

**255 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 16386 of 2018 (O&M)
Date of Decision: 04.09.2019**

Amit Sharma and others

.....Petitioners

Versus

Governing Body, Mehr Chand Polytechnic College, Jalandhar and
others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhul, Advocate,
for the petitioners.

Mr. A.S. Talwar, Advocate for
Mr. R.S. Cheema, Advocate,
for respondent Nos. 1 & 2.

Ms. Gunkirat Kaur, AAG Punjab
for respondent No.3.

JITENDRA CHAUHAN J.

By way of present civil writ petition filed under Article 226 of the Constitution of India, the petitioner has sought quashing of action of the respondents in replacing the petitioners with fresh contract employees. The petitioners have further sought a direction to the respondents to allow them to continue on the posts till regular appointments are made.

Vide order dated 09.07.2018, the present petition was dismissed as withdrawn qua petitioner Nos. 7 & 8.

It is contended by the learned senior counsel that

respondent No.1-college is a Government aided Private college and 95% salary of the employees is paid from the Grant-in-Aid released by the Government of Punjab and 5% of the salary is paid by the DAV Managing Committee. Since the said college is substantially financed by the Government of Punjab, so it is a State within the meaning of Article 12 of the Constitution of India. In pursuance to the advertisement issued by the respondent-college, the petitioners were offered appointments as Lecturers. It is further submitted that the respondent-college has adopted the practice to relieve the contractual employees during summer/winter vacations and all contractual employees are relieved in the first week of June every year and re-engaged in the mid of July when new session starts and in the winter vacations they are relieved in the last week of December every year and again re-engaged in second week of January. Although, the petitioners are continuing on contractual basis from the dates of their initial appointments but vide advertisement dated 27.06.2018 (Annexure P-3) the posts occupied by the petitioners were advertised to fill up the same on contract basis.

Learned senior counsel relies upon judgment rendered by Hon'ble the Supreme Court in *Hargurpratap Singh vs. State of Punjab and others (Civil Appeal No. 8745 of 2003) decided on 07.11.2003 (Annexure P-4) and Harminder Kaur and others vs. Union of India and others 2006(1) SCT 64.*

On the other hand, on behalf of the respondents, it is

contended that earlier there was a practice to fill up the posts on 89 days' basis and before the vacations, the staff used to be relieved in compliance to the norms of the State Government (Annexure R-2 and R-3). 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 posts were always for 89 days with usual break of one working day. The petitioners were relieved for summer and winter vacations as per Government instructions. Since these are grants in aid posts, the respondent-college has to follow the Government instructions. The petitioners are erstwhile employees of the respondent-college. They were not in service when the advertisement dated 27.06.2018 (Annexure P-3) was issued.

Heard.

On 14.12.2018, the following order was passed by this Court:-

“Learned senior counsel for the respondents has circulated the letter dated 13.12.2018 which reads that the petitioners shall be offered/absorbed for the even 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 (Annexure P-3) were made. The letter is taken on record as Mark-A.

It appears that the respondent has failed to understand the import of the order dated 9.7.2018 and subsequent orders passed by this Court.

At this stage, learned senior counsel seeks time to have further

instructions in the matter.

Post again on 21.12.2018.

Reply in the writ petition be filed in the meantime.”

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 **Harinder 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.

This Court, vide separate judgment of even date passed in the contempt petition, has convicted and sentenced Jagroop Singh, Principal of the college under Sections 11 and 12 of the Contempt of

Courts Act.

04.09.2019.

(JITENDRA CHAUHAN)
JUDGE

SN

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No