

---

**(2017) 05 SHI CK 0030**  
**In the High Court Of Himachal Pradesh**  
**Case No : 5830 of 2014**

Dharmender Kumar

APPELLANT

Vs

State of H.P. & others

RESPONDENT

---

**Date of Decision :** 03-05-2017

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-226>Article 226</a>, <a href=3998-12>Article 12</a>, <a href=3998-32>Article 32</a> - Power of High Courts to Issue certain writs - Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam - Remedies for enforcement of rights conferred by this Part

**Citation :** (2017) 05 SHI CK 0030

**Hon'ble Judges :** Justice Chander Bhusan Barowalia

**Bench :** Single Bench

**Advocate :** Mohan Sharma, B. Nandan Vashisht, Pushpinder Jaswal, Rajat Chauhan, Rita Goswami, Komal Chaudhary, Bhupinder Gupta, Neeraj Gupta

---

## Judgement

1. The present writ petition is maintained by the petitioner against the respondents praying therein for the following relief :- "(a) for issuance of an appropriate writ or direction to reinstate the services of the petitioner with all consequential benefits.

(b) for issuance of direction to regularize the services of the petitioner after the completion of 2 years of his probation period, i.e., 06.4.2011 onwards with all consequential benefits;

(c) to direct respondent No.2 to issue directions to respondents No.3 to 5 to follow the Rules and Regulations in its letter and spirit; and

(d) to pay the difference of salary to the petitioner from 13.2.2014 with interest @ 12% per annum till its realization;

2. The petitioner has submitted that respondents No.2 to 5 are registered Society/ Trust and performing the functions of public importance under the name and style of Dayanand Anglo Vedic College Trust and Management Society and

being governed and regulated by the Rules and Regulations framed by respondent No.2.

3. Further, it has been contended that the petitioner was appointed as a Music Teacher (PRT) on 6.4.2009 in DAV Senior Secondary School, Lakkar Bazar, Shimla, by a Selection Committee headed by the Chairman of DAV. It has been contended that the petitioner was appointed as a TGT and thereafter, he was allowed to teach the classes from 6th to 10+2 standard. Apart from that, the petitioner was assigned with the duty to teach the general knowledge (GK) and Dharam Shiksha from 6th to 8th Classes. It has further been submitted that the petitioner had worked from 6.4.2009 to 30.11.2013.

4. It has also been averred that the petitioner is well qualified and experienced person having the requisite qualification, i.e. Junior Diploma in Vocal, Senior Diploma in Vocal as well as two years Diploma in Harmonium and also completed Visharad/Prabhakar Degree in the year 2010 and thereafter completed the Sangeet Prabhakar from Paryag Sangeet Samiti, Allahabad, U.P.

5. It has been contended that the petitioner is rendering his services with sincerity and dedication. No complaint whatsoever regarding the work and conduct of the petitioner was received on behalf of the students or the teachers. The petitioner during these five years of his services ensured the participation of the students in State or National Level Music Competition and commendable job has been done by him for preparation of the competition, Youth Festival in the year 2009-2010, which was also commended in every sphere by all. It has also been averred that the petitioner himself composed and directed a Mantra "Nad", which is used to be sung in the morning assembly in the DAV School.

6. It has also been contended that the Central Board of Secondary Education (hereinafter to be referred as "CBSE") framed bye-laws for regulating the governance of the DAV Schools and work and conduct of the teachers as well. It has been contended that, in the bye-laws, it has specifically been provided that under what condition, the Managing Committee of the School can terminate the services of the Teachers and other staff members as well. Chapter VII talks about the Service Rules of the employees and Clause 27 deals with the probation period that every appointment of the employee is on probation for a period of one year, which the Management Committee can extend for a further period of one year and during the course of probation, as per the said clause, the Managing Committee is empowered to terminate the services of the employee without assigning any reason by giving one month's notice, in writing, or one month salary, including all allowances, which is also contrary to the principles of natural justice. It has been contended that as per Clause 28, if the work and conduct of the employee is found satisfactory during the probation period, he/she will be held eligible for the confirmation and the employee, shall be informed about his termination within three months of the completion of probation period. It has further been submitted that different yardsticks/parameters have been adopted by the School Management Committee, DAV Lakkar Bazar and some of

the persons were regularized even before the completion of probation period and some of the persons even have got completed five years, are yet to be regularized. It has been contended that the tactics being adopted by the School Management Committee is that they used to exploit the best period of petitioner's career in teaching with respondent No.5 and as and when they wish they used to terminate the services, just to accommodate their near and dear, as the petitioner has spent the peak period of his career with respondent No.5 and after his continuous service with respondent No.5 from 30.11.2013, conveyed the message to the petitioner not to come to the School without assigning any reason and orally terminated the services of the petitioner. It has further been submitted that the petitioner, thereafter, kept on visiting the School to know about the reasons for his termination from service. Thereafter, the petitioner submitted a detailed representation to respondents No.3 and 4, on 13.5.2014 and reminder thereof on 17.6.2014, but no heed has been paid by respondents No.3 and 4 for redressal of grievances of the petitioner.

7. It has also been submitted that respondent No.5 is violating the Rules and Regulations framed for functioning of the School itself and even the salary to the same category of the employee is being paid differently without following any proper procedure as per the will of respondent No.5 and the petitioner has been treated in the same manner with effect from 13.2.2012, as the petitioner was being paid the lesser salary to the same category of teacher, which is illegal, wrong, arbitrary, discriminatory, unjust as well as against the services of the petitioner, respondent No.5 has not made a glance over the past services rendered by the petitioner, which were remained commendable in every sphere. It has been submitted that the petitioner should have been regularized after the completion of two years of his probation period i.e. from 6.4.2011, which was not done by the respondents and the petitioner was convinced that his regularization is under process and the services would be regularized after completing all the codal formalities, but in spite of that the services of the petitioner were illegally terminated without assigning any reason and following the proper procedure, which is liable to be deprecated by the strict indulgence of this Court.

8. It has been contended that the State Government has issued the instructions to the private Institution established in Himachal Pradesh regarding functioning and the work and conduct of its employees from time to time, which are not being followed by respondent No.5 and respondent No.5 otherwise bound to follow the instructions.

9. In the reply filed by Respondent No.2, it has been submitted that the replying respondent is neither a necessary nor a proper party to the dispute between the petitioner and the other respondents, hence, the name of the replying respondent No.2 deserves to be scored off from the array of the respondents, as the disputes is mainly between the School Management Committee (respondent No.3 to 5) and the petitioner. It has been further submitted that the main function of the CBSE is to conduct the examinations and to grant affiliation to the

Schools.

10. Reply has also been filed by respondents No.3 to 5 jointly. In their reply, it has been submitted that the petitioner has suppressed true and material facts from the Court, which disentitles the petitioner to seek the reliefs sought for in the petition. It has also been submitted that the CBSE has wrongly been arrayed, as a party respondent, to the petition and that the respondents are not receiving any grant or financial aid from the Government nor the replying respondents are controlled and managed by the State Government and further the respondents being not the instrumentalities of the State of H.P is not amenable to the writ jurisdiction of this Hon'ble Court. It has also been submitted that the School in which the petitioner has rendered his services, is a private managed School and the petitioner has deliberately and in a mala fide manner made the State of H.P., as a party in order to maintain the petition before this Court. It has specifically been denied that the petitioner is entitled to invoke the extra ordinary writ jurisdiction of this Court. It has been submitted that the petitioner was appointed as Music Teacher in DAV Senior Secondary School, Lakkar Bazar, Shimla on 6.4.2009.

11. The respondents have further denied that the petitioner was appointed as a Music Teacher initially, then TGT and thereafter, he was permitted to teach Classes from 6th to 10+2 standard. It has been submitted that the petitioner was appointed on 6.4.2009, purely on temporary basis for one academic session, for which purpose the petitioner had applied and thereafter the petitioner had appeared for an interview on 20.3.2009, which period of employment came to be over on 24.12.2009. Thereafter, the petitioner was again given temporary appointment with the commencement of new Session on 16.2.2010, which period came to an end on 2.12.2010 and for this period interview was held on 11.12.2009. Thereafter, on completion of the academic session and with a purpose of filling up the post, the petitioner again applied for a temporary employment for which purpose the interview was conducted on 10.12.2010 and the petitioner was appointed and he joined on 14.2.2011, purely on temporary basis, which appointment came to an end on 23.12.2011. It has further been submitted that, on completion of academic session, fresh interviews were conducted on 18.12.2011, for which period, the petitioner was again interviewed and was appointed purely on temporary basis on 13.2.2012 and the employment period came to an end on 22.12.2012. Interviews were also again conducted by the Management on 03.12.2012 and the petitioner was again interviewed and joined purely on temporary basis on 11.2.2013 and such employment period came to an end on 30.11.2013. It has also been submitted that the appointment of the petitioner was coterminous with the end of each academic session and for each session the respondents had been issuing appointment letter for every period, which was temporary in nature and the terms and conditions, as narrated in the appointment letters were duly accepted by the petitioner himself. The petitioner is also guilty of suppressing the material facts from the Hon'ble Court. It has been submitted that the petitioner has rendered his services on temporary

basis, however, the petitioner has wrongly termed the period of service with the School to be of 5 years in continuation, which is stated to be incorrect. The replying respondents do not dispute various clauses of the bye-laws. It has been submitted that since no alleged right of the petitioner was violated, more particularly, when the petitioner himself chose not to apply and appear before the Interview Board, inspite of the fact that an intimation was sent to the petitioner, who chose to remain absent thus cannot be heard in portraying false facts in order to maintain false petition before this Court. It has been alleged that the allegations made in the petition are false, baseless and frivolous, as the petitioner was engaged for different period on temporary basis in an academic session. The procedure adopted for selection has also been adhered to in a transparent manner and there is no fault of the replying respondents.

12. Heard the learned counsel for the parties.

13. Learned counsel for the petitioner has argued that the action of the respondents in not appointing the petitioner as a regular Teacher and appointing him afresh every year in the academic session after the year 2009 up to the year 2014, i.e. for more than six years, is nothing, but exploitation of the petitioner. He has argued that as per the Policy of the respondents with regard to the selection and recruitment of staff, the respondents are bound by the Rules and Regulations and the appointment is to be made on temporary basis only for a limited period, which in no case exceeds three years, but the action of the respondents is highly arbitrary. The youth/ peak period of the petitioner is used by the respondents and by their action of asking him to appear each year for the interview even for more than six years, he has discharged the functions and duties of a Music Teacher to the best satisfaction of the respondents, but his non regularization is nothing, but the exploitation of a Teacher (petitioner).

14. On the other hand, Shri Bhupinder Gupta, Senior Advocate, learned counsel appearing for respondents No.3 to 5, alongwith Mr. Neeraj Gupta, Advocate, has vehemently argued that the respondents are not State under Article 12 of the Constitution of India and so, the present petition is not maintainable further the petitioner has no right in his favour. He has further argued that the petitioner though was appointed on temporary basis, but he cannot claim any right to be regularized with the respondents. He has further argued that the writ petition is not maintainable, as the petitioner was never appointed on regular basis, as claimed by the petitioner.

15. Smt. Rita Goswami, learned counsel appearing for respondent No.2 has argued that respondent No.2 is holding the examinations and so far as the petitioner is concerned, he has a cause only against respondents No.3 to 5 and the petitioner has raised no cause against respondent No.2.

16. The learned counsel appearing for respondents No.3 to 5 has further argued that the petitioner was initially appointed as a Music Teacher. He has also stated that the petitioner was appointed on 6.4.2009, purely on temporary basis, for

one academic session for which the petitioner has applied and his tenure came to be over by 24.12.2009 and then he again applied for the temporary employment and he was also appointed on 14.2.2011 and remained in service till 23.12.2011. Again, the petitioner was appointed on his application 13.2.2012 till 22.12.2012 and thereafter again he was appointed on 11.2.2013 till 30.11.2013, but at no point of time, the petitioner was appointed on regular post. The petitioner was appointed on temporary basis, though, he applied for 2-3 times and he was appointed on temporary basis only and he has no right in his favour. It has been further argued that respondents No.1 to 3 are not amenable to the writ petition of this Hon'ble Court and as per the agreement, which was signed between the petitioner and the respondents from time to time, the petitioner is bound by the agreement and no cause of action lies in his favour.

17. To appreciate the argument of the learned counsel for the parties, I have gone through the record in detail.

18. The Rules of the respondents from Administrative manual, which the petitioner has produced in the Court is required to be reproduced, as they are relevant for the adjudication of the present case.

19. Rule 9.17 of the Rules *ibid* says with regard to the temporary appointments, which reads as under:- "9.17 TEMPORARY APPOINTMENT:

To meet exigencies, temporary/ contractual appointments are made by the schools so that there may be no disturbance in the course of the academic session. Temporary appointments are made for both teaching and non-teaching staff members. From the point of view of DAV, Temporary appointments are of three types?(i) Temporary appointments up to 89 days, (ii) Contractual appointment for one academic session and (iii) Contractual appointment for more than one academic session but up to or less than three years. No contractual appointment can be extended beyond the expiry of contract period. Contractual appointments can be made only up to a maximum of three years. Temporary appointments up to 89 days may be got approved at Chairman/ Regional Director level; and may later be informed to the DAVCMC Office for record. Contractual appointments for one session or upto three years can be made only through the Adhoc Selection Committee. If an incumbent is later appointed on regular basis then at the time of his/ her retirement/resignation/ voluntary retirement, the period of temporary appointment is also considered towards the qualifying service for calculation of gratuity subject to the condition that there is no break in service between the period of temporary appointment and joining on probation basis. Only Casual Leaves, as admissible under the rules, are granted during the period of temporary/ contractual appointment. Temporary/ Contractual appointments may be made on a consolidated salary or on a pay-scale with allowances, as deemed fit by the Ad hoc Selection Committee. Budget Provision must be made in the respective session if the contractual appointments are to be made for more than 89 days.

20. From this, it is clear that the temporary appointment can be made up to 89 days or for one academic session, but no contractual appointment can be made for a period of more than 3 years. Admittedly, the petitioner has worked with the respondents for more than three academic sessions. Though, as per the respondents, he was appointed purely on temporary basis for each session.

21. The law on the subject with regard to each year appointment and brakes given to the temporary employee came for consideration of this Hon''ble High Court in a case titled Prem Chand and others versus State of H.P. and another, reported in 1988(1)Sim.L.C.1, this Court while dealing in the similar circumstances, has held as under: "7..... It is thus apparent that the employment of workmen in a casual or temporary capacity for years with the object of depriving them of the status and privileges of permanent workmen is an "unfair labour practice" entailing prosecution of the employer, that is, the head of the department, where no different authority is prescribed."

"9. For the foregoing reasons, it appears to be expedient in the interest of justice to direct the State Government to review the case and to place on the record of the case a fresh decision arrived at in accordance with law and in light of the observations made hereinabove on or before September 04,1986. Unless the decision is so recorded within the time aforementioned, the Court will proceed to decide the case in accordance with law. Meanwhile, however, the court directs that the practice of giving artificial or fictional breaks at the interval of 90 days or at any other regular interval(s) to the petitioners and persons similarly situate and, indeed, to all the daily wage employees in the Forest Department of the State Government, shall be forthwith discontinued and such breaks, if any, administered in the past shall be condoned. The petitioners will be paid the salary and allowances, if any, for all the days covered by such artificial or fictional breaks from the dates of their initial appointment and such payment shall be made within six weeks from today."

22. Similarly, the Hon''ble Apex Court in a case titled Rudra Kumar Sain versus Union of India and others, AIR 2000 Supreme Court 2808, has held as under:- "16. The three terms "ad hoc", "stop gap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to "fortuitous". In Black's Law dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous

event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stop-gap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

"18. In P. Ramanatha Aiyer's Law Lexicon (2nd Edition) the word "ad hoc" is described as "for particular purpose, Made, established, acting or concerned with a particular and or purpose". The meaning of word fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God."

23. In the present case, the appointment was not made for unforeseen cause, but was made actually for each academic session, which continued for more than three years and could not be made even as per the regulations of the respondents for more than three years, meaning thereby that the petitioner's appointment for more than three years cannot be termed to be temporary at all.

24. The arguments of the learned counsel for the respondent that the respondents are not State under Article 12 of the Constitution of India and that the petition is not maintainable is already settled by Hon'ble Supreme Court in a case titled Ramesh Ahluwalia versus State of Punjab and others, (2012) 12 Supreme Court Cases 331, the Hon'ble Supreme Court has held that in case private body is performing public functions, which are normally expected to be performed by the State Authorities, the private body/ authority the State under Article 12 of the Constitution of India. The Hon'ble Apex Court has further held that the writ is maintainable in the similar circumstances. The relevant extract is reproduced as under: "12. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jyanti Mahotsav Smarak Trust there can be no doubt that even a purely private amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing functions which are normally expected to be performed by the State authorities.

13. In the aforesaid case, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under :

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the

fundamental rights as well as nonfundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgment in Unni Krishnan and Zee Telefilms Ltd. brought to our notice by the learned counsel for the Appellant Mr. Parikh.

14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions, i.e. providing education to children in their institutions throughout India".

25. So, this Court finds that the writ petition is maintainable against respondents No.3 to 5, as they are discharging public functions, which are supposed to be discharged by the State and respondents No.3 to 5 falls under definition of State within Article 12 of the Constitution of India, as the petitioner was working with the respondents during the year 2009 till 2013. Hence, this Court finds that the services of the petitioner were required by the respondents during all these years and the respondents are required to follow their Regulations, but by making appointment each year (every academic session), the respondents are not only savings their money for the winter months, but are also asking the petitioner to work against their own Rules and Regulations, which provides that a temporary appointment cannot be allowed for more than three years.

26. The net result of the above discussion is that the action of the respondents in not appointing the petitioner on regular basis is arbitrary, capricious and against confines of legitimacy and requires to be set aside. Resultantly, the petition is allowed and the respondents are directed to allow the petitioner to work on the same and similar terms and conditions, under which he was earlier working with them. However, as the petitioner could not place before this Court any document suggesting that he was not working at any other place during the period under reference, so respondents are directed to allow the petitioner to work on same terms and conditions, he was working with them with all consequential benefits including seniority and regularization etc. etc. but without back wages.

27. Consequently, the present writ petition is allowed. All pending application(s), if any, shall also stand disposed of accordingly.