

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

CWP No. 13345 of 2015 (O & M)

Date of decision: 28.08.2015

Sarabjeet Kaur

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. RVS Chugh, Advocate,
for the applicant-petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 9434 of 2015

Application for placing on record Annexures P-5 and P-6 is
allowed, subject to all just exceptions.

The same are taken on record.

CWP No. 13345 of 2015

Admittedly, the petitioner has not approached the respondents
for her grouse though she alleges the cause of action arose on 17.05.2012
when respondent no. 5 was promoted. It is settled principle that a demand
has to be raised before approaching this Court.

The said principle was laid down by three Judges Bench of the
Apex Court in *Saraswati Industrial Syndicate Ltd. etc. Vs. Union of India*
(1974) 2 SCC 630 wherein it has held as under:-

*“25. As the appeals fail on merits we need not
discuss the technical difficulty which an application
for a writ of certiorari would encounter when no
quasi-judicial proceedings was before the High Court.*

The powers of the high Court under [Article 226](#) are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless the well recognised rule that no writ or order in the nature of a Mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties the salutary general rule which is subject to certain exceptions applied by us as it is in England when writ of Mandamus is asked for could be stated as we find it set out in Halsbury's Laws of England (3rd edition vol. 13 p. 106):

"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."

26. *In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under [Article 226](#) of the Constitution. These appeals must be and are, hereby, dismissed but in the circumstances of the case we make no order as to costs."*

Similar principles were laid down by the Apex Court in ***Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and others (2013) 5 SCC 427*** wherein, it was held that there has to be a demand which is clear,

plain and unambiguous to the concerned officer having requisite authority to perform the act before enforcement of a legal right can be claimed.

Similarly in ***Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another (2013) 5 SCC 470***, the same view was taken.

In the absence of the petitioner having failed to approach the respondents, he cannot approach this Court at the first instance. In such circumstances, exercise of the jurisdiction under Articles 226 and 227 of the Constitution of India cannot be invoked.

Accordingly, the present writ petition is dismissed.

28.08.2015
shivani

(G.S. SANDHAWALIA)
JUDGE