

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

Date of Decision: May 10, 2017

1. CWP No. 16358 of 2007 (O&M)

Anita

...Petitioner

Versus

State of Punjab & others

...Respondents

2. CWP No. 17943 of 2007 (O&M)

Meenakshi Sidana

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sumeet Mahajan, Senior Advocate with
Ms. Ramneeq Kaur, Advocate
for the petitioner in CWP No. 16358 of 2007.

Ms. Rajni Bala, Advocate for
Mr. R. K. Arora, Advocate
for the petitioner in CWP No. 17943 of 2007.

Ms. Lavanya Paul, Assistant Advocate General, Punjab
for respondents No. 1 to 4 in both cases.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Ankit Midha, Advocate
for respondents No. 5 to 8 in both cases.

JAISHREE THAKUR, J.

1. This common order shall dispose of above mentioned two writ petitions as the issues involved therein are identical. However, the facts are being extracted from CWP No. 16358 of 2007.

2. The instant writ petition was preferred in the year 2007 seeking a writ in the nature of Mandamus directing the respondents to allow the

petitioner to attend the school, allow her to mark her presence in the attendance register, allow her to take classes and for salary to be paid to her in terms of the order passed by this High Court in **CWP No. 15599 of 2006** (*Annexure P-10*).

3. There is a chequered history to this litigation. Having qualification, the petitioner was appointed as Teacher in Doaba Arya Senior Secondary School, Nawan Shahr on 01.04.1997 against a regular vacancy. Respondent-School invited applications for appointment to the post of JBT/ETT Teachers against aided posts within the meaning of Section 2(a) of the **Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979**. The petitioner was selected and an agreement of employment dated 04.07.2002 (*Annexure P-6*) was executed between the petitioner and the school management. Despite working, no salary was paid to the petitioner and on demand, she was told by the Management that she had been appointed against aided post and the salary will be released to her only after grant-in-aid is received by the School. The School Management sought approval of the District Education Officer (Senior Secondary), Nawan Shahr in July, 2002 to the appointment of the petitioner against an aided post. Since neither the salary was being released to the petitioner nor was the Government taking any decision regarding grant of approval to the appointment of the petitioner and other teachers, they filed a **Civil Writ Petition No. 6789 of 2004** with the prayer that directions be given to official respondents to grant approval to the appointment of the petitioners therein against aided posts of JBT Teachers. The said writ petition was disposed of on 27.04.2004 (*Annexure P-7*) by this Court with a direction to the official respondents that the demand notice be

decided within a stipulated time frame. In compliance with the said direction, District Education Officer, while deciding the demand notice of the petitioners, declined to grant approval to the appointment of the petitioner and other teachers under the grant-in-aid scheme holding that the appointment had been made in violation of Government instructions/rules (*Annexure P-8*). This was challenged by filing another ***Civil Writ Petition No. 15599 of 2006*** in which directions were given to the respondents to release the salary, pursuant to which, the petitioner received a sum of ₹1,34,149/-. While disposing of the writ petition, a direction was also issued to the District Education Officer to accord approval to the appointment of the petitioner and other similarly situated teachers for the purposes of 95% grant-in-aid and also to release the grant-in-aid to the respondent-School within a period of two months.

4. The State Government challenged the aforesaid decision before the Apex Court. However, since the petitioner was not allowed to join service or mark her presence after the decision in ***CWP No. 15599 of 2006***, she filed the instant writ petition with a prayer that she be allowed to discharge her duties and be paid salary as per the directions given in ***CWP No. 15599 of 2006***.

5. During the pendency of this writ petition, since the orders passed in ***CWP No. 15599 of 2006*** were pending consideration before the Apex Court, the proceedings herein were stayed. The Apex Court, while disposing of the ***Civil Appeal Nos. 7983-7983 of 2009***, noted that the appointments of the petitioners were not in consonance with the rules.

6. Learned senior counsel for the petitioner herein contends that

while disposing of the SLP, the Apex Court had given a direction that the fault in making employment lies with the Management of Doab Arya Senior Secondary School, Nawan Shahr since they did not follow the procedure while making appointment to six vacant posts of JBT/ETT Teachers and since the petitioners had worked against the said posts, it would be responsibility of the Management to make the emoluments payable to the petitioners and other Teachers who had been appointed. It is argued that the petitioner had discharged her duties till 01.12.2006 and after that she was not allowed to mark her attendance. In fact, she had been making representations to the School Management to the effect that she is going to school everyday but she is not being allowed to attend classes. The representations are dated 09.07.2007 (Annexure P-13), 17.07.2007 (Annexure P-14), dated 31.07.2007 (Annexure P-15), 06.08.2007 (Annexure P-16), dated 20.08.2007 (Annexure P-17), dated 29.08.2007 (Annexure P-18), dated 03.09.2007 (Annexure-19) and dated 07.09.2007 (Annexure P-20).

7. It is argued that since the petitioner was not allowed to discharge her duties, she had been requesting the respondents concerned to release her salary in terms of the orders passed by the Apex Court.

8. Per contra, Mr. Ashwani Kumar Chopra, learned senior counsel assisted by Mr. Ankit Midha, Advocate, appearing on behalf of the respondents-School in both cases, vehemently urges to this Court to have a look at the orders passed by the Apex Court. It is argued that the Apex Court while disposing of the SLP had only given direction to the Management of the Doaba Arya Senior Secondary School, Nawan Shahr to pay all emoluments (if the same are still unpaid) to the private respondents

in the SLP, petitioners herein. It is also argued that after **CWP No. 15599 of 2006** was disposed of, a sum of ₹1,34,149/- was paid to the petitioner and as on date, no amount is due and payable. It is further argued that the petitioner herself stopped coming to work after 01.12.2006. An opportunity was given to her to rejoin duty within a period of 15 days but she refused to do so and, therefore, her name was struck off the school rolls. It is also argued that as far back as 02.01.2004, the Management of the School had informed the petitioner that for want of approval by the Education Department, the Management Committee of the School would not be liable to make payment of her salary according to the government scale as applicable to Government Aided Schools. The salary that was paid to the petitioner was as payable to a non-aided post.

9. I have heard learned counsel for the parties and with their assistance have also gone through the record of the case.

10. Admittedly, the only question that would survive in the writ petition is whether the petitioner would be entitled to any remuneration on account of work rendered in the school.

11. Admittedly, the petitioner herein was appointed against a vacant post in 95% government aided school. It is also not in dispute that despite the High Court having interfered in the matter in earlier round of litigation and issuing the direction for approval of the post of the petitioner and others similarly situated candidates, no approval was given by the District Education Officer (Secondary School) to the appointment of the petitioner against a sanctioned aided post on the ground that the same was not in conformity with the rules. Impugning the said order of the District

Education Officer (Secondary School), a writ petition bearing **CWP No. 15599 of 2006** was filed and the same was allowed which ultimately disposed of by the Apex Court upsetting the judgment and holding that no approval could be granted to the appointment of the petitioners since it was not in conformity with the rules. However, while disposing of the appeal, the Apex Court passed the following order:

“We were informed, that the private respondents came to be appointed by the Management of the Doaba Arya Senior Secondary School, Nawanshahr, in the year 2002. We were also informed, that the private respondents have continued to be in the employment of the Doaba Arya Senior Secondary School, Nawanshahr, till date. No fault whatsoever lies with the private respondents. The fault, if at all, lies with the Management of the Doaba Arya Senior Secondary School, Nawanshahr. Unfortunately, the Management of the Doaba Arya Senior Secondary School, Nawanshahr, issued an advertisement in violation of the 1981 Rules. The procedure depicted in the 1981 Rules was also not followed while making appointments, to the six vacant posts of JBT/ETT teachers. The Management had required the private respondents to discharge their duties, without the prior approval of the State Government. The Management should therefore bear the responsibility of shouldering the emoluments payable to the private respondents. We therefore, hereby direct the Management of the Doaba Arya Senior Secondary School, Nawanshahr to pay all emoluments (if the same are still unpaid) to the private respondents, within two months from the date of receipt of a certified copy of this order.”

12. It is on the aforesaid direction that petitioner herein is laying her claim. A reading of the aforesaid order would reveal that a contention has been raised by the private respondents therein that they were continuing in the employment of the Doaba Arya Senior Secondary School, Nawanshahr. The Apex Court while holding that the appointments had not been made in accordance with 1981 Rules held that it would be the responsibility of the Management to shoulder the emoluments payable to the private respondents. A direction was given to the Management to pay all

emoluments to the private respondents within a period of two months, 'if the same are still unpaid'. A serious dispute has arisen between the parties as to whether the petitioner continued to discharge her duties after 01.12.2006 and whether all emoluments had been paid to her as submitted by the respondents. A question that would also arise whether the petitioner herein would be entitled to be paid salary of a government aided post or as per the letter dated 02.01.2004, wherein, she had been informed that the Management Committee of the School would not be liable to make payment of her salary according to the government scale as applicable to Government Aided Schools.

13. As per the contention raised by the respondents, the teachers' attendance register would reflect that the petitioner went on leave in December, 2006 and, thereafter, she stopped coming to work. The reason given is that in all probability the decision in ***CWP No. 15599 of 2006*** would be challenged before the Apex Court. On the other hand, learned senior counsel for the petitioner contends that there was no reason for the petitioner not to continue to discharge her duties and in fact this writ petition has been filed with a prayer that she may be allowed to discharge her duties. It has been argued that the petitioner had approached the authorities concerned on several occasions but she was not allowed to mark her attendance or to take classes.

14. This Court is of the opinion that in summary proceedings, it would be difficult to reach a conclusion as to whether the petitioner had abandoned her services or was deliberately not allowed to mark her attendance. This is a matter that requires evidence and the parties would be entitled to an opportunity of cross-examination which are not proceedings to

be undertaken in the writ jurisdiction. In writ jurisdiction under Article 226 of the Constitution of India, the jurisdiction is limited insofar as going into disputed question of fact is involved. The Apex Court in *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others vs. Sukhmani Das (Smt.) and another, (1999) 7 SCC 298* has held as under:

“7. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995.”

15. The Apex Court in *Orissa Agro Industries Corporation Ltd. and others vs. Bharati Industries and others, (2005) 12 SCC 725* has also

held as under:

“7. A bare perusal of the High Court’s judgment shows that there was clear non-application of mind. On one hand the High Court observed that the disputed questions cannot be gone into a writ petition. It was also noticed that essence of dispute was breach of contract. After coming to the above conclusions the High Court should have dismissed the writ petition. Surprisingly, the High Court proceeded to examine the case solely on the writ petitioner’s assertion and on a very curious reasoning that though the appellant-Corporation claimed that the value of articles lifted was nearly rupees 14.90 lakhs no details were specifically given. From the counteraffidavit filed before the High Court it is crystal clear that relevant details disputing claim of the writ petitioner were given. Value of articles lifted by the writ petitioner is a disputed factual question. Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition. As noted above, the writ petition was primarily founded on allegation of breach of contract. Question whether the action of the opposite party in the writ petition amounted to breach of contractual obligation ultimately depends on facts and would require material evidence to be scrutinized and in such a case writ jurisdiction should not be exercised. (See: State of Bihar v. Jain Plastic and Chemicals Ltd., [2002] 1 SCC 216).

8. In a catena of cases this Court had held that where dispute revolves round questions of fact, the matter ought not be entertained under Article 226 of the Constitution. (See: State Bank of India and Ors. v. State Bank of India Canteen Employees’ Union and Ors., [1998] 5 SCC 74, Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. v. Sukamani Das (Smt.) and Anr., [1999] 7 SCC 298).

9. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See: General Manager Kisan Sahkari Chini Mills Ltd., Sultanpur U.P. v. Satrugan Nishad and Ors., [2003] 8 SCC 639, Rourkela Shramik Sangh v. Steel Authority of India Ltd. and Anr., [2003] 4 SCC 317).

10. In National Highways Authority of India v. Ganga Enterpress and Anr., [2003] 7 SCC 410, it was observed by this Court that the question whether the writ petition was

maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See: Har Shankar and Ors. etc. etc. v. The Deputy Excise and Taxation Commissioner and Ors., AIR (1975) SC 1121 and The Divisional Forest Officer v. Bishwanath Tea Co. Ltd., AIR (1981) SC 1368). 11. In M/s. Radhakrishna Agarwal and Ors. v. State of Bihar and Ors., AIR (1977) SC 1496, the types of cases in which breaches of alleged obligation by the State or its agents can be set up were enumerated. The third category, indicated is where the contract entered into between the State and the person aggrieved in non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and in exercise of executive power of the State. The present case is covered by the said category. No writ order can be issued under Article 226 to compel the authorities to remedy a breach of contract; pure and simple. It is more so when factual disputes are involved. Above being the position the High Court's judgment is clearly unsustainable and is set aside. However, our interference in the matter shall not stand in the way of the writ petitioner seeking any other remedy as is available in law.

16. Therefore, on account of disputed questions of fact involved, this Court is not inclined to interfere in the matter and the present writ petitions are dismissed leaving it open to the petitioners herein to avail of any appropriate remedy in accordance with law as available to them.

May 10, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No