

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

L.P.A. No.1676 of 2019 in
Civil Writ Petition No.16386 of 2018
Date of decision: October 30, 2019

Governing Body, Mehr Chand Polytechnic
College, Jalandhar and another ...Appellant

Versus

Amit Sharma and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Alok Mittal, Advocate for the appellant.

None for the caveators/respondents.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 04.09.2019 in CWP No.16386 of 2018 titled 'Amit Sharma and others vs. Governing Body, Mehr Chand Polytechnic College, Jalandhar and others', whereby, the writ petition filed by respondent No.1 to 12 and three others was allowed. The action of the appellant College in replacing the private respondents with another set of contractual employees was set aside and the appellant College was directed to appoint the private respondents on the posts held by them.
2. Respondents No.1 to 12 had filed the writ petition for quashing the action of the appellant College to replace them with fresh contractual

employees. They had also prayed that they be allowed to continue till regular appointments were made in accordance with law. They further assailed the action of the appellant College for depriving them of the salary of summer/winter vacations.

3. It was their contention that the appellant- College is a Government aided Private college. It receives 95% grant-in-aid from the Punjab Government. The appellant College had advertised various posts. Respondents had applied in response to the advertisement. Having been found eligible and suitable, they were offered appointment. The appointment was on contractual basis for a period of 89 days or upto the end of the current semester.

4. The appellant College has adopted an illegal practice of relieving the contractual employees during summer/winter vacations. They are relieved in the first week of June every year and re-engaged in mid-July at the start of the academic session. Similarly, they are relieved in the last week of December and re-engaged in the second week of January. They claimed that though they had put in service between 03 to 13 years the appellant College was continuing them on contractual basis with the breaks as mentioned above. The appellant issued advertisement dated 27.06.2014, whereby, the posts occupied by them were sought to be filled on contract basis. They relied upon **Hargurpratap Singh v. State of Punjab and others, (2007) 13 SCC 292**, **Rattan Lal v. State of Haryana and others, (1985) 4 SCC 43** and **Harinder Kaur and others vs. Union of India and others 2006(1) SCT 64**.

5. The contention of the appellant College was that earlier there was a practice to fill up the posts on 89 days' basis. The staff used to be relieved before the vacations in compliance to the norms of the State Government. Since these are grants-in-aid posts, the college has to follow the Government Instructions.

6. For the academic session 2018-19, it was decided to discontinue with the 89 days' practice and keep the employees for full academic year as per the government instructions. The respondents were not in service when the advertisement dated 27.06.2018.

7. During the pendency of the petition certain interim orders were passed including one on 09.07.2018, whereby, the appellant College was restrained from replacing the private respondents with same set of employees in pursuance of advertisement dated 27.06.2018. Despite that the appellant engaged various persons on hourly basis. On 14.12.2018 counsel for the appellant circulated the letter dated 13.12.2018 stating that the private respondents shall be offered/absorbed for the session/semester commencing from 03.01.2019 to 02.05.2019 as per the calendar for the year 2018-19 on hourly basis on same terms and conditions on which the appointments in pursuance to advertisement dated 27.06.2018 were made. Ld. Single Judge concluded that to hoodwink the orders of the Court the appellant College had devised a novel method of appointing some persons on hourly basis. It was concluded that this was defiance of the Court orders. Vide separate judgment passed in the contempt petition, Jagroop Singh, Principal of the college has convicted and sentenced under Sections 11 and

12 of the Contempt of Courts Act.

8. Ld. Single Judge allowed the writ petitions by observing as under:

“It is to be noticed that the writ petition was filed with the prayer that the petitioners had been working from three to thirteen years. Their services were abruptly discontinued. The petitioners were contractual employees.

In Hargurpratap Singh's case(supra), it was held as under:-

“It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale.

Further, in Harminster Kaur's case (supra), it was held as under:-

"We have given our thoughtful consideration to the rival contentions of the learned counsel for the parties. In our considered view, the grievance made by the petitioner against the appointment of persons as guest faculty membership basis is well founded. The respondents cannot be permitted to substitute one set of persons by another set of persons on contractual basis alone, by terming the aforesaid appointments as "guest faculty appointments". The aforesaid appointments may be permissible in a situation where a particular vacancy

has arisen on account of a permanent employee proceeding on leave during the middle of session or in some similar situation during the course of the academic session. However, a guest faculty appointment cannot be permitted by way of an engagement at the commencement of the session and with a view to have a lecturer for teaching students for the whole academic session. To this extent the grievance made by the petitioner is absolutely justified. Even otherwise from the order dated September 26, 2003 we find that the learned Tribunal had itself directed that one set of contract employees could not be substituted by another set of contract employees. The aforesaid order has not been challenged by the Union Territory Administration at all and has attained finality.

Accordingly, we dispose of the present writ petitions with a direction to the respondents to continue the contract employees till such time, persons selected on regular basis join and in a situation where a decision has been taken not to fill up the vacancies on regular basis, it would be open for the administration not to continue the contractual employees any further. However, in such a situation it would not be open to the Union Territory, Administration to appoint persons on guest faculty membership basis. However, in a situation where a vacancy suddenly arises during the course of the academic session, then in such a situation the administration will be well within its rights to make a temporary arrangement of guest faculty membership by inviting applications from all eligible persons and in such a situation the petitioner shall also be considered for such appointments. Since the current academic session is about to end, therefore, if any guest faculty members have been engaged for the current session, then they would be allowed to continue keeping in view the interest of students. However, these directions shall be strictly followed for the ensuing session."

This form of hourly basis is another form of appointment on contractual basis. It is settled law that one set of contractual employees cannot be replaced by another set of contractual employees. However, the Court is satisfied that such an arrangement has been made only to frustrate the cause of the petitioners which has come on record. There is no dispute with regard to the continuous service of the petitioner

with the respondents and the fact that work of all of them has been satisfactory as nothing has been produced by the respondents with regard to their conduct. This kind of arrangement by the employer cannot be approved and is in complete violation of the aforesaid judgments.

In view of above, the present civil writ petition is allowed. The action of the respondents in replacing the petitioners with another set of contractual employees is set aside. Accordingly, the respondents are directed to appoint the petitioners on the posts held by them.”

9. The view taken by the Ld. Single Judge is in consonance with law declared by the Hon'ble Supreme Court in various decisions which have been consistently followed.
10. Accordingly, there is no merit in this appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 30, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No