

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

**CWP-18122-2018 (O&M) and
other connected cases
Reserved on: 05.05.2023
Date of decision: 01.06.2023**

**GOVERNMENT ITIs CONTRACT EMPLOYEES
UNION PUNJAB AND ORS.**

..Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ranjit Singh Kalra, Advocate
Mr. N.K. Awasthi, Advocate
Mr. H.C. Arora, Advocate
Ms. Sunaina, Advocate
Mr. Neeraj, Advocate
Mr. Raman Sihag, Advocate
Mr. Gagandeep Singh Simble, Advocate
Mr. J.S. Mahal, Advocate
Mr. Anil Shukla, Advocate
Mr. M.K. Dogra, Advocate
Mr. Peeush Gagneja, Advocate
Mr. Ravneet Singh Joshi, Advocate
for the petitioners.

Mr. Vikas Arora, AAG, Punjab.

Mr. S.K. Sharma, Sr. Panel Counsel
Mr. Indira, Advocate
Mr. Harmeet Singh Oberoi, Advocate
for Union of India.

Mr. Arvind Seth, Advocate
for Union of India (in CWP-1299-2021).

Mr. Udit Garg, Advocate
for respondent No.3 (in CWP-24066-2018).

ANIL KSHETARPAL, J.

1. With the consent of learned counsel representing the parties, a batch of 16 connected writ petitions (details whereof are at the foot of the judgment), involving identical issues for adjudication, is being disposed of by a common order.

2. In order to comprehend the controversy involved in the present case, the relevant facts in brief are required to be noticed. The Union of India came out with a scheme to upgrade 1396 Government Industrial Training Institutes through the Public Private Partnership. Under the aforesaid scheme a tripartite memorandum of agreement was signed while giving interest free loan of Rs.2.5 crore by the Union of India to the Institute Management Committee (Society) (hereinafter referred to as the 'IMC'). As per the agreement apart from the Union and State Government, representatives of industry were associated. The IMC was given the powers to run the Government Industrial Training Institutes with the minimum interference of the Central or State Government. The petitioners in all the writ petitions have been employed as instructors and clerks (Class III) by the local IMC. Through these writ petitions, the petitioners pray for the regularization of their services or their conversion to a contract basis. They also pray for the issuance of a direction to ensure the payment of their salaries at the rates agreed upon by the State of Punjab with the Ministry of Labour and Employment, Government of India specifically for instructors with a minimum salary of Rs.14,000/- per month, along with annual increments as per the tripartite agreement. Furthermore, as an interim measure, the petitioners have prayed to restrain the respondents from imposing breaks in service, including mid-academic breaks and to grant

them the same leave facilities as their counter parts in the Technical Education Department. They have also sought a restraining order to prevent the respondents from terminating the services of the petitioners during the pendency of the writ petition. In some of the writ petitions, a prayer has been made to direct the respondents to restart all those trades, which have been closed due to paucity of funds.

3. In these writ petitions, the petitioners heavily rely upon a judgment passed by the Division Bench of Himachal High Court in **Amit Atri and others Vs. Anil Verma, LPA-107-2014 and other connected cases, decided on 03.12.2014.** On the careful reading of the judgment, it is evident that the learned Single Judge declared the appointment of the writ petitioners to have been made on a contract basis with all the consequential benefits. Against the aforesaid judgment, the Letter Patent Appeals were filed. The Division Bench held that the judgment of the learned Single Judge is not sustainable. Ultimately, the Letter Patent Appeals and the writ petitions were disposed of while giving liberty to the State of Himachal Pradesh to examine the cases of the petitioners in terms of the instructions dated 25.04.2011. Thus, the aforesaid judgment does not establish as a *ratio decidendi* that the petitioners are entitled to the regularization of their services or their conversion to a contract basis.

4. The learned counsel representing the parties in various writ petitions have also firmly counted on the judgment passed in **CWP-9300-2015, titled as “Ms. Menka and others Vs. State of Haryana and others”, decided on 05.05.2016.** On its careful reading, it is evident that these writ

petitions were filed by the Assistant Professors/Extension Lecturers. The Bench in the said case culled out the following questions for adjudication:-

*“(i) Whether the petitioners can be allowed to continue to work on their post till the regular selections are made?
(ii) Whether the petitioners are entitled to get the salary of the vacation period?
(iii) Whether the petitioners are entitled to get Rs.1000/- per lecture instead of Rs.250/-, as per UGC guidelines?”*

5. The first question in the aforementioned case was answered in terms of the judgment passed by the Supreme Court in **Hargurpartap Singh Vs. State of Punjab and others, 2007 (13) SCC 292.** The second question was answered in terms of the judgment passed in **Dr. Anil Khurana Vs. MDU, Rohtak and others, CWP-13946-2004.** The third question was also answered in favour of the petitioners in the said case.

6. The learned counsel representing the petitioners has also relied upon the judgment passed in **State of Punjab Vs. Jagjit Singh, 2017 (1) SCC 148** to contend that the petitioners are entitled to minimum of the pay scale.

7. In the present case, while contesting the writ petitions it has been projected by the State as well as the IMC that the availability of the work of instructors who have been appointed depends upon the demand and supply of study/training in a particular trade. It has been submitted that contractual appointments are made for specified periods based on the demand for a particular duration. As there is no regularity of work, it is contended that regular appointments cannot be made.

8. Sh. Ranjit Singh Kalra, the learned counsel representing the petitioners in CWP-12046-2019 submits that the Court should lift the veil and declare the petitioners to be the government servants, and hence, entitled

to the regular pay-scale, regularization and other service benefits. Sh. H.C. Arora, the learned counsel representing the petitioners in as many as six writ petitions while filing the written arguments contends that the instructors are entitled to be paid minimum salary of Rs.14,000/- per month as per the memorandum of agreement, which shall be increased by at least 5% per year. He further relies upon the judgment passed in *Narendra Kumar Tiwari and others Vs. State of Jharkhand and others 2018 (2) SCC (L&S) 472.*

Sh. Peeush Gagneja, the learned counsel representing the clerks-Class III employees has also filed synopsis contending that the State of Punjab is obligated to create an equal number of regular posts and to fill them in accordance with law. It may be noted here that with regard to the various regular posts in the ITIs, the State of Punjab has contended that the regular appointments are sought to be made, however, on account of the interim orders during the pendency of the writ petitions, the steps to make appointments on regular basis have been kept in abeyance.

9. After having considered the arguments of the learned counsel representing the parties, this Court is of the view that the petitioners are not entitled to any relief for the following reasons:-

- i) The petitioners are not the government employees, they have been appointed at a local level by the IMC and hence they have to abide by the aforesaid terms and conditions. They are not entitled to protection available to the Public Servants under Article 311 of the Constitution of India.
- ii) It is the stand of the State that the engagement of the instructors depends upon the availability of the work during the

particular intermediate durations, hence, in absence of the regular availability of the work, no direction as prayed for can be issued to them.

iii) The services of the petitioners have been engaged by the IMC for a particular duration of time only. They were neither appointed as the government servants nor they were engaged against any regular civil post.

10. This Court has also carefully read the judgment passed in the **Narender Kumar Tiwari's case (supra)**. In the aforesaid case, the Supreme Court examined the appeal against the judgment passed by the Division Bench of the High Court of Jharkhand related to regularization of the daily wage or contract workers hired on the different posts in view of provisions of the 'Jharkhand Sarkar ke Adhinasth Aniyamit Rup Se Niyukt Ewam Karyarat Karmiyo Ki Sewa Niyamitikaran Niyamawali, 2015'. In the aforesaid case, High Court dismissed the petition, whereas, the Supreme Court directed the State to take a decision within a period of four months regarding the regularization of the status of the appellants before the Supreme Court. The aforementioned judgment with the utmost respect pertains to the daily wage contract workers who were engaged by the State. Therefore, the judgment is not applicable in the present case.

11. With respect to the argument of Sh. Ranjit Singh Kalra, Advocate, that the Court should lift the veil and declare the petitioners to be the government employees, it may be noted that the concept of lifting of veil cannot be invoked in the present case, particularly when, the petitioners have been employed under the specific contract created by the IMC. The

petitioners do not allege that the State has used IMC as a disguise to hide certain material facts. The memorandum of agreement has been annexed with the lead case as Annexure P-1. The terms of the contract are evident. The petitioners are not party to the aforesaid contract. Moreover, for the enforcement of a contract, filing of the writ petition is not the proper remedy.

12. The next argument of Sh. H.C. Arora, Advocate has already been discussed comprehensively, hence, it needs no further elaboration.

13. As regards the argument of Sh. Peeush Gagneja, Advocate, it may be noted that the judgment passed by the Supreme Court in **Jagjit Singh's case (supra)** has been explained and distinguished in a subsequent judgment passed by the Supreme Court in **State of Bihar Vs. Bihar Secondary Teachers Struggle Committee, Munger, (2019) 18 SCC 301**, while relying upon the judgment passed by the Seven Judge Bench in **Zabar Singh and others Vs. State of Haryana and others, 1972 (2) SCC 275**.

14. The judgment passed in **Ms. Menka's case (supra)** is not applicable to the specific facts of the case. In that case, it was not the contention of the State that regular work is not available. The petitioners in the aforesaid writ petition were working as the Assistant Professors/Extension Lecturers. Hence, this judgment also does not support the case of the petitioners.

15. The issue of whether the writ petitions are maintainable in the context of IMC is left undecided.

16. With these observations, the writ petitions are dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

June 01st, 2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Sr. No.	Case No.	Petitioners	Respondents
1.	CWP-24066-2018	GOVERNMENT ITIs CONTRACT EMPLOYEES UNION PUNJAB AND ORS	STATE OF PUNJAB AND ORS
2.	CWP-23476-2018	PAWAN KUMAR AND ORS	STATE OF PUNJAB AND ORS
3.	CWP-12046-2019	MANDEEP KAUR	STATE OF PUNJAB AND ORS
4.	CWP-10599-2016 (O&M)	HARDIP SINGH AND ORS	STATE OF PUNJAB AND ANR
5.	CWP-23412-2019	GURWINDER SINGH	STATE OF PUNJAB AND ORS
6.	CWP-31852-2019	SANJEEV AGNIHOTRI	STATE OF PUNJAB AND ORS
7.	CWP-36091-2019	NAVNEET SINGH AND OTHERS	STATE OF PUNJAB AND ORS
8.	CWP-40362-2018	GOVT. ITIs CONTRACT EMPLOYEES UNION, PUNJAB AND OTHERS	STATE OF PUNJAB AND ORS
9.	CWP-10653-2019	GOVERNMENT ITIs CONTRACT EMPLOYEES UNION, PUNJAB AND OTHERS	STATE OF PUNJAB AND ORS
10.	CWP-36860-2019 (O&M)	GOVERNMENT ITIs CONTRACT EMPLOYEES UNION, PUNJAB AND OTHERS	STATE OF PUNJAB AND ORS
11.	CWP-19389-2020 (O&M)	GOVERNMENT ITIs CONTRACT EMPLOYEES UNION PUNJAB AND OTHERS	STATE OF PUNJAB AND ORS
12.	CWP-26574-2022 (O&M)	GOVT. ITIs CONTRACT EMPLOYEES UNION,	STATE OF PUNJAB AND ORS

		PUNJAB AND ORS	
13.	CWP-1299-2021	SARABJIT SINGH JOSHI	STATE OF PUNJAB AND ORS
14.	CWP-7813-2023	SUSHIL JAGOTA AND ORS	STATE OF PUNJAB AND ORS
15.	CWP-27185-2022	SURBHI SHARMA	STATE OF PUNJAB AND ORS

June 01st, 2023

(ANIL KSHETARPAL)
JUDGE

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