and accordingly, the institution terminated her service. The petitioner's request for review was accepted by the institution's Board of Directors and the Special General Assembly, and she was duly informed to attend the Special General Assembly. However, the petitioner repeatedly engaged in unlawful and irresponsible conduct in violation of the institution's statutes and the employee regulations. Despite being given multiple opportunities to correct her behavior, she failed to do so and continued to act adversely.

Consequently, the institution was compelled to terminate her service. Since she was notified through correspondence and given chances to rectify her conduct, it cannot be said that she was denied an opportunity to be heard. Since Micro Farmer Agriculture Cooperative Limited was established under the Cooperative Act, 2048, matters concerning its employees fall under the purview of the Labor Act, and remedies are to be sought accordingly. Despite the availability of ordinary jurisdiction for such relief, the petitioner has approached this honorable court under extraordinary writ jurisdiction. Consequently, the present writ petition is liable to be dismissed.

Upon perusal of the writ petition, rejoinder and the arguments of learned advocates and learned Joint Government Attorney representing both the parties and upon studying the case files and documents, the following issues need to be resolved:

- (a) What type of association or organization attracts writ jurisdiction, and what recognition has been accorded to this in national and comparative law?
 - (b) Under what circumstances does writ jurisdiction extend to cooperative institutions, and what principles have been established in comparative jurisdictional laws regarding this matter?
 - (c) What perspectives and legal recognitions have been articulated by this court in previous decisions concerning writ jurisdiction over cooperatives?
 - (d) Whether the writ as sought by the petitioner can be issued or not?
2. In considering the issues, with regard to the first question what type of associations or organizations attract writ jurisdiction, it is necessary to analyze the nature and functions of Micro Farmer Agriculture Cooperative Limited. In the present petition, among the respondents, except for the Division Cooperative Office, Malangwa, Sarlahi, and the local office of Micro Farmer Agriculture Development Bank, Janakpur, Dhanusha, all others are officers and bodies of the same cooperative institution. The Division Cooperative Office and Micro Farmer Development Bank have submitted written statements asserting that they have no role in the appointment or termination of employees of the cooperative institution.
3. In this context, regarding the legal personality and registration of Micro Farmer Cooperative Limited, Shankarpur, Sarlahi, it appears that the institution was registered in the year 2063 BS under the Cooperative Act, 2048 and the Cooperative Regulations, 2049. Provisions relating to registration of the cooperative are prescribed in Sections 4 and 5 of the Act. Further details on the registration of the cooperative are provided in Rules 3, 4, and 5 of the Cooperative Regulations, 2049. Section 4 (2) of the Cooperative Act, 2048 specifies that the documents required for registration of any cooperative institution must include two copies of the Bye-laws of the concerned association or society, work plan, and description of shares which the members have undertaken to subscribe and signed by at least members as referred to in Section 3. Under the Cooperative Act, 2048 and the Cooperative Regulations, 2049, the Registrar of Department of Cooperatives is the authority responsible for registration. The powers of registration, renewal, supervision, direction, and inspection of the cooperative are vested in the Registrar.
4. Under Section 7 of the Cooperative Act, 2048, defines that an association or society shall be an autonomous and body corporate with perpetual succession, indicating that a cooperative is

a self-governing entity. Section 12 of the same Act provides that, an association or society may, subject to this Act and the Rules framed under this Act, make a By-law for the operation of its business. The management and operation of each association or society shall be governed by its own bylaws, which must clearly specify the institution's name, address, area of operation, objectives, method of administration, and any other details as required. Any amendment to the bylaws must be approved by a two-thirds majority of the general assembly of the respective institution or association, and the amended bylaws shall take effect upon the approval of the Registrar. In this context, it appears that a cooperative institution is an independent entity with a defined membership, regulated by the applicable Act and its Rules under the oversight of the Registrar. Being subject to the standards and supervision established by the Act through the competent authorities, the cooperative carries out its functions independently. Within its operational framework, the cooperative remains a self-governing and autonomous institution, managed by a Board of Director or other bodies elected by its members. **Except in cases where the State or any of its organs has direct involvement in the formation, membership, or financial investment of a cooperative, generally, cooperatives are understood to be self-managed and self-regulated. They are considered independent in determining their internal matters, including the appointment, transfer, promotion, disciplinary action, dismissal of employees, and the procedures for appeal or review of such actions.** In this context, it becomes necessary to examine the nature and functions of Micro Farmer Agricultural Cooperative. Specifically, it must be analyzed whether the cooperative has any direct involvement of the State or is entrusted with public duties, and, conversely, whether a normally operating cooperative without such connections falls under the category of a State or public body. This distinction is crucial in determining the applicability of extraordinary judicial remedies, such as writ jurisdiction, to the cooperative.

5. Considering the nature and functions of cooperative institutions, it is necessary to examine whether such institutions fall under the State or a body with public duties. From a comparative perspective, Article 12 of the Indian Constitution provides guidance on the definition, scope, and ambit of the term "State." Under Article 12, unless otherwise interpreted, the term "State" includes: the Government and Parliament of India; the Provincial Government and Legislature of the Province; local authorities or other authorities under the control of the Government of India; and all public or governmental bodies¹. It has been observed in numerous Indian cases that the term "State" and the circumstances under which State liability arises have been interpreted and clarified². Although the Constitution of Nepal does not contain a provision of the same nature in the context of the enforcement of fundamental rights, this court has, in various instances, drawn upon the underlying principles embedded in the corresponding Indian

¹ Article 12 – In this part, unless the context otherwise requires, "the state" includes the Government and Parliament of India and the Governmental and Legislature of each of the state and all local or other authorities within the territory of India or under the control of the Government of India.

² See: Bhaskara Rao v A.P. Public Service Commission, (1987) Supp SCC 587- Hindustan Shipyard, Sabhajit Tewary v Union of India, (1975) 1 SCC 485- Council of Scientific and Industrial Research, Praga Tools Corporation v. Immanuel, (1969) 1 SCC 585- Company registered under Companies Act, 1996, Banabihari v. Registrar, Cooperatives Societies, AIR 1989 Ori 31- Cooperatives Societies, Rastogi v. Union of India, AIR 1986 Del 128- Army Welfare Housing Organization (AWHO), Chander Mohan v. National Council of Educational Research, (1991) 4 SCC 578 – National Council of Educational Research and Training (NCERT), Kissan Sahakari Chini Mills Ltd v. Shatrughana Nishad (2003) 8 SCC 578
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constitutional provision to develop different perspectives for determining the scope and responsibility of the State³.

6. While interpreting Articles 12 and 36⁴ of the Constitution of India, it is observed that the term “State” is defined as follows: for the purposes of Part III [Fundamental Rights], unless the context otherwise requires, “State” includes the Government and Parliament of India, the Legislature of each State, and all local or other authorities within the territory of India or under the control of the Government of India. Accordingly, the term “State” encompasses the executive and legislative organs of the Union and the States, as well as local bodies and other authorities. It has been noted that extraordinary remedies are made available in instances where the actions or omissions of such authorities result in the violation of fundamental rights. In the context of Article 12, it is observed that the term “other authorities” is to be understood as referring to public authorities. Against such authorities, writs primarily mandamus, prohibition, and injunction may be invoked. For the purposes of writ jurisdiction, the authorities considered as “State” under Article 12 are treated as public bodies. Accordingly, under the constitutional provisions and established jurisprudence of India, all government departments qualify as “State,” and all government-owned and government-managed institutions fall within the scope of “State.”⁵
7. Examining judicial practice in India, it is observed that in the case of *Vidya Ram Misra v. S.J.N. College*⁶, the Supreme Court dismissed a writ petition concerning the termination of a teacher employed in a private college affiliated with Lucknow University. The court explained that “the service of the teacher in this case was governed by contract between himself and the managing committee. Further, the committee was not a statutory body and therefore, if the services of the teacher were terminated the teacher had remedy by way of suit and not by way of writ.” Similarly, in the case of *Vidyodaya University v. Silva*⁷, the Supreme Court of India declined to issue a mandamus writ, observing that the relationship between the university and its teachers was contractual in nature. The court held that in such matters, writ jurisdiction does not arise. Furthermore, institutions that are privately owned and privately managed fall outside the scope of writ petitions, as the dispute concerns a contractual relationship rather than a statutory or public law obligation. Similarly, in the case of *Council of Scientific and Industrial Research (CSIR) Scientific Workers Association v. Union of India*⁸, it was observed that any institution which is economically, functionally, and administratively dependent on the government falls within the definition of “State” under Article 12 and, therefore, comes within the ambit of writ jurisdiction. However, if the government acts merely as a regulatory authority without direct control or functional dependence, such an institution does not fall within the definition of “State,” and writ jurisdiction would not be attracted.

³ Mohan Sanskar vs. Ministry of Education and Sports, Case: Certiorari, Nepal Law Reporter 2067, Decision No. 8379, Unit 5, Som Prasad Pudasaina vs. Family Planning Association et.al., Nepal Law Reporter 2052, Kumar Shrestha vs. Basudev Nepal Nepal Law Reporter 2047, Decision No. 4076, Unit 2.

⁴ Article 36 – Definition- in this part, unless and the context otherwise requires, “the state” has the same meaning in part III.

⁵ WRITS AGAINST EDUCATIONAL INSTITUTIONS , K. Shrinivas Rao , Journal of the Indian Law Institute , January-June 1984, Vol. 26, No.

⁶ 1972 AIR 1450.

⁷ [1964] 3 All E.R. 865.

⁸ (20020) 9 SCC 289

8. In this context, the Supreme Court of India, in the case of *Ajay Hasia v. Khalid Mujib*⁹, observed that an institution registered under the Jammu & Kashmir Registration of Societies Act, 1993, which had established and was operating a regional engineering college in Srinagar, was directly managing and administering the college. Accordingly, such an institution was held to fall within the definition of “State” under Article 12 of the Constitution, as it performed functions analogous to a state authority. In that judgment, the court noted: “We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence.” Accordingly, the court laid down that for an entity to be considered an instrumentality or agency of the government, various test has been laid down. For instance, an entity may be regarded as an instrumentality or agency of the government if any of the following conditions exist: the entire share capital of the institution is controlled by the government; the government finances or bears nearly the entire expenditure of the institution; the institution is granted a monopoly by the state; the institution is protected or sanctioned by the government; the government exercises deep and pervasive control over the institution; the functions of the institution are of public importance and closely related to governmental functions; any departmental work of the government is delegated to the institution.
9. Similarly, in the case of *R.D. Shetty v. International Airport Authority*¹⁰, the Supreme Court of India observed the following principles: any institution that is wholly controlled by the government or the state qualifies as a *state instrumentality or agency*. Conversely, if an institution is established under a statute or by an association but functions independently without government interference, it does not fall within the definition of a *state instrumentality or agency*. In fact, based on the principles distilled from the decisions of the Supreme Court of India, it is evident that for writ jurisdiction to be attracted against any institution, the degree of government control over the institution and the public nature of the functions performed by that institution must be taken into account.
10. If an institution is seen to be dependent on the government in terms of structure, finances, functions, and administration, and if its entire share capital is under government control, and its operations are fully controlled by the state or government, and the functions it performs are of public importance, and it closely implements government policies or is protected by the State, then such an institution is considered to fall under the category of instrumentality or agency of the government. Observing the Indian judicial practice, it appears that writ jurisdiction is attracted only in the circumstances described above. Institutions that are privately or community-owned and managed, registered under their statutes, or operated under contractual arrangements, where the government acts merely as a regulatory authority, generally do not attract writ jurisdiction. However, **with the progressive evolution of constitutional jurisprudence recognizing “State-like” bodies, it is now well settled that writ jurisdiction may, in appropriate cases, be invoked where there is an alleged violation of constitutionally guaranteed economic, social, or cultural rights, even when**

⁹ (1981) 1 SCC 722.

¹⁰ 1979 AIR 1628

such violation is attributable to private or community-based institutions, or to business institute or organizations discharging functions akin to those of the State.

11. In recent times, discernible shifts have emerged in India with respect to the definition of “State” for the purposes of writ jurisdiction. The judicial approach has evolved to recognize that, in addition to the manner of creation, affiliation, and degree of control exercised over an institution, the nature and character of the functions performed by such institution must also be taken into consideration while determining its amenability to writ jurisdiction¹¹. In the context of India, it is seen that even though the Board of Control for Cricket in India (BCCI) was not under the direct control of the Government and did not fall within the definition of “State” under Article 12, the court, having regard to the public importance of the functions discharged by the said Body, accorded it the status of a State-like entity and expanded the scope of judicial review. In that case, the court held that where a body of a private character performs functions of a public nature, recourse is not confined merely to ordinary remedies, but the exercise of extraordinary writ jurisdiction is also permissible. In *Federal Bank v. Sagar Thomas*¹², the court, drawing upon the principles enunciated in *Ajay Hasia* and *R.D. Shetty*, further clarified that even private-sector bodies or associations may fall within the ambit of writ jurisdiction where they are entrusted with, or discharge, duties of a public character. Likewise, in *Binny v. Sadasivan*¹³, it was held that “if a 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.” Similarly, in *P.K. Das v. Bar Council of Delhi*¹⁴, the court observed that since the activities of the Bar Association are of a public character, such bodies are amenable to the writ jurisdiction of the court. From the aforesaid evolution in judicial precedents, it can be deduced that **the definitional contours of the “State” and of entities possessing State-like character and functions, for the purpose of violation of fundamental or legal rights, are undergoing a gradual transformation. With the progressive development and expansion in the nature and content of fundamental rights, and considering the potential for arbitrariness that may arise when State or State-like bodies discharge, or fail to discharge, their duties and obligations, it is evident that where such arbitrariness results in infringement of individual rights and an**

¹¹ See: *Zee Telefilms Ltd. & Anr vs Union of India & Ors* on 2 February, 2005. (Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under [Article 226](#).)

¹² See: *Federal Bank Ltd vs Sagar Thomas & Ors* on 26 September, 2003. (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) 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 (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.)

¹³ See: *V. Sadasivan and 36 others vs Binny Limited*, 1998 (1) CTC 1, 1998 (79) FLR 97. (“Thus, it can be seen that a writ of mandamus or the remedy under [Article 226](#) is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, especially in view of the words used in [Article 226](#) of the Constitution. 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.”)

¹⁴ See: *PK Dash, Advocate & Ors. vs Bar Council Of Delhi & Ors.* on 31 May, 2016. (Bar Associations' activities have a pre- dominantly public character, and can, in many instances, affect court functioning. As a result, It is held that the nature of relief sought in these proceedings is intrinsically connected with public functioning of the court and affect them. Consequently the present proceedings are maintainable under [Article 226](#) of the Constitution of India.)

efficacious remedy is not available under ordinary law, the court may extend relief in exercise of its writ jurisdiction.

12. In the aforesaid context, this court, in its interpretations rendered in *Som Prasad Pudasaini v. Nepal Family Planning Association*¹⁵; *Sukdev Gautam v. Nepal Bar Association*¹⁶, wherein it was held that the Statute of the Nepal Bar Association, 2048, and its Rules, 2048 and 2049, could not be treated as laws of Nepal and that a writ petition could not be issued against the Nepal Bar Association; as well as in *Kamal Bahadur Ranabhat v. Rajendra Mani Paudel*¹⁷, concerning the removal of a teacher employed in a school operated as a company, has consistently observed that where no ordinary remedy exists, or where such remedy is ineffective to afford meaningful relief, this court may assume writ jurisdiction. Accordingly, in the changed and evolving context, considering the expanded scope of fundamental rights and the transformation in the understanding of the “State” and State-like entities performing public functions, it is evident that where individuals’ fundamental or legal rights are arbitrarily interfered with by the State or by bodies possessing a public character and discharging public functions akin to the State, this court ought to be proactive in invoking its writ jurisdiction and in providing appropriate relief.
13. Although the Constitution of Nepal does not contain, in the context of enforcement of fundamental rights, a provision analogous to Article 12 of the Constitution of India, it is evident that the principles inherent in Article 12 of the Indian Constitution have been embraced in certain decisions of this court. In *Mohan Shankar v. Ministry of Education and Sports, et al.*, a writ petition seeking an order of certiorari, this court held that institutions established and operated directly or indirectly with the support of the State, and functioning as agencies of the State, fall within the ambit of public institutions. In that case, the operational expenses of Nepal Veda Vidyashram were borne by public bodies, and the services discharged by it were of a public nature. On that basis, this court interpreted that institution to fall within the broader definition of a public institution. Accordingly, holding that educational programs operated by legal and public institutions receiving State grants must adhere to the principle of equality and must ensure fair and transparent admission based on merit and requisite qualifications, without discrimination on the basis of caste or ethnicity, this court issued an order of mandamus in the name of Pashupati Area Development Trust and Nepal Veda Vidyashram, directing compliance with such constitutional mandates.
14. In *Bhadra K.C. v. Labor Court*¹⁸, a dispute had arisen concerning an action or decision taken under the Staff Regulation of a Norwegian non-governmental organization, Red Varna (subsequently Save the Children), framed under Norwegian law. While examining the petition within the jurisdiction of Article 88 (2) of the then Constitution, this court held that the Staff Regulation of Save the Children Norway did not constitute the law of Nepal, nor was the authority rendering the decision thereunder a holder of a public office under Nepalese law. Consequently, the decision taken by Save the Children Norway under its Staff Regulation was held not to be amenable to judicial review by this court. However, since the dispute also involved decisions rendered by the Labor Office and the Labor Court, this court reasoned that

¹⁵ Som Prasad Pudasaini vs. Nepal Family Association, Nepal Law Reporter 2052, Decision No. 5078, Full Bench

¹⁶ Sukdev Gautam vs. Nepal Bar Association et.al., Nepal Law Reporter 2060, Decision No. 7236, Unit

¹⁷ Kamal Bahadur Ranabhat vs. Rajendra Mani Paudel, Nepal Law Reporter 2072, Decision No. 9488, Unit 10

¹⁸ Petitioner Bhadra K.C. vs. Labor Court, Case: Certiorari, Nepal Law Reporter 2049, Writ No. 2606

such bodies fall within the category of public authorities. Accordingly, it was held that while the decision of Save the Children Norway itself could not be subjected to judicial review, the decisions of the Labor Office and the Labor Court, being public authorities under Nepalese law, were amenable to judicial scrutiny by this court.

15. In a similar matter involving the International Centre for Integrated Mountain Development (ICIMOD), namely *Director General J. Gravel Campbell v. Labor Court*¹⁹, inter alia, this court held that the Human Resources Policy of ICIMOD did not constitute the law of Nepal. The court further interpreted that, under Article 88 (2) of the then Constitution, its power of judicial review extends only to decisions taken by organs of the Government of Nepal or instrumentalities of the State constituted in accordance with Nepalese law and exercising authority by applying Nepalese law. Accordingly, decisions rendered pursuant to internal policies of international or non-governmental organizations, which are neither Nepalese law nor actions of State instrumentalities under Nepalese law, were held to fall outside the scope of judicial review by this court. It was further clarified that this court does not undertake judicial review of decisions rendered on the basis of documents, statutes, or Charters other than the law of Nepal. Accordingly, the court held that, under Article 88 (2), it could neither interpret nor review the Human Resources Policy of ICIMOD as if it were a service law of Nepal. However, the petition before the court did not seek review of a decision taken by an ICIMOD official under its Human Resources Policy; rather, it challenged the decisions of the Labor Office and the Labor Court, which are public authorities of Nepal. Since those authorities had adjudicated a matter over which they lacked jurisdiction, their decisions were subjected to judicial review. In this context, the Court observed that where an institution is established under Nepalese law, entrusted with a public duty, and whose governing law applies with the force of Nepalese law, and where the authority rendering decisions under such law holds a public office under Nepalese law, such an institution falls within the ambit of a State instrumentality or agency of the Government.
16. Turning to the second question, namely whether cooperative institutions fall within the ambit of writ jurisdiction, a review of comparative jurisprudence indicates that cooperative societies may, in appropriate circumstances, be brought within the fold of writ jurisdiction²⁰. In particular, the Supreme Court of India has held that where a cooperative institution is entrusted with or discharges a public duty, writ jurisdiction may be attracted. In determining whether writ jurisdiction lies against a cooperative society, due regard must be had to the extent of governmental involvement, control, or supervision over such institution. The presence of substantial governmental control or the performance of functions imbued with public character constitutes a relevant and determinative consideration in assessing the maintainability of a writ petition against a cooperative institution²¹. In *Banabihari v. Registrar, Cooperative Societies*²², the Supreme Court of India held that, for a cooperative bank to fall within the definition of “State” under Article 12 of the Constitution, it must be examined whether such institution has been created by a statute enacted by the legislature or under authority delegated by such statute, and whether it thereby acquires the status contemplated under Article 12. The court further observed that this determination must be made by applying the established tests evolved

¹⁹ Nepal Law Reporter 2065, Decision No 7934, Unit 2

²⁰ P.M. Bakshi, Encyclopedia of Writ Law, Capital Law House, 1999, pg-71.

²¹ Justice B L Hansaria's, Writ Jurisdiction, 3rd Edition, Universal Law Publishing Co., 2005, Page 44

²² Banabihari v. Registrar, Cooperative Societies, AIR 1989 Ori 31.

through its earlier decisions. Upon applying those tests, the court found that the requisite conditions were not satisfied in the case of the cooperative bank concerned. In the absence of statutory creation, pervasive governmental control, or the discharge of public functions of a State character, the cooperative bank could not be regarded as “State” within the meaning of Article 12. Consequently, the writ petition was held to be not maintainable and was accordingly dismissed.

17. Similarly, in *Kissan Sahakari Chini Mills Ltd. v. Shatrughana Nishad*²³ (2003) 8 SCC 578, the Supreme Court of India held that Article 226 of the Constitution can be invoked only where an authority or person is discharging a public function or performing a public duty. It was clarified that a cooperative society would fall within the ambit of writ jurisdiction only when such public functions or public duties are involved. In the absence of the discharge of any public duty or performance of a public function, writ jurisdiction would not be attracted against a cooperative institution.
18. As regards the third question, namely whether writ jurisdiction may or may not be attracted in respect of cooperative institutions, it is seen that with the repeal of the Public Association Act, 2041 (*Sajha Sanstha Act, 2041*), and the continuation of its legal regime under the Cooperative Act, 2048, institutions such as Sajha Yatayat Limited, which were registered under the former Act, are now being operated, regulated, and guided in accordance with the provisions of the Cooperative Act, 2048. It is further observed that the rules and regulations governing institutions operated under the Cooperative Act, 2048, such as the Sajha Prakashan Central Office, Sajha Health Services, and other cooperative societies are to be regarded as having the force of law. This position was explained by this court in the year 2052 B.S., in Writ No. 2279, in the case of *Ramesh Joshi v. Sajha Prakashan Central Office and others* (certiorari including mandamus), wherein the court interpreted the scope in relation to such cooperative institutions. Similarly, in Writ No. 3887 of 2055 B.S., decided on 2056/04/28, it was held that Sajha Health Services, being a self-governing cooperative institution, conducts its operations and management in accordance with its own by-laws, and therefore, writ jurisdiction cannot be invoked against it. In that case, it was observed that under Subsection (1) of Section 12 of the Cooperative Act, 2048, an institution or society may, under the authority of this Act and the rules made thereunder, formulate its own by-laws for the conduct of its operations. Once such by-laws are approved by the Registrar, they shall come into effect. Further, Subsection (2) of Section 12 provides that the administration and management of each institution or society shall be governed by its own by-laws. Accordingly, it was observed that the operations of Sajja Health Service Cooperative Limited were conducted in accordance with its bylaws, as amended in 2021, under the framework of the Cooperative Act, 2044, establishing it as an autonomous institution. It was noted that the petitioner was appointed by the Managing Committee of the Cooperative and that the same Managing Committee, in exercise of its authority, terminated the petitioner’s service. Rule 28 of the Sajja Health Service Employee and Financial Administration Regulations, 2054, provides that the authority to remove or dismiss an employee rests with the appointing authority. Since the petitioner was terminated by the same authority that lawfully appointed her, the action could not be deemed unlawful, and therefore, the writ petition was dismissed. However, in the precedent case of Jhalak

²³ *Kissan Sahakari Chini Mills Ltd v. Shatrughana Nishad* (2003)8 SCC 578.

Bahadur Sapkota v. Saja Yatayat²⁴, it was observed that when the law prescribes a clear procedure, any decision or action taken in contravention of that procedure cannot be regarded as lawful or consistent with the principles of natural justice. In that matter, the orders impugned were set aside, and the petitioner was restored to her original position through an order of mandamus. Although Saja Yatayat was established as a private entity under the Cooperative Societies Act, its functions and duties are of a public nature. Moreover, with shareholding by ministries and departments of the Government of Nepal, and with representatives from the Ministry of Land Management, Physical Infrastructure and Transport, and the Department of Revenue under the Ministry of Finance on its Board of Directors, it was observed that the matter attracts not only ordinary remedies but also extraordinary writ jurisdiction.

19. From this, it is evident that for writ jurisdiction to be attracted in the **case of a cooperative society there must be direct or indirect involvement of the State in the institution. The functions and character of such institutions must be of a public nature and capable of affecting fundamental rights. The acts performed by a cooperative society should be of public significance, aligned with government policies or programs, and generally, the institution should not be entirely autonomous but operated, funded, or subsidized by the State. Consideration must also be given to the State's role or influence in the institution's financial and administrative management, the extent of its economic investment, and the public duties and obligations entrusted to the institution.**
20. However, it is observed that the present petition concerns Farmer Cooperative, an institution established under the Cooperative Act, 2048. Subsection (1) of Section 12 of the Cooperative Act, 2048, provides that an institution or society may frame its own regulations for the conduct of its affairs under the Act and the rules made thereunder. Accordingly, the management and administration of Farmer Cooperative Limited are governed by its Employee Service Rules, 2065, indicating that the institution operates as an autonomous and self-governing entity. It is observed that the said cooperative institution, having definite members, functions as an independent, autonomous, and self-governing entity under the regulatory framework of the Cooperative Act, 2048, and its Rules, with oversight and supervision exercised by the Registrar within the standards prescribed by the Act and Rules. Within this framework, the institution conducts its affairs through a Board of Directors or other bodies elected by its members, confirming its status as an independent and self-managed entity. It appears that, **except in cases where a cooperative society's formation, membership, or financial structure involves direct participation or control by the State or any of its agencies, ordinary cooperative societies operate independently and manage their internal affairs autonomously, including the appointment, transfer, promotion, disciplinary action, and dismissal of their employees, as well as the provision for review or appeal of such decisions. Writ jurisdiction may be invoked only where the cooperative exhibits characteristics akin to the State, undertakes functions or assumes public obligations, or, under the guise of a cooperative, implements State policies and programs, and where alternative remedies are either unavailable or ineffective in providing meaningful relief.**
21. In this context, except in cases where a cooperative society involves direct State participation or assumes public obligations, such societies do not fall under the State or any public authority.

²⁴ Jhalak Bahadur Sapkota vs. Sajha Yatayat Central Office, Pulchowk et.al., Sub: Certiorari, Nepal Law REproter 2062, Decision No. 7032, Unit 1/2

Moreover, although the subject matter of the present petition pertains to a period prior to the enactment of the current Labor Act, 2074, Section 2(j) of that Act now explicitly defines cooperative societies as “enterprise.” Consequently, alternative remedies are available, and in such circumstances, writ jurisdiction is not attracted even in matters of this nature. Considering the remedies available to the petitioner where this court’s extraordinary writ jurisdiction is not attracted, under Section 60 of the then Labor Act, 2048, and more pertinently under the current Labor Act, 2074, Sections 163, 165, and 165(4), the termination of employment in such a cooperative, being treated as an “enterprise” for the purposes of the Labor Act, allows the aggrieved employee to first seek internal redress within the cooperative. Subsequently, if not satisfied, the employee may approach the competent Labor Court for adjudication. Under Section 2(b) of the Labor Act, 2048, an “enterprise” means any company, organization, association, firm or group thereof, established under the prevailing laws for the purpose of operating any industry, profession or service, where ten or more workers or employees are engaged, set up in accordance with prevailing law for the purpose of carrying on any industry, business, or service. Similarly, Section 2(j) of the current Labor Act, 2074, defines “enterprise” to include any company, private firm, partnership firm, cooperative society, association, or other institution, whether for profit or not, established, incorporated, registered, constituted, or operating under prevailing law for the purpose of carrying on any industry, business, or service. This confirms that a cooperative society is also considered an “enterprise” under the Labor Act. Similarly, under Section 165 of the current Labor Act, 2074, if a worker or employee is dissatisfied with a decision of the Labor Office or Department, they may file an appeal within 35 days. It is evident that provisions for alternative remedies existed even under the Labor Act, 2048, for workers or employees employed in an establishment. Under Section 58 of the Labor Act, 2048, it is provided that “except as provided in this Act or the Rules made thereunder, if any activity contrary to this Act or the Rules made hereunder has been performed such activity shall be quashed by the order of the Department of Labor. Furthermore, Section 60 (c) of the same Act provides that any punishment or order imposed by the administrator, other officer, or office may be subject to appeal before the competent Labor Court. Accordingly, in view of the availability of alternative remedies under the provisions of the then Cooperative Act, 2048, there appears to be no circumstance warranting the invocation of this court’s extraordinary writ jurisdiction for seeking relief.

22. Accordingly, with regard to the fourth question on whether the relief sought by the petitioner for reinstatement can be granted, it is noted that the respondent is a cooperative society, established under the Cooperative Act and functioning as an autonomous body governed by its own by-laws. There is no indication of direct involvement of the State. Given that alternative remedies are available under Section 60 of the Labor Act, 2048, there exists no ground to invoke the writ jurisdiction of this court to issue an order of mandamus to set aside the decision dated 2073/03/01. Similarly, there is no basis for issuing an order of mandamus for granting any other service-related benefits.
23. Accordingly, for the foregoing reasons and considerations, it is observed that the respondent is a cooperative society, established under the Cooperative Act and functioning as an autonomous body governed by its own by-laws. There is no evidence of any direct or indirect involvement of the State, or of any public character, function, or responsibility, nor is there a situation where alternative remedies are unavailable or ineffective. Therefore, writ jurisdiction cannot be invoked. It is further noted that the petitioner has approached this court without

exhausting the alternative remedies provided under Section 60 of the then Labor Act, 2048, and without following the procedure prescribed by law. In view of these circumstances, there is no ground to grant the relief sought. The present writ petition is hereby dismissed. It is hereby directed to remove the case from the case registry and upload the order in the electronic system and accordingly submit the case file to the Record Section.

Consenting with the above Opinion

Justice Hari Prasad Phyuul

Bench Officer: Loknath Parajuli/Laxmi Rana

Computer Operator: Bishnu Devi Shrestha

Dated: Year 2079 of the Month of Falgun Date 2 Day 3

(Corresponding to Year 2022 of the Month of November Date 13 Day 3)