

(103) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28569 of 2019
Date of decision:14.01.2020

Parveen Kumar and Ors.

.... Petitioners

Versus

State of Haryana and Ors.

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Naveen Siwach, Advocate for the petitioners.

B.S. Walia, J. (Oral)

[1] Prayer in the writ petition is for the issuance of a writ of Mandamus for directing the respondents not to replace the petitioners by other contractual employees in view of the law laid down by Hon'ble the Supreme Court in **Hargurpratap Singh and Others v. State of Punjab and Others** i.e. Annexure P-4 as also to allow them to continue to work on their respective posts till the posts subsist or regularly selected candidates join.

Prayer is also for the issuance of a writ of Mandamus for directing the respondents to pay to the petitioners the minimum pay-scale of the posts on which they have been working along with all admissible benefits payable from time to time in view of the law laid down by Hon'ble the Supreme Court in the case of **Malathi Das (Retd.) now P.B. Mahishy and Others v. Suresh and Others, 2014 (13) SCC 249.**

[2] On query, learned counsel states that the petitioners have not submitted any representation to the respondents in respect of the grievances

which are the subject matter of the writ petition.

[3] It is settled law that demand for justice is a *sine qua non* for the issuance of a writ of Mandamus. Reference in this connection can be made to the decision of this Court in **Surya College of Education versus Chaudhary Devi Lal University, Sirsa and another 2013(4) SCT 393.**

Relevant extract of the same is reproduced as under:-

“10. In view of the above, the only question of law that falls for consideration of this court is, whether it is sine qua non for the petitioner to put his/her demand for justice before the concerned authority, before approaching this court, seeking a writ of mandamus.

11. Learned counsel for the petitioner has failed to point out any averment in this regard or any document to the effect that before approaching this court by way of instant petition, any right of the petitioner has been infringed and thereafter, the petitioner approached the respondent authorities, raising its grievance by making necessary representation, demanding the consideration of the rights of the petitioner and seeking redressal of its grievance. Learned counsel for the petitioner also could not point out any difficulty, which might have been faced by the petitioner, while not approaching the respondent authorities by making the appropriate representation.

12. In view of what has been observed above, this court feels no hesitation to conclude that the necessary requirement of law has not been fulfilled by the petitioner, before approaching this court. Before seeking a writ of mandamus, the petitioner was under legal obligation to show infringement or denial of any of its rights and thereafter, moving necessary representation to the concerned authority pointing out the infringement or denial of its rights, besides seeking redressal of its grievance, followed by inaction on the part of respondent authorities. Since the petitioner has failed to satisfy the

above said requirements of law, the instant petition is not maintainable in the present form.

13. The view taken by this court finds support from the judgement of the Hon'ble Supreme Court in Amrit Lal Berry, K.N. Kapur and others v. Collector of Central Excise Central Revenue and others, 1975(4) SCC 714. The relevant observations made by the Hon'ble Supreme Court read as under:- " In the petition of K.N. Kapur and others, we do not even find an assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognised by this Court in Kamini Kumar Das v. State of West Bengal, AIR 1972 Supreme Court 2060 at p.2065 that a demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus, would also operate against the petitioners."

14. Respectfully following the law laid down by the Hon'ble Supreme Court in the case of Amrit Lal Berry, K.N. Kapur and others case (supra), it is unhesitatingly held that the present petition is misconceived and is not maintainable in the present form, at this stage. I say so because the learned counsel for the petitioner has failed in laying down the basic foundation of the case in view of the law noticed hereinabove.

15. However, lest this order is misunderstood, it is made clear that the petitioner shall be at liberty to approach the respondent authorities by moving the necessary representation raising its demand for justice and seeking redressal of its grievance. Further, it goes without saying that if the petitioner approaches the respondent authorities by way of an appropriate representation or justice demand notice, the competent authority shall consider the claim of the petitioner, dispassionately and expeditiously, passing an appropriate order, in accordance with law."

[4] Faced with the aforementioned situation, learned counsel prays for permission to withdraw the writ petition with liberty to file a comprehensive representation with directions to the competent authority to consider and decide the same in accordance with law in a time bound manner.

[5] Without commenting upon the merits of the claim or the entitlement of the petitioners to the relief claimed, the writ petition is disposed of by granting liberty to the petitioners to file a comprehensive representation to respondent No.2 within a period of two weeks from the date of receipt of certified copy of the order. In case any such representation is submitted before respondent No.2 within the stipulated period of time, the same be considered and decided in accordance with law within a period of six weeks thereafter.

(B.S. Walia)
Judge

14.01.2020
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.