

CWP-9061-2026 AND CWP-9240-2026

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

109 (02 cases)

Date of Decision: 06.04.2026

1. CWP-9061-2026

Ishank Kaushik

.....Petitioner

VERSUS

Indian Red Cross Society And St. John Ambulance (India), Haryana
State Branch And Anr.

..Respondents

2. CWP-9240-2026

Sanjeev Kumar @ Sanjeev Dhiman

.....Petitioner

VERSUS

Indian Red Cross Society And St. John Ambulance (India), Haryana
State Branch And Anr.

..Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present:- Mr. Anil Mehta, Advocate,
Ms. Sukriti Kaur, Advocate,
Mr. Mayank Sharma, Advocate and
Mr. Joydeep Garg, Advocate
for the petitioner in both the cases.

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**HARPREET SINGH BRAR, J. (Oral)**

1. This common judgment shall dispose of both the aforementioned petitions. However, for the sake of brevity, the facts are taken from CWP-9061-2026.

2. This is a Civil Writ Petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for setting aside the impugned transfer order dated 17.03.2026 (Annexure P-8), whereby the petitioner has been transferred from District Red Cross Branch, Faridabad to District Red Cross Branch, Ambala with additional charge of District Panchkula, as well as the relieving order dated 19.03.2026 (Annexure P-10). Additionally or in the alternative, a prayer is made for issuance of a writ in the nature of *mandamus* directing the respondents to allow the petitioner to continue at his present place of posting i.e. Faridabad or at any nearby station commensurate with his cadre and service conditions. Further, a prayer is made for issuance of a writ in the nature of *mandamus* directing the respondents to consider and decide the representations dated 23.02.2026 and 14.03.2026 (Annexure P-7 colly).

CONTENTIONS

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was appointed as District Training Officer (DTO) on 14.06.2017

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by the Indian Red Cross Society and St. John Ambulance (India), Haryana State Branch, at District Branch, Faridabad. Since his appointment, the petitioner has maintained an unblemished service record. However, the petitioner has been subjected to the repeated transfers within a short span of time, as is evident from transfer orders dated 15.11.2021 (Annexure P-2), 05.01.2022 (Annexure P-3), 23.03.2023 (Annexure P-4), 07.03.2024, (Annexure P-5) and 10.02.2025 (Annexure P-6), reflecting arbitrariness and lack of administrative consistency.

4. Aggrieved by the same, the petitioner submitted multiple representations (Annexure P-7 colly) highlighting the absence of administrative exigency for such transfers and the serious personal hardships caused by it. However, without considering the same, the respondent issued the impugned transfer order (Annexure P-8) and relieved the petitioner from his charge in District Jhajjar Branch vide letter dated 19.03.2026 (Annexure P-10), in undue haste. As a matter of fact, as per the Rules of the Indian Red Cross Society, the post held by the petitioner is a district cadre post and therefore, he cannot be transferred beyond the district without his consent.

5. Learned counsel for the petitioner relies upon the judgments rendered by respective Constitution Benches of the Hon'ble Supreme Court in *Ajay Hasia vs. Khalid Majib Sehravardi (1981) 1 SCC 722* and *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2022) 5 SCC 111* to

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contend that the respondent-Indian Red Cross Society is amenable to writ jurisdiction as per the criteria as culled out by the Hon'ble Apex Court. Not only does the respondent-Society serve functions of public welfare but it also has the Worthy Governor of the State of Haryana at the helm of the affairs as the Society's President. Further still, the relevant Rules have been framed under Section 5 of the Indian Red Cross Society Act, 1920, and as such, this Court is fully competent to intervene in the frequent transfers as the petitioner under its writ jurisdiction. The petitioner has been subjected to undue hardships without there being any administrative exigency. Moreover, the petitioner has been subjected to hostile discrimination whereas identical circumstance employees remain posted in the same district during the entirety of their tenure, without ever having been transferred. As such, the conduct of the respondents is ripe with arbitrariness and *mala fide*.

6. Notion of motion.

7. Mr. Shireesh Gupta, Advocate has put in appearance, through hybrid mode, on behalf of respondents No.1 and 2 in CWP-9061-2026 and on behalf of respondent No.1 in CWP-9240-2026 and has filed separate Vakalatnama(s), which are taken on record.

8. *Per contra*, learned counsel for the respondent-Society submits that the President of the respondent-Society is fully empowered to transfer any employee against any vacant post on administrative grounds within the

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State of Haryana under the Service Rules notified on 27.02.2017 (Annexure P-10A). Be that as it may, Service Rules notified on 27.02.2017 (Annexure P-10A) are meant for internal management of the respondent-Society and are not statutory in nature. Lastly, it is contended that transfer is a normal incident of service and thus, the scope of interference by this Court is very narrow.

OBSERVATIONS AND ANALYSIS

9. Having heard learned counsel for the parties it transpires that the petitioner is an employee of a District Branch of the respondent-Indian Red Cross Society, State Branch Haryana. Aggrieved by the frequent transfers, the petitioner has filed the present writ petition before this Court. Before delving further into this matter, it is pertinent that jurisdiction is established. In order for this Court to invoke its writ jurisdiction under Article 226 of the Constitution, it must be established that the Rules governing the service conditions of the petitioner are statutory in nature. Notably, the Section 5 of the Indian Red Cross Society, 1920 bestows rule-making powers, exercising which, the Managing Committee of the Indian Red Cross Society framed Indian Red Cross Society Branch Committee Rules, 2017, as notified on 15.12.2017. These rules, undoubtedly, are statutory in nature but do not provide for service conditions of the employees of the District Branches. However, the Rules relied on by the

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petitioner i.e. Indian Red Cross Society/ St. John Ambulance (India), District Red Cross Branch Staff Rules, 2017 notified on 27.02.2017 have not been framed by exercising a statutory rule making power. Rather, the Rules dated 27.02.2017 have only been approved by the Governor, in his role as the President of the Indian Red Cross Society/ St. John Ambulance, State Branch Haryana. As such, it is clear that these rules were merely meant for internal administration and not to create an enforceable right.

10. Tritely, writ jurisdiction of this Court can only be invoked if the rules governing the service of the petitioner are statutory in nature. A Full Bench of this Court in ***Jasbir Singh vs. Commissioner (Appeals), Jalandhar Division and others, 2011(4) RCR (Civil) 1***, has held that the rules created by a society for its employees for internal management cannot be said to have acquired a statutory status. Speaking through Justice Satish Kumar Mittal, the following was opined:

"37. There are three categories of Service Rules which can be framed to regulate the conditions of service of the employees of the Society. In first category, a registered Society under the Societies Act can frame its own Service Rules to regulate the service conditions of its employees. The Rules may be binding between the Society and its employees. The second category of the Rules is those rules which are formulated under Section 85(2) (xxxviii), which empower the Government to frame Service Rules for any Co-operative Society or for class of societies with regard to qualifications for employees of a Society or class of society and the conditions of service subject to which persons may be employed by Societies. Such Rules so framed

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have the force of Statute and are deemed to be incorporated as a part of the Statute, whereas this principle does not apply to the first category of Rules framed by the Society because those Rules merely govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a Company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute. But the second category of Rules is the Statutory Rules and they have the force of the statute. Similarly, there is third category of Rules known as Common Cadre Rules. These rules could have been framed under Section 84-A of the Punjab Act which provide that an apex society may suo motu and when required to do so by the Registrar shall constitute a common cadre of all, or specified class of employee in the service of that society or in the service of the central societies which are members of the apex society or in the service of the primary societies which are members of the apex society. Sub-section (2) further provides that when a common cadre of employee is constituted under sub-section (1), the Registrar shall notwithstanding anything contained in any law for the time being in force or any agreement, settlement or award determine the pay scales and allowances admissible to such employees and Apex Society shall make rules for the regulation of recruitment and conditions of service of such employees with the prior approval of the Registrar. Therefore, the Common Cadre Rules framed under sub-section (2) by the Registrar are also having the statutory colour and stand on the same footing as that of the Statutory Rules."

(emphasis added)

11. A two-Judge bench of the Hon'ble Supreme Court in ***St. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others (2023) 4 SCC 498*** opined that while a writ petition under Article 226 of the Constitution is maintainable against an individual or a body

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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.

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(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*

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no public element and writ of mandamus cannot be issued as the action was essentially of a private character.

(emphasis added)

12. 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)

13. Additionally, a two-Judge bench of the Hon'ble Supreme Court in *South Indian Bank Ltd. and others vs. Naveen Mathew Philip and*

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another 2023 SCC OnLine SC 435 has categorically held that that the High Court cannot exercise its jurisdiction under Article 226 of the Constitution in order to provide relief by issuing a writ of *mandamus* where no legal right exists. Speaking through Justice M.M. Sundresh, the following was held:

*“16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. **A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power.** More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative...”*

14. In view of the discussion above, considering the lack of a public element with respect to the relationship between the petitioner and the respondent-Society as well as the nature of the dispute that has arisen between them, this Court is of the considered opinion that interference in the present case would not be justified.

15. Accordingly, both the present petitions are dismissed. However, the petitioner shall be at liberty to invoke alternate remedies in accordance with law.

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

17. Photocopy of this order be placed on the file of connected case.

(HARPREET SINGH BRAR)
JUDGE

06.04.2026

Parul Verma

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