

COCP No.3294 of 2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**COCP No.3294 of 2014
Date of decision:28.05.2015**

Madhuri Sharma

...Petitioner

Versus

Dr. Roshan Sunkaria and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Mr. Anant Kataria, AAG, Punjab.

Rakesh Kumar Jain, J.

The case of the petitioner is that she was appointed as Guest Faculty Lecturer (Classical Dance) in Government College for Women, Ludhiana in the year 2011. She approached this Court by way of CWP No.4078 of 2012 with an apprehension that she would be replaced by another Guest Faculty Lecturer. The writ petition was disposed of on 05.03.2012. The operative part of the order dated 05.03.2012 reads as under:-

“The petitioners are working as Guest Faculty Lectures in the respondent-College. They seek a direction that they be not relieved from their assignments with a view to adjust other Guest Faculty Lectures in their place.

Ms. Monica Chhibber Sharma, DAG Punjab states that as a matter of policy and subject to the petitioners' eligibility and availability of work, the Guest Faculty Lectures like the petitioners are not to be substituted by another set of Guest Lectures and they shall be replaced by regularly appointed employees only.

In this view of the matter, the writ petition is disposed of as having been rendered infructuous.”

It is alleged that she had worked thereafter for the sessions 2011-12, 2012-13 and 2013-14 upto April 2014 and when the session 2014-15 commenced, the respondent-college gave an advertisement on 07.07.2014 for replacement of the petitioner by another Guest Faculty Lecturer on temporary basis. As a result thereof, the petitioner had to file another CWP No.13348 of 2014 in which an interim order was passed on 14.07.2014, which read as under:-

“Learned counsel for the petitioner relies on the order dated 5.3.2012 passed by this Court in CWP No. 4078 of 2012 (Sumita and another Vs. State of Punjab and others) wherein present petitioner was petitioner No.2, to contend, inter alia, that the advertisement dated 7.7.2014 (Annexure P-4), including the subject of the petitioner, i.e. dance, was contrary to the undertaking given before this Court on behalf of the respondent-State as well as the abovesaid order dated 5.3.2012 passed by this Court.

Notice of motion.

On the asking of the Court, Mr. Anshul Gupta, AAG, Punjab, accepts notice on behalf of the respondents and seeks time to get instructions.

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Learned counsel for the petitioner undertakes to supply four sets of the writ petition to the learned counsel for the State, during the course of the day.

List on 29.8.2014.

In the meantime, status quo regarding services of the petitioner shall be maintained.”

It is further alleged that when the respondents did not allow the petitioner to join her duties, she made a representation to the Principal of the respondent-college on 20.08.2014. She came to know that in the month of October, 2014, the respondent-college has appointed one Shubhjit Kaur as Guest Faculty Lecturer (Classical Dance) in a clandestine manner, defying the undertaking given on 05.03.2012 and terminating her services in violation of the order dated 14.07.2014. Hence, the present contempt petition has been filed for initiating the contempt proceedings against the respondents.

After notice, separate replies have been filed by respondents no.1 & 2 and respondent no.3. The consistent stand of all the respondents is that Smt. Subhneet Saini (Retired), the External Examiner of Panjab University, Chandigarh, conducted the practical exam of dance in the respondent-college. It was pointed out by her, during the course of practical examination, that the petitioner, who is taking dance classes in the respondent-college, does not have the knowledge about the subject and has not even completed the syllabus to the suffering of the students. The report recorded by the Principal of the respondent-college on 11.03.2014 in this regard is as under:-

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“The dance practical examination for B A III was conducted in the college on 11.3.2014 by an external examiner Mrs. Shubhneet Saini (retired). While conducting the practical, the examiner brought out the following facts in the presence of Mrs. Sudarshan Mehta associate professor of Music Instrumental, Ms. Sharanjit Parmar associate professor music instrument and the undersigned:

- 1 That the teacher (Madhuri Sharma Guest Faculty) has not covered the syllabus of the concerned class completely as specified by the university.
- 2 As per university specified syllabus and instructions, which was specifically pointed out by the examiner, no help of any assistant for preparation of students was taken. So this aspect of the syllabus was overlooked by the teacher.
- 3 (Madhuri Sharma Guest Faculty).
- 4 The students were not made aware of the specified aspect of syllabus regarding some music instrument. Because of this the student will not be able to get marks based on this aspect. The student had no knowledge of even definition of the basic facts of Dance. Even the teacher Madhuri Sharma Guest Faculty did not know these definitions.

It is also alleged that prior to the report dated 11.03.2014, notices were also issued to the petitioner on 10.10.2012 and 28.01.2013, relevant parts of which are also reproduced as under:-

“Notice dated 10.10.2012

Your Item of Dance was checked on 10.10.12 in which the level of student is very low. You are not paying any attention towards it. An improvement be

made in it. You are quite negligent towards it. Therefore you are issued an alert in this regard.”

Notice dated 28.01.2013

“With reference to the above mentioned, subject you have been issued alert letter for being careless in the subject. The undersigned found after the investigation of the matter from the students that you are neither imparting correct knowledge of this subject and nor the practicals are being conducted in a correct manner. It appears that you are being careless in teaching the students. Through this letter you are being issued a strict warning to be cautious in future and that you should teach the students of your subject in correct manner so that they do not face any problem.”

Besides that, a warning was also given to the petitioner on 12.03.2014 that if she would not improve her result, it would not be possible for the respondent-college to retain her in the next session. It is further submitted that the petitioner has not been replaced by another Guest Faculty Teacher to accommodate somebody but for the reasons that the petitioner was a poor performer, affecting future of the students and was not improving despite repeated reminders and warning.

The respondents have also referred to a decision of this Court in the case of **Priya Kaushal v. The State of Punjab and others**, CWP No.18797 of 2013, decided on 13.01.2015, wherein it has been held that though there has been an undertaking for not replacing the Guest Faculty Lecturer with another Guest Faculty Lecturer but it does not mean that the petitioner therein would have an immunity against the disciplinary action or

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where a *bona fide* opinion is formed that the performance of the Guest Faculty Lecturer is not up to the mark or there are complaints by staff and students against him/her in the performance of teaching duties.

Thus, it is submitted that the order dated 05.03.2012 has not been willfully and deliberately violated by the respondents, rather there were compelling circumstances at their end which force them to take the step of relieving the petitioner from her duties on account of her poor performance.

Insofar as the order dated 14.07.2014 is concerned, the respondents have submitted that the petitioner has not come to the Court with clean hands as she has already been relieved on 15.03.2014 at the end of session 2013-14, therefore, when the order of *status quo* was passed by this Court on 14.07.2014, she was not in service.

After considering all the above stated facts and circumstances, emanating from the pleadings of the parties, which have been reiterated by both the parties during the course of their arguments, I am of the considered opinion that the respondents have not violated the order dated 05.03.2012 passed in CWP No.4078 of 2012, much-less willfully and deliberately, to attract the provisions of Section 2(b) of the Contempt of Courts Act, 1971 and order dated 14.07.2014 was of no help to the petitioner because it only directed the respondents to maintain *status quo*, which means that if the petitioner was in service, then she remain in service and if she is out of service, then she would remain as such. Since the petitioner was relieved from service on 15.03.2014, much before passing of the order dated

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14.07.2014, therefore, there is no willful and deliberate attempt on the part of the respondents to violate the said order passed by this Court.

In view of the aforesaid discussion, I do not find any merit in the present contempt petition and hence, the same is hereby dismissed.

Rule is discharged.

May 28, 2015
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(Rakesh Kumar Jain)
Judge