

2026:PHHC:084852



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

106

CWP-13747-2025

Date of Decision: **26.05.2026**

Anup Kumar

.....Petitioner

VERSUS

Indian Red Cross Society Haryana State Branch and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Piyush Aggarwal, Advocate for
for the petitioner.

Mr. Rajesh Gaur, Advocate and
Ms. Anjali Singh, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ, order or direction in the nature of *Certiorari* for setting aside the impugned retirement order/certificate dated 30.04.2025 (Annexure P-1), being illegal, arbitrary, passed without proper application of mind and contrary to the relevant rules and standing instructions issued by the State of Haryana. Further, a writ in the nature of *Mandamus* is sought directing the respondents to permit the petitioner to continue in service till attaining the age of 60 years in accordance with the applicable rules and instructions issued by the State of Haryana.

2026:PHHC:084852



1.1. Further, prayer has also been made for staying the operation of the impugned retirement certificate/order dated 30.04.2025 (Annexure P-1) during the pendency of the present writ petition in the interest of justice.

2. Learned counsel for the petitioner, *inter alia*, contends that petitioner has been made to retire on attaining the age of 58 years. He attained the age of 58 years on 31.12.2024, however, he was superannuated on 30.04.2025. As per his appointment letter and Service Rules applicable to him, his age of retirement is 60 years. However, the petitioner was subjected to discrimination as the respondents had retired similarly situated employees at the age of 60 years instead of 58. The respondents cannot apply Service Rules, if any, framed after appointment of the petitioner. In any case, at the time of his appointment, a different set of Rules were in force, however, he was appointed as per Haryana Government Service Rules.

3. *Per contra*, learned counsel for respondent No.1-Society submits that the petitioner was appointed as a Chowkidar on 21.08.1992 and that the service conditions of such employees are governed by the Service Rules of the Indian Red Cross Society. The said Service Rules were framed in the year 2017. He further submits that the Managing Committee of the District Red Cross Society, Rewari, in its meeting held on 20.01.2025, resolved to adopt the Service Rules of the Indian Red Cross Society/St. John Ambulance (India) and District Red Cross Societies, 2017, which were notified on 27.02.2017, and under the said Rules, the age of superannuation has been prescribed as 58 years. Relevant Rule 25 is reproduced hereunder:-

2026:PHHC:084852



“25. Superannuation and Retirement:-

An employee shall retire on attaining the age of 58 years. Provided that an employee may seek voluntary retirement before attaining the age of 58 years, after completing 20 years service, and giving 3 months clear notice of his/her intention to do so. In that case, he/she shall be entitled to benefits admissible to him/her under the Rules according to his/her length of service.

Provided that an employee, may, however, be permitted to withdraw his notice during the notice period with the approval of the competent authority,

The date of retirement of the employees except those whose date of birth falls on the 1 day of the month, will be the afternoon of the last day of the month, in which the date of their retirement falls instead of the actual date of their superannuation. In the case of those employees whose date of birth falls on the 1 day of the month, the date of retirement will be the afternoon of the last day of the month preceding the month in which their date of birth falls (However, in the case of Blind Master Trainers, the retirement age will be 60 years as per approval of Social Justice and Empowerment Department letter No. 22652/H-1/V.K./SJE/2013 dated 30.12.2013".

3.1. He further submitted that once the age of superannuation is stipulated as 58 years no vested right of the petitioner has been violated for which the petitioner can approach this Court in seeking extension. Further, this Court in **CWP-24341-2024** titled as **Baljit Kaur & Ors. vs. State of Haryana & Anr.**, has decided the issue regarding the decision of the employer in reducing the age of superannuation to 58 years from 60 years. A uniform rule has been implemented and as such, neither any vested right of the petitioner has been violated nor any prejudice has been caused to the petitioner.

2026:PHHC:084852



4. Having heard the submissions advanced by learned counsel for the parties and upon perusal of the record with their able assistance, it transpires that the adjudication of the present petition would involve settlement of disputes questions of facts. However, it is settled law that where disputed questions of facts are involved, a petition under Article 226 of the Constitution of India is not the proper remedy. In such cases, the High Court cannot transform itself into a court of first instance to re-appreciate evidence or decide intricate factual disputes. A two-Judge Bench of the Hon'ble Supreme Court in ***S.P.S. Rathore v. State of Haryana, (2005) 10 SCC 1***, speaking through Justice Y.K. Sabharwal, has held as follows:

"16. In Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. The Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties. In T.N. Electricity Board v. Sumathi [(2000) 4 SCC 543] it was held that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out

2026:PHHC:084852



exception to this general rule by observing that, it should not be understood that in every case of tortious liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution."

5. Further a two-Judge Bench of the Hon'ble Apex Court in ***Orissa Agro Industries Corporation Ltd. Vs. Bharati Industries 2005 (12) 725*** while speaking through Justice Arijit Pasayat, observed that as follows:

"9. A bare perusal of the High Court's judgment shows that there was clear non-application of mind. On one hand the High Court observed that the disputed questions cannot be gone into a writ petition. It was also noticed that essence of dispute was breach of contract. After coming to the above conclusions the High Court should have dismissed the writ petition. Surprisingly, the High Court proceeded to examine the case solely on the writ petitioner's assertion and on a very curious reasoning that though the appellant-Corporation claimed that the value of articles lifted was nearly rupees 14.90 lakhs no details were specifically given. From the counter-affidavit filed before the High Court it is crystal clear that relevant details disputing claim of the writ petitioner were given. Value of articles lifted by the writ petitioner is a disputed factual question. Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court

2026:PHHC:084852



should not entertain the writ petition. As noted above, the writ petition was primarily founded on allegation of breach of contract. Question whether the action of the opposite party in the writ petition amounted to breach of contractual obligation ultimately depends on facts and would require material evidence to be scrutinised and in such a case writ jurisdiction should not be exercised. (See : State of Bihar v. Jain Plastic & Chemicals Ltd., 2002(1) SCC 216).

6. *In a catena of cases this Court has held that where dispute revolves round questions of fact, the matter ought not be entertained under Article 226 of the Constitution. (See : Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. v. Sukamani Das (Smt.) and Anr., 1999(4) RCR (Civil) 174 (SC) : (1999(7) SCC 298)."*

6. A Two-Judge bench of the Hon'ble Supreme Court in **Chairman, Grid Corporation of Orissa Ltd. (Gridco) Vs. Smt. Sukamani Das 1999 (7) SCC 298**, while speaking through Justice G.T Nanavati made the following observations:

"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission

2026:PHHC:084852



line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995.

7. Reliance in this regard may be placed on the judgement rendered by the Hon'ble Apex Court in ***Shubhas Jain v. Rajeshwari Shivam, 2021 SCC Online SC 562, Union of India v. Puna Hinda, (2021) 10 SCC 690*** and of this Court in ***Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta and another, 1999(1) SCT 88 (SC) : JT 1998(8) SC 55.***

8. Further still, the Indian Red Cross Society and St. John Ambulance Association, Haryana State Branches (Headquarters) Staff Rules, 1986, have not been framed in pursuance of any rule-making power bestowed

2026:PHHC:084852



by the parent statute i.e. Indian Red Cross Society Act, 1920. Notably, the Section 5 of the Indian Red Cross Society Act, 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.

9. 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

2026:PHHC:084852



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)

10. 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

2026:PHHC:084852



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

2026:PHHC:084852



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

2026:PHHC:084852



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)

11. 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

2026:PHHC:084852



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)

12. 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 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

2026:PHHC:084852



the prescription of fees and use the constitutional remedy as an alternative....”

13. 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 and Ishank Kaushik vs. Indian Red Cross Society and St. John Amulance India Haryana State Branch and another, CWP-9061-2026*.

14. In view of the discussions above, the present writ petition is dismissed being not maintainable.

15. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

26.05.2026

parul verma

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