

(2014) 12 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 26027 of 2014

Asha Rani

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Constitution of India, 1950 — Article 12 226

Citation : (2015) 178 PLR 565

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : L.S. Sidhu, Advocate for the Appellant;

Final Decision : Disposed off

Judgement

Rajiv Narain Raina, J.

1. Heard the learned counsel for the petitioner at some length. The facts briefly stated are the petitioner was selected and appointed as a Lecturer in Mathematics on guest faculty, basis against a teaching post with salary defrayed from Parents Teachers Association [PTA] funds. The appointment came through an advertisement issued in the Punjabi Tribune in its issue dated 7th July, 2014. Earlier, she had taught in the same college, i.e., Government College, Phase - VI, SAS Nagar [Mohali] for three successive academic sessions. That engagement was through the aegis of the SIP Society for Information-Communication Technology Education Project with salary paid by the society and not by the Punjab Government. In the current session, she was engaged on contract for teaching work paid under the Self-Financing Scheme (SFS) supplemented by the PTA. As of a sudden her services were disengaged mid-session on 8th November, 2014 and she was substituted by a temporary teacher i.e. the 6th respondent. The 6th respondent had worked as Lecturer in Mathematics in the same college for many years till she forsook the assignment in which situation it was occupied by the petitioner in the present academic session through the aforesaid advertisement as a member of the guest faculty.

2. Aggrieved by the action of the 3rd and 4th respondent-PTA, the petitioner claimed that she was wrongly substituted by a temporary employee. She raised a dispute by serving a legal notice dated 13th November, 2014 on the Principal, Government College, Phase-VI, SAS Nagar [Mohali]. The 5th respondent replied to the legal notice and supported the action by differentiating between the status of the petitioner and the 6th respondent, one of guest faculty; the other employed on part time basis and paid from public funds and not through the Self Financing Scheme-cum-PTA scheme. Her grievance was not redressed locally.

3. The petitioner is before the Court claiming a certiorari to upset the appointment of the 6th respondent by illegal replacement on the theory that an ad hoc should not be substituted by an ad hoc employee, a temporary by a temporary and a stop-gap by a stop-gap arrangement and in this case, a guest faculty by temporary.

4. In reply to paragraph S of the legal notice, it is reasoned that the appointment of the 6th respondent was based on a decision of the State Government addressed to the College to appoint a part-time lecturer and since the 6th respondent had been leaching on a part-time basis since the year 2000 in the college itself before she left for some reason there was nothing wrong in the decision. 6th respondent's appointment as a part-time employee was by Government and paid by Government but the petitioner was not appointed by the Government but by the society and, therefore, the ruling of the High Court in CWP No. 7882 of 2004; Rajwinder Kaur v. State of Punjab etc. decided on 11th April, 2005 was inapplicable to her case when it spoke against improper replacement till regular recruitment is made in accordance with rules.

5. The stand of the 5th respondent in support of the course of action taken by replacing one for the other does not create a justiciable right in the petitioner to approach the writ court for directions to specifically enforce a contract for personal service based on the advertisement dated 7th July, 2014 [P-3] which invited candidates to a walk-in-interview to compete for selection to serve on teaching/non-teaching staff of the respondent college as guest faculty on contract. There is a reasonable classification between the status of the two competing interests which differentiates them into separate classes sufficient for court not to compel one or the other by a mandamus without presence of a public law element going by the contractual engagement in the terms advertised and accordingly functions discharged. The petitioner was not employed under the State. Though I cannot say for certain it was not in its affairs. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. It may sometimes be equally difficult to draw a line between functions of public authorities in the sphere of private contract of employment which does not create statutory rights or constitutional status in public service or a quasi public employment for a public purpose of teaching students Mathematics in Government classrooms making the status of the teacher wholly irrelevant in the perception of the taught who are concerned

only by the quality of the teaching. Truly speaking, the bane of education in Punjab schools and colleges lies in epic ad hocism. The disease is endemic, the infection spreading rapidly and festering the system with wounds. The question here is really one of judicial reach or overreach in judicial review. The writ court cannot rewrite the unfair contract much as it might want to and that is where its limitation lies with insufficient material or tangible data to test it on principles of public policy which itself is an unruly horse in a rodeo difficult to ride or subdue.

6. In *Binny Ltd. and Another Vs. V. Sadasivan and Others*, the Supreme Court had the following to say on judicial review and public law remedy involving private body in a matter of conditions of employment in a public limited company:

"it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties."

7. Thus, in the opinion of this Court the petitioner did not enter into a contract with the Government nor was engaged by it nor was paid directly from public funds for work performed on guest faculty and, therefore, her case can sadly be seen as only one of breach of contract since the engagement was for the academic session 2014-15 but which is not effectively over and she has been left in the lurch which was not a very fair and impartial thing to do and some element of arbitrariness cannot be ruled out in the dispensation.

8. However, a breach of contract of personal service can normally sound in damages and salary for the remaining session may become an actionable claim when contract is breached or cut short in the manner done. All that the petitioner can appear to claim by way of private action is to bring a suit for the balance salary for the academic session 2014-15 against the college authorities and for recovery of balance salary and for this, the writ jurisdiction is not the proper forum in search of a public law remedy in view of the law laid down by the Constitution Bench of the Supreme Court in *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, which is the magnum opus on the point that a contract of personal service cannot ordinarily be specifically enforced and a Court, normally, would not give a declaration that the contract subsists and that the employee even after having been removed from service, can be deemed to be in service against the will and consent of the employer.

9. Thus, in the present case, in view of the nature of the rights and liabilities of the parties involved which appear not to involve fundamental rights but only civil which lie in private law domain based on an employment contract of which breach is complained, the action of the respondent college which is severable

from its relationship with the State Government and not based on the latter's fiscal approval, then I think the premature termination may not be interdicted by the issuance of a writ. To command a specific performance of contract is not possible in writ jurisdiction which is a special remedy provided in article 226 of the Constitution of India to redress public wrongs based on public rights and public duty and breaches of it. Where damages are an adequate relief, specific performance of contractual obligations may be refused, relief being discretionary.

10. For these reasons, I am compelled to disallow the petition on principle of noninterference in a private contract of employment though entered in a Government college but would do so by granting the liberty as aforesaid to the petitioner to seek private law remedy for breach of contract and balance salary for the current session in a civil court as proper remedy, if advised, or before the college authorities itself including the respondent PTA citing the law on the subject. If such a request is made to college authorities I have no reason to believe that it will not be addressed and decided within reasonable time in accordance with law as the college is a Government institution, after all. The dismissal of this case is not in extinguishment of all the claimed rights. It means only that the writ petition was not found maintainable in the matter to make an effective order of protection or interim measures. Accordingly, the petition stands disposed of.