

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 20514 of 2015 (O&M)

Date of decision : 22-07-2016

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Surinder Singh and others

.....Petitioners

Versus

Union of India and others

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

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Present: Mr. J.S Dahiya, Advocate for the petitioners.

Mr. Kanwaljit Singh, Senior Advocate with  
Mr. A.D.S Jatana, Advocate for respondent no.4.

None for other respondents.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

The petitioners are seeking writ of certiorari to quash the practice of respondent no.3- Army Institute of Law, Mohali to relieve the petitioners every year for 7 days and reappoint them on their respective posts after interviewing them. Further prayer in the writ is the petitioners be allowed to continue till regular appointments are made and grant them minimum scale prescribed for their respective posts as is granted to the regular staff doing same nature of work against the posts in question.

Managing Committee, Army Institute of Law, Mohali-respondent no.3 advertised the posts from time to time for appointment of non-teaching staff on the basis of their need on daily wage basis and thereafter on contract basis. The petitioners participated in the interview for the respective posts and they were issued appointment letter (Annexures P-1 to P-8) collectively. The petitioners made a request to respondent no.3 for giving them minimum pay scale and security of service by keeping them in service till regular appointments were made without giving any break. Thereafter, respondent no.3 issued an advertisement (Annexure P-9) to fill up the posts on contract basis.

Counsel for the petitioners has referred to the judgment in the case of ***Hargur Partap Singh vs. State of Punjab 2007 (13) SCC 292 (Annexure P-10)***, wherein Hon'ble the Supreme Court gave directions to the State to continue the contractual employees by giving them minimum of pay scale till the regular appointments are made. Reference has also been made to a judgment passed by a Co-ordinate Bench of this Court in the case of ***Shivkesh and others vs. State of Haryana and others (CWP No. 13555 of 2013)*** decided on **2.7.2013 (Annexure P-11)**, whereby the appointment of Canal Patwaris on contract basis was directed to continue till such time as regular recruitment was made. A cost of Rs.10,000/- was imposed upon the Government for having forced the petitioners to approach this Court. Counsel for the petitioners has also referred to a judgment of this Court in the case of ***Major and others vs. State of***

***Haryana and others (CWP No. 1504 of 2010)*** decided on ***January 29, 2010 (Annexure P-12)***, where the petitioners were working on their respective posts on contract basis. It was held that the respondents cannot be permitted to replace the petitioners to substitute them by similar arrangements. The petition was disposed of with a direction to the respondents that the petitioners be not replaced by similar contractual arrangements. However, the respondents were given liberty to make appointment on regular substantive basis by following the appropriate procedure under law. Finally he has referred to the judgment in the case of ***Dr. Anil Khurana vs. Maharshi Daya Nand University, Rohtak and others (CWP No. 13946 of 2004)*** decided on ***3.9.2013 (Annexure P-13)***, wherein the petitioners, in terms of the judgment of Full Bench in ***Avtar Singh vs. State of Punjab in CWP No.14796 of 2003 decided on 11.11.2011***, were held entitled to the minimum of regular pay scales for the period of 3 years commencing prior to the institution of the writ petition till the date when their respective services were terminated. An LPA against the above said judgment has been dismissed on 21.11.2014 (Annexure P-14). However while dismissing the LPA, it was clarified that the minimum of the regular pay scale is to be given to daily wager, ad hoc or contractual appointee against the regular sanctioned posts if they have been appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates.

The stand taken by Punjabi University, Patiala-

respondent no.2, in the written statement is that respondent no.3 is affiliated to the Punjabi University, Patiala since the year 1999 and that neither any specific relief was claimed by the petitioners against respondent no.2-University, nor any action of the respondent no.2-University was challenged by the petitioners. The entire relief claimed by the petitioners was against respondent no. 3 and 4 only. Vide order dated 29.10.2015 the Army Welfare Education Society (Registered), Sector-68, Mohali was impleaded as respondent no.4. After being impleaded, written statement was filed by the Officiating Chairman, Army Welfare Education Society (Registered) taking a preliminary objection that the writ was not maintainable against private parties as respondent no.4 was a registered society under the Societies Registration Act, 1860 vide Registration Sr. No. S/13459 of 1983 dated 29.4.1983 (Annexure R-4/1) with the Registrar of Societies, Delhi Administration, Delhi. Respondent no.4 has no recourse to any public funds or grants and the entire expenditure on salaries and various other financial heads is borne by the society out of funds generated as fee from the students and therefore respondent no.4 cannot be defined as a State under Article 12 of the Constitution of India. Respondent no.4 is a private society/entity and all employments under the rules and regulations of the Society are term based and any action of respondent no.4 cannot be challenged by filing a writ petition. The petitioners have been appointed under Clause 130 of Volume-II of the Army Welfare Education Society (AWES) which reads as under:

*RULES AND REGULATIONS VOLUME-II  
FOR ARMY INSTITUTES/COLLEGES (as amended):*

*Article : 130 Adm Staff:-*

*(c) Adm Staff in the colleges is employed  
on term basis on consolidated pay.*

*(d) Services of group D staff will be  
outsourced to the extent feasible.”*

A separate affidavit dated 27.1.2016 has been filed on behalf of Brig. Avtar Singh, Officiating Chairman, Army Welfare Education Society, Sector-68, Mohali, in which it has been stated that the post of 1 driver and 1 LDC had been abolished vide order dated 24.5.2012 (Annexure R-4/2). It has further been clarified in the affidavit that some staff of the Administration had been appointed on regular basis after due process as Article 135 AWES and regulations were amended vide order dated 19.04.2011 (Annexure R-4/3). The list of employees (Annexure R-4/4) who had been appointed on regular basis and contractual basis is also being filed so as to establish that the services of some of the petitioners is no longer required. Since the post of the Driver and the LDC had been abolished, the payment being made as pay and salary to these petitioners is a burden upon the society which is ultimately borne by the students. The petitioners can participate in the selection process as per the advertisement and they would be considered fairly for the

purpose of appointment.

The first question to be decided would be whether respondent no.4 which is a registered society would fall in the definition of 'State' under Article 12 of the Constitution of India so as the writ petition is maintainable.

Counsel for the petitioner has referred to a judgment of the Delhi High Court in the case of ***Army Welfare Education Society and another vs. Manju Nautiyal and another (LPA No.223 of 2015)*** decided on 29.10.2015. The main question for consideration in the above said judgment was whether Army Public School recognized under the Delhi School Education Act and Rules, 1973 can resort to temporary, tenure or contractual appointments of permanent posts and not confirming the employees on account of Rule 105 of the Delhi School Education Act and Rules 1973 and whether a writ was maintainable against the said privately managed school. While referring to the Constitution Bench judgment of Hon'ble the Supreme Court in the case of ***Unni Krishnan J.P & others vs. State of A.P & others, 1993 Volume I SCC 645***, the writ petition was held to be maintainable as the subject of education was a public function and writ petitions are maintainable even against private educational Institutes. The Army Public School had appointed employees on contract/probation and the stand taken by them that the appointments had been made against the scheme of the management was rejected. Writ petition was allowed by holding that the schools cannot be allowed violations of law as the same will

frustrate the rights of the employees of the School to receive monetary emoluments as regular employees of the private unaided schools through schools are in fact mandated by virtue of Section 10 of the Delhi School Education Act, 1973 to give to its employees monetary emoluments not less than employees of government schools. In a case where the Managing Committee itself has appointed the employees waiving or deliberately overlooking the requirements of the Scheme of Management, then the Managing Committee/School cannot allege that it has itself violated the Scheme of Management and yet the employee should not be made permanent in spite of long period of contractual services with the school. In ***Army Welfare Education Society and another vs. Manju Nautiyal and another (supra)***, it was observed by the LPA Bench in paragraphs 9 and 16 as under:

*9. It strikes clearly that the underlying theme of the argument advanced by Mr.R.Bala Subramanian, Advocate recognizes that a school recognize under the Delhi School Education Act, 1973 has to comply with the provisions of the said Act and the Rules framed thereunder with such freedom to administer the schools as the Act and the Rules permit. There is no quarrel with the said preposition. The decisions in Brahmo Samaj Educational Society's case, Kathuria Public School's case, TMA Pai Foundation's case and Management of Geeta*

*School's case recognize that private individuals have a complete freedom in regulating the procedure to be followed while making appointments in educational institutions as also freedom to enforce discipline, but at the same time the decisions recognize that keeping in view the importance of education in society such statutory regulations which enhance excellence in teaching have to be followed by these private institutions. This explains the decision in Brahmo Samaj's case where a private minority aided institution was given the freedom to make appointments of teachers and not through the College Service Commission but with the rider that only qualified candidates could be LPA 223/2015, 225/2015, 227/2015, 314/2015, 347/2015, selected as teachers. In paragraph 7, with reference to the decision in TMA Pai's case it was explained that independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution but the State can very well provide for the basic qualification of teachers. We therefore need not labour to note the individual facts in Brahmo Samaj Education Society's case, Kathuria Public School's*

*case, TMA Pai Foundation School's case and Management of Geeta School's case (supra). We also need not bother ourselves with the fact of P.L.Aggarwal's case and Mamta Mohanty's case because the four preceding judgments recognize what has been held in the latter two i.e. academic excellence of teachers should be adhered to and thus persons not possessing necessary educational qualification would not be entitled to be appointed as a teacher in educational institutions.*

*16.To put the law in its correct perspective we hold that recognized private schools in Delhi cannot resort to temporary, tenure or contractual appointments save and except where a vacancy is available for a limited duration. To give some examples. A teacher has proceeded on child care leave for a period of one year. The lien being retained to the post, a short term vacancy for one year ensues and can be filled up for said period. A teacher, on being unwell, applies for and is sanctioned medical leave for three months. The lien being retained to the post, a short term vacancy for three months ensues and can be filled up for said period. A teacher may suddenly resign. The process to fill up the vacancy is likely*

*to consume say 6 months. Teaching would suffer if no teacher is available immediately. It would be a situation of a short term vacancy pending regular selection and it would be permissible to recruit a teacher without following the process of selection and limiting the tenure till when a regular teacher is appointed. But where a vacancy exists it would be a fraud on the statute to resort to LPA 223/2015, 225/2015, 227/2015, 314/2015, 347/2015, short term tenure appointment and that too endlessly.*

The judgment in the case of ***Mrs. K. Naqvi vs. State of Punjab and others, 2004 (4) SLR 362*** shall not go against the petitioners as in that case it was held that Yadvindra Public School, Mohali does not receive any funds from the Government. It is only run by a society not even recognized by the State of Punjab. It is running a private business and has not been created for public purpose. Therefore it is not an instrumentality of State within the meaning of Article 12 and is not amenable to writ jurisdiction under Article 226 of the Constitution. Its employees are not even governed by 1979 Security of Service Act which is meant only for the employees of Government aided and recognized private schools.

Apart from the judgment in the case of ***Army Welfare Education Society and another vs. Manju Nautiyal and another (supra)***, in the case of ***Geeta Sharma vs. Union of India and***

**others 2001(2) Rajasthan LR 349** while dealing with the case of maternity leave of an employee of the Army School, Jaipur Cantt while deciding the writ petition it was held that the School was performing the function of the State within the meaning of Article 12 of the Constitution of India in paragraphs 25 and 26, it was observed as under:

*25.The Board of Administration at Headquarters Commands are GOC-in-C, Chief of Staff and Maj. Gens. Administration. The land and building arrangement is to be made by the Ministry of Defence. As far back in the year 1980 there were 45 Army Schools and 5 Army Public Schools were established to date. In the year 1991 there were 1500 teachers to impart quality education at nominal cost to cover 35,000 children throughout the length and breadth of the Country. At present as many as 108 schools are running throughout the country. As such the society is performing the function of State in imparting the education. Even the funds are being paid by Army Headquarters as is clear in Clause 13 of the Rules. The society/school is under the hand of army official by designation. Rules have been framed wherein terms and conditions of service have been laid down for teachers recruitment,*

*retirement and scales have also been prescribed.*

*The retirement age is also fixed as per guidelines given by the University. As such it cannot be said that the Society is not performing the function of 'State' and the contention of counsel for respondent is not acceptable.*

*26. The opinion of the respondent to the effect that respondent to the effect that respondent Institute is not 'State' within the meaning of Article 12 of the Constitution of India has no merit in view of the judgment of this Court in case of **Ruby Joyce Charles (Smt.) vs. Air Force School and Others 1992 (2) SLR 111**, wherein it was held that the registered society which is running the school falls within the expression to 'other local authority' as used under Article 12 of the Constitution of India. As the Air Force Authorities who are officers of the Central Government have passed the order of removal or dismissal, it was held that the society is amenable to the writ jurisdiction.*

In the present case counsel for the petitioner has placed on record Annexure P-16 giving the details of the management which consists of serving officers. A perusal of the same shows that Lt. Gen KJ Singh, Lt Gen V Menon and Maj Gen JT Chacko constitute the Management of the Army Institute of Law.

In replication to the written statement filed by respondent no.4, it is stated that the Army Institute of Law is managed and controlled by Indian Army through its serving army officers who are the patron-in-chief, patron and chairman of the Army Institute of Law.

The Institute is affiliated with Punjabi University, Patiala which is also a Government University and this Institute. The petitioners are working against sanctioned posts and have been appointed after following the due procedure and duly interviewed by the respondents as per the details given in Annexure P-17 and advertisement dated 10.10.2007 (Annexure P-18). In view of the above facts, it is held that the writ petition against the Institute is maintainable.

The second question for consideration in the present writ petition is whether the petitioners have a right to continue on the post till the regular selections are made. A perusal of the advertisement dated 10.10.2007 (Annexure P-18) shows that as per the advertisement appointment to the post of one steno and one clerk on contractual basis was made on a salary of Rs.5000/- p.m+ EPF. This fact is not in dispute between the parties. The respondents by way of affidavit dated 27.1.2016 have placed on record letter dated

24.5.2012 (Annexure R-4/2) to show that the post of one Driver and one LDC had been abolished. As per the above affidavit, the petitioners had been appointed under the rules and regulations of the Society as appointments on term basis under Article 130 and 135 of the Army Education Welfare Society at the inception of the Institute. Some staff of the admn. had been appointed on regular basis after due process as Article 135 AWES and regulations was amended. The amended rule dated 19.04.2011 is annexed herewith as Annexure R-4/3. List of the employees appointed on regular basis and contract basis is placed on record as (Annexure R-4/4). A perusal of this list shows that contractual appointees are being appointed since the year 2003 onwards. Even if one post of Driver and one post of LDC had been abolished, the Management at the most can relieve junior most LDC and Driver. The question for consideration would be whether after 7-10 years they be subjected to take a part in regular selection process and they have no right of confirmation. This aspect has been considered by the judgment which has been upheld by the LPA Bench as well as the SLP has also been dismissed. The stand taken by the respondents that he appointments were not made in accordance with the Article 135 of the Army Education Welfare Society Regulations (Annexure R-4/3). A perusal of Annexure R-4/3 shows that a policy decision has been taken to appoint administrative officer or staff on contract basis and their appointment is not to be converted into regular appointments. However, a provision has been made that the contractual

administrative staff can apply for regular appointment. The above said policy decision (Annexure R-4/3) cannot be read against the present petitioners. The ratio of the judgment in the case of ***Army Welfare Education Society and another vs. Manju Nautiyal and another (supra)*** shall be applicable in favour of the petitioners. In that case, the stand taken by the Army Public School that initially contractual appointments had been made against the scheme of the Management was rejected by the Delhi High Court. It was held that the employees could not suffer on account of taking such an irregular stand. In the present case as per the policy Annexure R-4/3, a conscious decision has been taken to make appointments and the staff on contract basis. Further they are given opportunity to participate in the regular selection process. The appointments of all the petitioners has been made through advertisement as is clear from (Annexure P-18). It is not the case of the respondents that the permanent posts are not existing on which the petitioner had been appointed on contract basis. The respondents cannot resort to an unfair mean of appointment by taking work from the petitioners on contract basis from almost 8 to 10 years and then seek to replace them by making regular appointments by advertisement (Annexure P-9) for filling up the post on contract basis. The writ petition on its core itself deserved to be allowed. As Hon'ble the Supreme Court has held in the case of Hargurpartap Singh that a contractual employee cannot be replaced by another set of contractual or ad hoc employees and the judgment of Hon'ble the Supreme Court has been

consistently followed thereafter by this Court in a number of judgments (Annexures P-11 and P-12), writ petition deserves to be allowed. Advertisement (Annexure P-9) needs to be set aside.

The last prayer of the petitioner that they are entitled for payment of minimum of regular pay scales as per the judgment of Full Bench in ***Avtar Singh vs. State of Punjab in Civil Writ Petition No. 14976*** decided on ***11.11.2011***.

In view of all that has been discussed above, the present writ petition is allowed. The petitioners are held entitled for payment of minimum regular pay scales for the period of 3 years commencing prior to the institution of the writ petition till the date when the respective services were terminated.

A direction is further being given that all those petitioners who have served for a period of more than eight years on contract basis they shall be deemed to have been confirmed on a regular basis and the remaining petitioners shall have the opportunity to participate in the regular selection process initiated by the society in future. Allowed in the above said terms.

22-07-2016  
***ritu***

**( RITU BAHRI )**  
**JUDGE**