

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

CWP No.16117 of 2014 (O&M)

Date of Decision: 23.08.2017

Dr. Kanwaljit Singh

....Petitioner

Versus

Shri Guru Ram Dass Hospital Charitable
Trust and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The petitioner, in the present case, has approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to grant the benefits of revision of pay scale w.e.f. 01.01.1996 and time scale placement of lecturers on completion of 4, 9 and 14 years of service as has been granted to similarly situated employees in the same college.

Briefly, the facts of the case, as made out in the present petition are that the petitioner was initially appointed as Demonstrator in Sri Guru Ram Dass Charitable Hospital Trust, Amritsar on 08.03.1993. Thereafter, he was promoted as lecturer in Dental Surgery in Sri Guru Ram Dass Institute of Dental Science and Research, Amritsar on 12.04.1995.

Petitioner and other lecturers signed an agreement, whereby, the petitioner was to be given a pay roll as per Punjab Government, whereas, he was not given the scale as per agreement. Later on, a civil suit was filed, which was decreed in favour of plaintiff-petitioner and he was found entitled for revision of pay scale with effect from 01.01.1996 and time scale placement of lecturers on completion of 4, 9 and 14 years of service.

Against the judgment and decree passed by the trial Court, the respondent-college filed an appeal and the same was dismissed on 01.10.2012.

Thereafter, a detailed representation was given by the petitioner for grant of pay scale and time bound placements. A settlement was arrived at between the parties and as per terms and conditions, the petitioner was given an amount of Rs.7,50,000/- in two equal instalments i.e. in the months of December 2012 and April 2013. In spite of agreement/compromise arrived at between the parties, the IInd instalment was not paid and when the petitioner insisted for payment of amount, he was transferred from Amritsar Institute to Dera Baba Nanak, Gurdaspur dispensary. The petitioner was not given the work which he was doing earlier and it was done just to harass him.

When the request of the petitioner was not accepted then he filed the present writ petition with the grievance that he is entitled for ACP scheme along with revised pay scale as per settlement arrived at with the respondents as also as per Punjab Civil Services (Revised Pay) Rules, 1998.

Learned counsel for the petitioner submits that the action of the respondents in not granting the benefits as per ACP scheme and revised pay scale is not only arbitrary but discriminatory as well, as other similarly

situated persons have been granted the same benefits. Learned counsel also submits that the petitioner was being harassed and a pressure was put upon him to withdraw the writ petition.

Learned counsel for the respondents has raised a preliminary objection about maintainability of writ petition as the respondent-Trust is an un-aided private institute and is receiving no grant-in-aid from State of Punjab.

Learned counsel for the respondents has relied upon the judgment rendered in case ***Dr. Jaswinder Kaur vs State of Punjab and others (CWP No.23815 of 2013)***. Said judgment was upheld by LPA Bench. Learned counsel also submits that an unaided college is not amenable to writ jurisdiction and the petitioner is having an alternative remedy to avail. Learned counsel further submits that the controversy, in the present case, is squarely covered by judgment of this Court in case ***Dr. Kanwaljit Singh vs Shri Guru Ram Dass Hospital Charitable Trust and others (CWP No.15644 of 2015, decided on 19.05.2017)***.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file including the judgment passed in ***Dr. Kanwaljit Singh's*** case (supra).

On perusal of said judgment, it is apparent that the controversy, in hand, is squarely covered as the same issue is involved in the present case. The relevant portion of said judgment is reproduced as under :-

6. In the classic case of ***Andi Mukta Sadguru Shree Muktajee Vendas Swami Suvarna Jayanti Mahotsav Smarak Trust v. R.R. Rudani***, (1989) 2 SCC 68, it was held that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the

Constitution of India for issuance of a writ of mandamus, provided, of course, the private body is performing public functions which are normally expected to be performed by the State authorities. The Supreme Court succinctly put this issue beyond the pale of controversy in the following words :-

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied."

*7. Everybody who is performing a public duty or performing a duty of the State is amenable to the jurisdiction of the High Courts under Article 226. However, Courts must exercise restraint and exercise these powers only in cases which involve public law public duty. Therefore, the test for invoking the writ jurisdiction is, whether the act complained of is in the discharge of a public duty or a public function or not. In a judgment rendered by the Hon'ble Supreme Court in **Godavari Sugar Mills Ltd. Vs. The State of Maharashtra (2011) 2 SCC 439**, it has been held that only where the lis has a public law character or involves a question arising*

out of the public law functions, access to justice by way of a public law remedy under Article 226 will not be denied.

8. In a recent judgment of Supreme Court in **Joshi Technologies International Inc. Vs. Union of India (2015) 7 SCC 728**, it has held as under:-

“ 69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, “normally”, the Court would not exercise such a discretion:

(i) At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

(ii) State in its executive capacity, even in the contractual field is under obligation to act fairly and cannot practice some discriminations.

(iii) Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross- examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

(iv) Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred.

(v) *Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.*

(vi) *Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.*

(vii) *Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.*

(viii) If the contract between private party and the State instrumentality and or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction.

(ix) *The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction*

between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

(x) Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

*(xi) The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. **(emphasis added)**.*

The dispute herein arises out of a transfer order that was issued by the management of an unaided college which is run on the funds given to it by the Shri Gurdwara Prabhandak Committee. There is no State aid or control over the functioning of the Trust for it to become an instrumentality of the State in the instant case. It is an inter-se dispute between the management and the petitioner with the color of a private dispute, and no public element is involved. In case, the respondent Trust had acted arbitrarily or illegally with regard to any function of a

*public domain, like in the instance of grant of admission, conducting of examination and the like, only in that eventuality a writ would be maintainable as held in **Andi Mukta case (supra)**. A similar view has been taken in **R.D. Sharma versus St John's High School and others 2002 (3) SCT 324** :*

“14. In my opinion a writ of mandamus is maintainable against a private institute even though it does not get aid and its duty runs shoulder to shoulder with a duty which is performed by a public institution. To clarify this aspect of the case, if a dispute involved in a particular case with regard to the admission or education or with regard to the pay of a member of the staff, in such a situation a writ under [Article 226](#) is maintainable because imparting of education by a private institute is such a duty which is also being performed by the public institutions. In other words, mere label of a private institute will not oust the jurisdiction of the High Court under [Article 226](#) of the Constitution. We have to see what is being agitated or claimed by the writ petitioner. If a writ petitioner complains with regard to the deprivation of the admission or equal pay for equal work or remuneration at par with the Government aided institution, in such a situation the High Court will entertain the petition. But if the controversy involved in a particular writ petition is purely a service matter pertaining to the service conditions for a private contract, in such a situation if there is any breach, the High Court will not issue a mandate under [Article 226](#) of the Constitution. The distinction, in my opinion, is patent and clear. In the present case the alleged cause of action arose to the petitioner when his service had been terminated in an illegal manner without adopting the principles of natural justice. This is an alleged breach of contract or service on the part of St. John's High School which is a private institute not even aided by the government. In such eventually the remedy of the petitioner

lies somewhere else either the general law or he may file a suit for damages in the competent court of jurisdiction. The Hon'ble Division Bench of Guhanti High Court in Managing Committee, Silchar Medical Colleeiate v. Deb Pada Bhattachar Jee, (1994)1 Gauhati L.R. 202 held in para No. 12 of the judgment as under:-

"Although a private educational institution performs public duty insofar as imparting of education is concerned, it may not discharge public duty in other matters. The present case is purely of a private institution, and the management of the school is also a private body. Therefore, if the right of the employee in this school is purely of a private character, the management performs no public duty in this regard."

Without saying anything on the merits of the case, it is held that no writ petition would be maintainable under Article 226 of the Constitution of India as it is purely a private college and respondent-Trust does not perform public duty. The petitioner is relegated to avail an appropriate remedy under civil law.

Accordingly, the writ petition is disposed of in the above said terms.

(DAYA CHAUDHARY)
JUDGE

23.08.2017
gupreet

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No