

**CWP-7805-2022 and
CWP-12683-2022**

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2023:PHHC:166397

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

**CWP-7805-2022 (O&M)
DECIDED ON: 6th JULY, 2023**

PAWAN KUMAR GUPTA

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

AND

2023:PHHC:166398

2.

CWP-12683-2022 (O&M)

RAHUL RAJ SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

**Present: Mr. Ashutosh Gupta, Advocate
for the petitioner (s).**

Mr. Kapil Bansal, DAG, Haryana.

**Mr. Naman Jain, Advocate with
Mr. Mudit Jain, Advocate
for respondents No.3 to 5 (in CWP-7805-2022) and
for respondents No.2 to 4 (in CWP-12683-2022).**

**Mr. Sunish Bindlish, Advocate
for respondent No.5 (in CWP-7805-2022)**

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SANDEEP MOUDGIL, J

1. This Court intends to dispose of both the writ petitions by this common order, which involve identical question of law on similar set facts.
2. To avoid repetition the facts are being taken from CWP-7805-2022, titled “***Pawan Kumar Gupta vs. State of Haryana and Others.***”
3. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* for quashing the impugned appointment letter dated 13.12.2019 (Annexure P-12) vide which respondent No.5-Atul Shukla (in CWP-7805-2022) was offered an appointment to the post of Principal in the Institute of Hotel Management, Panipat (Society) as well as office order dated 30.04.2021 (Annexure P-1) whereby, respondent No.8-Mohd. Shahid Hasnain (in CWP-126383-2022) was appointed as Principal, Institute of Hotel Management Catering Technology & Applied Nutrition, Rohtak with further prayer for issuance of a writ in the nature of *mandamus* directing the respondents No.1 to 4 (in CWP-7805-2022) to take action on the representation dated 11.01.2022 (Annexure P-1) as well as order dated 25.04.2022 (Annexure P-2) vide which the earlier order has further been extended from 01.05.2022 to 30.04.2023.
4. Mr. Ashutosh Gupta, Advocate for the petitioner(s) *inter-alia* contends that the petitioner-Pawan Kumar Gupta (in CWP-7805-2022), who is a member of Board of Governors of respondent No.3-Institute of Hotel Catering Technology and Applied Nutrition, Panipat, has raised objections to the appointment of respondent No.5-Atul Shukla (in CWP-7805-2022) as Principal alleging that he do not fulfill the essential qualification of 20 years

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teaching with a minimum experience of 3 years as Head of Department, as stipulated in the “Institute of Hotel Management Catering Technology and applied Nutrition, Rohtak/Panipat/Faridabad/Kurukshetra/Yamuna Nagar Societiey’s Staff Regulations, issued in the year 2012 (Annexure R-8) (hereinafter referred to as ‘Staff Regulations, 2012).

5. It is further contended that no advertisement was ever floated for the selection of respondent No.5-Atul Shukla. It is submitted on behalf of the petitioner-Pawan Kumar Gupta that though an advertisement was floated in the year 2017 but respondent No.5-Atul Shukla never applied for the post, as he was ineligible, as the whole scheme was kept in abeyance and swept under the carpet, so that respondent No.5 can be given extension. Another contention is that during the pendency of present petition, respondent No.5-Atul Shukla has superannuated but he has been given extension in service although there is no such provision for extension in service. It is lastly submitted that objection raised by the Finance Department were never answered, neither any approval was taken.

6. Learned counsel for respondents has vehemently contended that the petitioner has mischievously filed the present petition as it is essentially in the nature of Public Interest Litigation (PIL), hence, the same is not maintainable. To buttress this contention, he relies upon the judgment of Apex Court rendered in the case of **“Hari Bansh Lal v. Sahodar Prasad Mahto; (2010) 9 SCC 655**. It is further contended that in an identical matter involving the quashing of appointment of respondent No.5-Atul Shukla as Principal, IHM, Panipat had been dismissed by the Division Bench of this Court in CWP-19964-2016 vide order dated 24.09.2016 by placing reliance

upon the judgment of **“Madan Lal vs. High Court of J&K; (2014) 15 SCC 308;** wherein, it has been held that in service matters, a public interest litigation is not maintainable. It is submitted that the petitioner-Pawan Kumar Gupta joined the Society-IHM in the year 2015 and till 11.01.2022, he never raised any objection regarding the appointment of respondent No.5 and for that reason, the objection raised by the petitioner as per Annexure P-1, the best can be inferred as being the result of personal grudge between him and respondent No.5, despite petitioner being the Member of Board of Governors since December, 2015 further never raised any objection as and when respondent No.5-Atul Shukla got any extension in service (through deputation) as Principal including absorption on 31.12.2019.

7. No other point has been argued by the counsel for the petitioner.

8. Heard, learned counsel for the parties.

9. A bare perusal of the writ petition makes it clear that the petitioner did not have any *locus-standi* to file the present petition, as no right of the petitioner has been violated, thus, he is not an aggrieved party. It is well settled law that the writ petition under Article 226 of the Constitution of India, can only be filed for the enforcement of a fundamental right or any legal right, as such the petitioner need to demonstrate that there is legal wrong done to him by violation of his right, accordingly, is an aggrieved person/party, therefore, constrained to move the Court. Reliance can be placed upon the judgment of the Apex Court rendered in the case of **“JasbhaiMotibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed”; 1976 (3) SCR 58,** wherein, it has been held as under:-

"36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones: a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be "persons aggrieved".

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47. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a

decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a 'person aggrieved' and has no locus standi to challenge the grant of the No Objection Certificate.

48. It is true that in the ultimate analysis the jurisdiction under Article 226 is general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money."

10. As far as the eligibility of respondent No.5 at the time of deputation is concerned, the rules of National Council of Hotel Management and Catering Technology (NCHMCT) were not applicable as rules of 'Haryana Technical Education Board' were being followed, since the rules of NCHMCT were adopted for the first time by the Board of Governors in its meeting held on 13.04.2013 i.e. after the appointment of petitioner on deputation. Respondent No.5 was having 1st Class Degree from Lucknow University, 3 years Diploma in Hotel Management from Institute of Hotel Management, Lucknow with aggregating 64.08% and around 25 years' experience in the line (including around 23 years teaching experience),

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meaning thereby, respondent No.5 fulfilled the requisite qualifications and experience prescribed for the post of Principal.

11. Moreover, it is abundantly clear that the petitioner being a member of Board of Governors had all the rights to raise the contention regarding the illegality, if any, in the appointment of the petitioner but he had never raised any objection at the time of extension in service (through deputation) as Principal including absorption on 31.12.2019. Since the petitioner was himself was a signatory to the meetings giving consent and subsequent extension to respondent No.5, he cannot be now permitted to take a u-turn to challenge the said action on flimsy and whimsical grounds just to settle his personal scores. Furthermore, it is also crystal clear from the record that respondent No.5 after superannuation was given contractual engagement on the post of Principal IHM-Faridabad and Panipat (on contractual basis) from 01.07.2022 to 30.06.2023 on account of the fact that he has done commendable job and has worked as an asset for the institute.

12. In view of the discussions made hereinabove, this Court does not find any merit in both the petitions, as such the same are dismissed with no order as to costs.

13. Pending Application(s), if any, shall stand disposed off.

14. A copy of this order be placed on the file of another connected petition.

6th JULY, 2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether Reportable : *Yes/No*