Sr. No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

SWP No. 652/2019
c/w
SWP No. 659/2019

Pardeep Kumar S/0 Mr. Jai Krishan
R/0 VillageBaryal, Near Air Force Station, Udhampur,

....Petitioner/Appellant(s)

Through: Mr. D. S. Chauhan, Advocate

v/s

1.Union of India through its Secretary, Ministry of Defence, New Delhi.

2. Chief of Army Staff, South Block, New Delhi.

3. Chairman, School Administration & Managing Committee, Amy Public School, Udhampur.

4. Principal, Army Public School, Udhampur.

....Respondent(s)

Through:- Mr. Vikas Sharma, Sr.Panel Counsel

CORAM:
HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

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1. The Petitioner has filed this writ petition under Article 226 of the Indian Constitution seeking the following relief:

(A) WRIT OF CERTIORARI quashing the Notification dated January 11, 2018, wherein, the applications were invited for the selection of
Contractual (Teaching / Non-Teaching &Administrative Staff) for Army Public School, Udhampur, issued by the Principal Army Public School, Udhampur;

(B) WRIT OF PROHIBITION restraining the Respondents from replacing / substituting the Writ Petitioner by another set of 'contractual appointee' pursuant to the Notification dated

January 11, 2018,wherein, the applications were invited for the selection of Contractual (Teaching / Non Teaching &Administrative Staff) for Army Public School, Udhampur, issued by the Principal Army Public School, Udhampur, till post held by the Writ Petitioner on 'contractual basis' is filled up by thecompetent authority i.e., the School Administration &Managing Committee, Army Public School, Udhampur;

(C) WRIT OF MANDAMUS directing and commanding the Respondents to allow the Writ Petitioner to continue and work as Chowkidar on' contractual basis' in Army Public School, Udhampur, till the post held by the Writ Petitioner is filled up by the competent authority i.e the School Administration& Managing Committee, Army Public School, Udhampur on regular/substantive basis;"

2. The petitioner claims to have been engaged as Chowkidar in Army Public School, Udhampur, on a contractual basis pursuant to a proper selection process and a valid appointment order passed by the competent authority. The petitioner contends that the respondents' action to replace him through fresh contractual appointments pursuant to the Notification dated 11th January 2018 is arbitrary, irrational, unjust, oppressive, and unconscionable.

3. The aforesaid reliefs are being claimed by the petitioner on the following grounds:-

(i) That the engagement / appointment of the Writ Petitioner as Chowkidar in Army Public School, Udhampur, on 'contractualbasis' as a cadre can thus be attributed to multiple reasons;(a) To ensure availability of adequate Chowkidars in the Army Public School, Udhampur, to pursue the goal of universalization of Education; (b) To control fiscal deficits faced by the Army Public School, Udhampur, by employing Chowkidars on fixed / consolidated salaries; the Writ Petitioner submits that when he was appointed / engaged as Chowkidar in the Army Public School, Udhampur, on 'contractual basis' the Advertisement Notification for the academic Session 2015-2016 was issued, whereby, applications were invitedfor appointment / engagement of Chowkidars in the Army Public School, Udhampur, on consolidated salary. This was done on basis of notification and after evaluating merit and suitability of each and every competing candidate, a merit

list was drawn and Writ Petitioner came to be engaged as Chowkidar in the Army Public School, Udhampur, on 'contractual basis. The Writ Petitioner is / was recruited and selected on contractual basis 'on merit through fair and open process set out in the Recruitment, Selection and Appointment Procedure and in the context of an overall workforce plan. The principles underlining the recruitment process are fairness, creditability, equal employment opportunity, merit and optimizing the career prospects for currently employed staff., Public School, Udhampur;

(ii) That Article 14 of Constitution of India is a command of the Constitution to the State as a matter of public policy with a view to implement its object of ensuring equality of status and opportunity which every welfare State is by its Constitution expected to do. Article 14 of Constitution of India sets out an attitude of mind and away of life rather than a precise Rule of Law;

(iii) That since the writ petitioner has been working continuously and uninterruptedly as Chowkidar in the Army Public School, Udhampur, on 'contractual basis' pursuant to proper and valid appointment order, passed by the Competent Authority, as such, the action of the Respondents in replacing / substituting the services of the Writ Petitioner as Chowkidar in the Army Public School, Udhampur, on 'contractual basis' against a clear and available vacancy, by another set of contractual appointees pursuant to the Notification dated January 11, 2018, is not only arbitrary, irrational, unjust, oppressive and unconscionable;

(iv) That the respondents cannot be permitted to replace / substitute the services of the writ petitioner as Chowkidar in the Army Public School, Udhampur, on 'contractual against a clear and available vacancy, by another set of contractual appointees pursuant to the and deprive the writ petitioner of right to continuance and working on the post held by him on 'contractual basis' in the academic arrangement till regular selection / recruitment is made by the competent authority i.e Jammu & Kashmir Services Selection Recruitment Board;

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1. In the instant case, the Petitioner-Ex.Hav.Sukhdev Singh claims to be appointed/engaged as Chowkidar in Army Public School, Udhampur, against a clear and available vacancy, by the competent authority, after undergoing the process of selection and has been working as Chowkidar in Army Public School, Udhampur, on 'contractual basis'.

2. The short grievance projected by the petitioner is that he has been appointed/engaged on contractual basis by a proper and duly constituted Selection Committee, as such, he cannot be replaced by resorting to engagement/employment of another appointee on fresh contractual arrangement.

3. The respondents have opposed the petition, raising a preliminary objection that Army Public School, Udhampur, is run by the Army Welfare Education Society, which is not an instrumentality of the State under Article 12 of the Constitution of India. Therefore, they contend that the writ petition under Article 226 is not maintainable.

4. It is stated that the petitioners' contractual engagement was for a fixed tenure of three years effective from 8th April 2016. The terms of appointment and contract explicitly provide that the services stand terminated on expiry of the contract period on 8th April 2019 without the need for any further order. Hence, the petitioners cannot claim continuation in service beyond the contract period.

5. Heard learned counsel for the parties and perused the material on record.

6. The primary issue that arises for consideration is whether the petitioner can maintain a writ petition under Article 226 of the Constitution of India against the respondents, who are private entities running an educational

institution, for enforcement of alleged contractual rights of employment.

7. The Hon'ble Supreme Court while dealing with such a matter in case ***Army welfare Education Society, New Delhi vs. Sunil Kumar Sharma and others***, 2024 SCC OnLine SC 1683, held the High Court committed a grave error in treating the appellant society as "State" under Article 12 of the Constitution. While the appellant society's school performs the public function of imparting education, the employment relationship between the school and the respondents is purely contractual and private in nature. Any alleged breach of such a private employment contract does not involve a public law element. In Para 42 the Hon'ble Supreme Court observed as under:-

> "42In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the Civil Appeals @ SLP (C) Nos. 3138-3141/2021 & 3133-3137/2021 High Court committed an egregious error in entertaining the writ petition filed by the respondents herein holding that the appellant society is a "State" within Article 12 of the Constitution. Undoubtedly, the school run by the Appellant Society imparts education. Imparting education involves public duty and therefore public law element could also be said to be involved. However, the relationship between the respondents herein and the appellant society is that of an employee and a private employer arising out of a private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element. The school cannot be said to be discharging any public duty in connection with the employment of the respondents."

8. The Hon'ble Supreme Court in case titled ***DILEEP KUMAR PANDEY v. UNION OF INDIA***, 2025 INSC 749 (May 21, 2025) in para 13 and 14 head as under:-

> "13. The Court in St. Mary's Educational Society (2022 SCC ONLINE SC 1091) held that an application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise, and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.
>
> Further, it has been held that even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article226 of the Constitution for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as it sintegral part cannot be rectified through a writ petition under Article226 of the Constitution.
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> 14. St. Mary's Educational Society (supra) further holds that even if it be perceived that imparting education by private unaided schools is a public duty within the expanded expression of the term, an employee/non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether the person is employed by the school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed as an inseparable part of the obligation to impart education."

9. The Supreme Court while relying upon St. Mary's Education Society's case held that though the Society was imparting education, which involves public duty, the

relationship between the respondents and the Army 'Welfare Education Society was that of an employee and private employer arising out of a private contract. Therefore, a breach of contract does not touch any public law element, and the school cannot be said to be discharging any public duty in connection with the employment of the teachers

10. In the present case, the petitioners' engagement was contractual with clear terms providing for automatic termination on expiry of the tenure. The petitioners cannot claim right to continue beyond the contractual period. The institution is managed by a private society and does not discharge any public law function in the context of employment. Hence, the present petitions are not maintainable under Article 226 of the Constitution.

11. In view of the above, both the writ petitions are devoid of merit and are, accordingly, **dismissed**.

(VINOD CHATTERJI KOUL)
JUDGE

JAMMU
BIR
28.08.2025