



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

CWP-20965-2020

Date of decision: 12.11.2025

Shakeela and another

....Petitioners

Versus

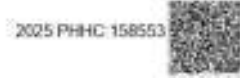
State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Imran Farooqi, Advocate
for the petitioners.Mr. Sandeep Punchhi, Advocate
for respondents No.2 & 3.**HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of *certiorari* for quashing the Final List of appointments dated 01.01.2020 (Annexure P-5) prepared by respondent No.3 whereby respondents No.5 and 6 were selected against vacant post of S.ST teacher as well as waiting list dated 29.11.2019 (Annexure P-4).

2. Briefly, the facts are that the respondent-Punjab Waqf Board issued an advertisement dated 29.08.2019 inviting applications for various posts of teachers and other staff for schools under its management. Petitioner No.1 was working as a PTA teacher in Islamia Senior Secondary School, Malerkotla since 01.09.2016 while petitioner No.2 was working there as an S.ST Engage Teached since 22.05.2017, when they applied to the posts of teachers for Punjabi and S.ST pursuant to the advertisement (supra). The petitioners were invited for demonstration-cum-interview subsequent to which,



they were placed in the waiting list. However, they were not invited to join service in spite of availability of vacant posts.

3. Learned counsel for the petitioners contends that the advertisement(supra) provided for 63 posts of Trained Graduate Teachers (TGTs) out of which 07 pertained to S.ST. In the waiting list of 24 candidates, the petitioner No.1 is placed at serial No.24 and petitioner No.2 at serial No.23, respectively. Out of the waiting list, 08 candidates were called for joining. However, those at serial No. 1, 6 and 7 refused to join resulting in 02 posts remaining vacant. Against the said vacant posts, candidates at serial No.9 to 20 were called for joining, out of which only candidate at serial No.17 joined. Despite the fact that 01 post still remained vacant, the respondent- Waqf Board did not invite any remaining candidates from the waiting list to join. Learned counsel further submits that the advertisement (supra) states that the candidate ought to be between the age of 18 and 37 as on 01.07.2019 to be eligible. However, respondent No.5, who was placed at serial No.2 in the final list for S.ST, was 39 years old on 01.07.2019. Even in the preliminary list she has been declared ineligible for not meeting the age criterion. Further, respondent No.6, who was placed at serial No.8, has also been appointed as a TGT for S.ST in spite of being overage. As such, appointment of both respondents No.5 and 6 is erroneous. Lastly, clause d of the advertisement(supra) states that the waiting list, issued on 29.11.2019, would be valid for a period of one year. However, the same is prayed to be extended in view of the lockdown ordered in view of the COVID-19 pandemic.

4. *Per contra*, learned counsel for the respondent- Waqf Board submits that the petitioners were at the end of the waiting list i.e. serial No.23



and 24. While it is settled law that candidates in the waiting list have a right to be considered for appointment in the event of a post falling vacant during the validity of the list but the same is not a vested right. Furthermore, the validity of the waiting list expired on 29.12.2020. The Waqf Board also published a list of vacancies subsequently and invited applications, however, instead of applying to the same, the petitioners decided to hinge their fate on the present writ petition. The entire selection process in furtherance of advertisement (supra) has been concluded long back and the selected candidates, who ranked higher than the petitioners, are serving efficiently.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that before embarking upon a decision on merits of the case, the issue of maintainability of the present writ petition needs consideration. The advertisement(supra) was issued by the respondent-Waqf Board for recruitment of employees at various posts for schools directly being managed by the Waqf Board itself. As such, it becomes pertinent to assess if the schools run by the Waqf Board fall under the purview of Article 12 of the Constitution of India and thereby amenable to writ jurisdiction under Article 226.

5.1. A two-Judge bench of the Hon'ble Supreme Court in ***ST. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others*** opined that while a writ petition under Article 226 of the Constitution is maintainable against an individual or a body performing public functions, it is also pertinent that the specific act challenged by means of the writ petition has a direct nexus with discharge of the said public duty. It was further observed that unless the employment is governed by statutory rules, the relationship



between a private unaided school and its employees cannot be deemed to have a public nature. Speaking through Justice J.B. Pardiwala, the following was opined:

“68. We may sum up our final conclusions as under:-

(a) **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 the 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.

(b) **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 Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(c) It must be consequently held that **while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions.** An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.



(d) Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a nonteaching 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 "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and nonteaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of nonteaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

*(e) From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. **In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.***

(emphasis added)

5.2. Subsequently, a two-Judge bench of the Hon'ble Supreme Court in ***Army Welfare Education Society New Delhi vs. Sunil Kumar Sharma and others 2024 SCC Online 1683*** further illuminated that the relationship between a private educational institution and its employees possesses a contractual nature, lacking a public law element. As such, issues pertaining to service would not be amenable to writ jurisdiction under Article 226 of the Constitution of India. Speaking through Justice J.B. Pardiwala, the following was held:

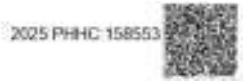
“42. In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the High Court committed an egregious error in entertaining the writ petition filed by the respondents herein holding that the appellant society is a “State” within Article 12 of the 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.”*

(emphasis added)

6. The petitioners herein were contractual employees, teaching at a school managed by the Waqf Board. Their grievance pertains to the procedure adopted by the Board in conducting the recruitment process. Indubitably, the Punjab Waqf Board is a creation of a statute i.e. the Waqf Act, 1955, however, the matter at hand pertains to recruitment of staff to the schools managed by it. In imparting education, the school might be performing a public function but in order to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, the specific action challenged must also be shown to have a direct nexus with the discharge of public duty. A perusal of the advertisement(supra) reflects that the service conditions of the selected candidates would be governed by the policies approved by the Waqf Board vide its resolution dated 21.07.2019. Clearly, the schools are independently and entirely managed by the Board, in terms of the policy it deems fit to adopt. Notably, the employment in the schools managed by the Waqf Board is not regulated by any statutory rules which further reinforces that the institutions do not face any interference or control from the Government. Thus, the advertisement(supra) and the process adopted in furtherance of it by the respondent-Waqf Board does not create any vested rights in the candidates as the advertisement is essentially in the nature of invitation to an offer, looking to create a private contractual relationship.



7. In view of the discussion above, the present petition is dismissed as it is not maintainable before this Court under Article 226 of the Constitution of India.

8. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

12.11.2025
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No