



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

CWP-12169-2013

Date of decision: 22.05.2026

Harparveen Kaur

....Petitioner

Versus

Indian Red Cross Society and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Vijay K. Jindal, Advocate
for the petitioner.

Mr. Vikas Chatrath, Senior Advocate with
Ms. Preet Arora, Advocate and
Ms. Priya Kaushik, Advocate
for the respondent(s)-Indian Red Cross Society.

HARPREET SINGH BRAR, J. (ORAL)

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned action of respondent No.1 in not allowing the petitioner to join her parent department. Further, for issuance of a writ in the nature of *mandamus* holding that the petitioner is entitled to continue in the service of respondent No.1-Indian Red Cross Society District Mansa, as Clerk after her repatriation and further, she is entitled to all consequential reliefs.

2. The petitioner had approached the Division Bench of this Court vide *LPA No.3758 of 2025* titled as *Harparveen Kaur Vs. Indian Red Cross Society and another* decided on 02.04.2026, wherein, the judgment passed by this Court in CWP No.12169 of 2013 titled as *Harparveen Kaur Vs. Indian Red Cross Society, District Mansa and another* decided on 02.12.2025 has been set aside and the matter was remanded back to this Court for fresh consideration on merits.



3. Learned counsel for the petitioner contends that respondent No.1-Society invited applications for the post of Clerks vide advertisement (Annexure P-1). Pursuant thereto, the petitioner was engaged vide appointment order dated 24.06.1997 (Annexure P-2). However, soon after her appointment, the petitioner was relieved vide letter dated 03.07.1997 (Annexure P-3) and deputed to respondent-Bank vide order dated 07.07.1997 (Annexure P-4). Eventually, the petitioner was repatriated to the respondent-Society vide order dated 01.04.2013 (Annexure P-16) by the respondent-Bank. The said order has been passed in contravention of principles of natural justice as neither was the petitioner provided with an opportunity to be heard nor was a show cause notice ever served on her. Vide impugned letter dated 02.04.2013 (Annexure P-17), respondent No.1-Society stated that the petitioner ought to be retained with respondent No.2-Bank as she has been working there for about 16 years and because no vacant posts are available with the Society. Thus, the petitioner has been abandoned by both the respondents as neither is willing to take her back.

4. It was further submitted that the petitioner was appointed on a temporary basis, with a probation period of 02 years. After completion of the probation period, the petitioner is entitled to be treated as regular/confirmed employee of respondent-Society and to the regular pay scale for the post of Clerk from the date of her appointment. Further, it was respondent No.1-Society that had been extending the deputation period of the petitioner from time to time for the benefit of the respondent-Bank. Admittedly, the petitioner was appointed as a Clerk by respondent No.1-Society at the instance of respondent No.2-Bank and she had been discharging the duties of a Clerk with the latter. As such, she ought to be granted regular pay scale for the said post by



the respondent No.2-Bank on the principle of equal pay for equal work, as well as deputation allowance, cash allowance and computer allowance as paid to Clerks working as Cashiers in the respondent-Bank. The salary of the petitioner was paid by the respondent-Bank, however, the term 'deputationist' was added to the post of the petitioner to provide an excuse to the respondent-Bank to not regularize her in spite of the permanent nature of her work and continuous service. As a matter of fact, the Clerks who were appointed in the year 1997 or later by both respondent-Society and respondent-Bank, respectively have been continuing in service and have earned multiple promotions and financial benefits while the petitioner has been forced to serve at fixed salary, without any promotional avenues.

5. *Per contra*, learned counsel for the respondent- Society submits that the petitioner has concealed a material fact that she has earlier filed a writ petition which was dismissed as withdrawn, however, without obtaining any liberty from this Court, as such, the present petition is not maintainable. Secondly, no writ is maintainable regarding service disputes of the employees of the respondent-Society is of the nature of a private contractual dispute, as the service rules governing the same are not statutory in nature. Reliance in this regard is placed on the judgment rendered by this Court in ***CWP-9061 of 2026*** titled as ***Ishank Kaushik Vs. Indian Red Cross Society and St. John Ambulance India Haryana State Branch and another*** decided on 06.04.2026.

6. Having heard learned counsel for the parties and after perusal of the record with their able assistance, it transpires that the petitioner was initially appointed by the respondent No.1-Society, however, on the request of



respondent No.2-Bank vide letter dated 12.06.1997. It appears that soon after selection, the petitioner was sent to respondent No.2-Bank on deputation where she served for about 16 years before being repatriated to respondent No.1-Society.

7. However, learned counsel for the petitioner could not satisfy this Court on the aspect of maintenance of the present petition. The appointment letter (Annexure P-2) of the petitioner states that her service shall be governed by the rules adopted by the respondent-Society. However, no particular Rules have been cited to justify invocation of the writ jurisdiction of this Court. *In arguendo*, if the District Branch Rules, Mansa are taken into consideration, the writ still cannot be held to be maintainable as the same were not created in pursuance of any rule-making power bestowed by the parent statute i.e. Indian Red Cross Society Act, 1920. 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.

8. 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 v. 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 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)



9. A two-Judge bench of the Hon'ble Supreme Court in *St. Mary's Education Society and another v. Rajendra Prasad Bhargava an 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 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)

10. Subsequently, a two-Judge bench of the Hon'ble Supreme Court in ***Army Welfare Education Society New Delhi v. 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)



11. Additionally, a two-Judge bench of the Hon'ble Supreme Court in *South Indian Bank Ltd. and others v. Naveen Mathew Philip and another* **2023 SCC Online SC 435** has categorically held 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....”

12. Reliance in this regard can also be placed on the judgment rendered by this Court in *Vinay Katoch and others vs. Indian Red Cross Society and others* in **CWP-2733-2026**.

13. Accordingly, the present petition is dismissed being not maintainable.

(HARPREET SINGH BRAR)
JUDGE

22.05.2026
Neha

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