

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 14401 of 2020

Date of Decision: 28.01.2021

Pawan Kumar and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Pawan Kumar, Advocate
for the petitioners.

Mr. Ayush Sarna, Assistant Advocate
General, Punjab for respondents No. 1 and 2.

Mr. Rajdeep Singh Cheema, Advocate
for respondent No.3.

Anil Kshetarpal, J.

The petitioners have filed this writ petition under Article 226/227 of the Constitution of India seeking the following substantive reliefs:

- “ii) *Issue a writ in the nature of certiorari and mandamus for declaring the action of the respondents as illegal, arbitrarily, unlawful and unconstitutional whereby the services of the petitioners have been terminated without any reason and without providing any opportunity of hearing and an advertisement has been published in the daily news paper for the appointment of temporary clerks and Lab Attendants i.e. the posts, upon which the petitioners are working;*

- iii) *Issue a writ in the nature of mandamus directing the*

respondents to allow the petitioners to work till the regular selection is being made on the said posts as it is settled proposition of law that no temporary/contractual employee can be replaced with another temporary/contractual employee and further their salaries pending since May, 2020 may also be disbursed to them.

- iv) *Issue a writ in the nature of Mandamus directing the respondents to regularize the services of the petitioners as per the policy/notification dated 24.12.2016 (Annexure P-5), whereby the contractual employee who is working from the last 3 years have been ordered to be regularized by the Govt. and further provide them equal pay to the equal work, as drawn by the another Lab Attendants/Clerks of the Govt. of Punjab;*
- v) *Issue a writ in the nature of Mandamus directing the respondents to settle the pay and allowances of the petitioners as given to the regular employees, as per the policy guidelines of equal work equal pay and grant them arrears of pay and allowances”.*

At the outset, it must be noticed that the respondents, apart from contesting the writ petition on merits, have objected to the maintainability of the writ petition in view of equally efficacious alternative remedy of appeal before the Educational Tribunal constituted under the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (hereinafter referred

to as “the 1974 Act”).

Keeping in view the aforesaid objection, this Court has heard learned counsel for the parties on the entire dispute. Since this Court is of the considered view that the petitioners have an alternative remedy, therefore, they are required to be relegated to the alternative remedy, hence, it would not be appropriate for the Court to make any observations on merits. Suffice to note that the petitioners claim to be contractual employees of D.A.V. College, Amritsar and they have been replaced by respondent No. 4 to 8 after the posts were advertised and the petitioners did participate in the selection process.

After the amendment in the 1974 Act, notified on 15.02.2008, the Education Tribunal has been conferred jurisdiction to hear all the cases of disputes between the Managing Committee and the employees. It is not in dispute that the petitioners do fall in the definition of the employees as defined in Section 2(e) and the respondent-College falls within the definition of the Managing Committee. Still further, this controversy has now been settled by the Division Bench while deciding Letters Patent Appeal No. 892 of 2019 on 09.05.2019. Para 9 of the said order is extracted as under:

“9. The expression “all cases of disputes” used in Section 7-A(12) of the Act is wide enough to encompass within its ambit any type of disputes between the employees of “unaided institutions” and their “Managing Committee” and the scope of the same cannot be held to be confined only to the punishment of dismissal, removal or reduction in rank. The expression used is wide enough to confer power upon the

Tribunal to hear all such disputes arising between the employees and the Managing Committee of the institution”.

Keeping in view the aforesaid facts, the petitioners are required to be relegated to the alternative remedy, particularly when the petitioners do have an equally efficacious alternative remedy.

With the observations made above, the present writ petition is disposed of.

(Anil Kshetarpal)
Judge

January 28, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No