



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10162-2018

Balvinder Kaur

...Petitioner

Versus

The Secretary, Indian Red Cross Society Punjab State Branch,
Sector 16 Chandigarh and others

...Respondents

Reserved on: 23.03.2026

Pronounced on: 07.04.2026

Uploaded on: 07.04.2026

Whether only the operative part of the judgment is pronounced?

No

Whether full judgment is pronounced?

Yes

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mukesh Arora, Advocate
for the petitioner.

Mr. A.S. Shergill, Advocate
for the respondents.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing order dated 16.10.2015 (Annexure P-1) vide which the pay of the petitioner has been downgraded/reduced by refixing it w.e.f. 01.01.1996, order dated 01.07.2016 (Annexure P-2) whereby the pay of the petitioner for the post of Junior Assistant was retrospectively reduced, after her retirement. Further, for quashing of noting dated 28.02.2015 (Annexure P-3) vide which retiral benefits such as leave encashment and DCRG was wrongly calculated and paid



to the petitioner, without issuing any notice or providing an opportunity of hearing. It is further prayed that a writ of *mandamus* be issued, directing the respondents to refix the pay of the petitioner, grant the benefits of Assured Career Progression Scheme and sanction retiral benefits on correctly refixed pay.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as a Clerk on 12.01.1989 vide order dated 12.01.1989. She was granted the regular pay scale of Rs.950-1800 w.e.f. 01.04.1992, as per entry recorded in the Service book. The petitioner retired from service on 28.02.2015. Thereafter, the pay of the petitioner was reduced by refixing it vide impugned order dated 16.10.2015 (Annexure P-1), w.e.f. 01.04.1992. The petitioner had also exercised her option for being covered by the ACP Scheme, as instructed vide letter no.03.11.2006 (Annexure P-8) and thus was entitled to benefits of ACP on completion of 04, 09 and 14 years of service at the post of Clerk. Further, the option exercised by the petitioner was also accepted by the respondent-Society vide noting (Annexure P-4). As such, the respondents have erred in retrospectively downgrading the pay of the petitioner. Additionally, such refixation amounts to punishment and the respondent-Society ought to have issued a notice and provided an opportunity of personal hearing before implementing the same. Learned counsel further contended that the amount of gratuity is required to be calculated under Section 4 of the Payment of Gratuity Act, 1972, which works out to be Rs.6,78,530/-. However, the same has been wrongly calculated as Rs.3,61,330/- and disbursed to the petitioner. Further still, a recovery of Rs.18,993/- has been imposed on the petitioner based on wrong refixation of pay vide order dated 16.10.2015 (Annexure P-1) w.e.f. the



year 1996. Aggrieved by the same, the petitioner had moved a representation (Annexure P-12) and issued a legal notice dated 23.03.2018 (Annexure P-10) but to no avail.

3. *Per contra*, learned counsel for the respondents submitted that the petitioner was promoted to the post of Junior Assistant on 27.08.2013, as discernible from Annexure R-3. She retired from the said post on 28.02.2015 (Annexure R-4) as per the Constitution/Regulations of District Red Cross Society, Patiala. Notably, in the year 2013, the petitioner, being the dealing hand, managed to get pay scale in accordance with notification dated 15.12.2011 applicable w.e.f. 01.12.2011. Subsequently, the petitioner herself submitted various applications (Annexure R-5 (colly)) seeking re-fixation of her pay and release of retiral benefits, when it came to the notice of the respondents that her pay was fixed as per instructions that were not adopted by the Red Cross Society, Patiala. In fact, no other employee except for the petitioner was granted benefit of the said instructions. Accordingly, impugned order dated 16.10.2015 (Annexure P-1) was passed.

4. Further, it was contended that the petitioner had already opted for the Assured Career Progression Scheme, 1996, which provided for increments at 8-16-24-32 years of service. Since employees can only be governed by one ACP Scheme, the petitioner is not entitled to the benefits under the New ACP Scheme, 2006 which provided for the same at 4-9-14 years of service. Moreover, respondent- Red Cross Society, District Branch Patiala and its allied bodies are governed by their own set of rules and thus, the service conditions as applicable to the employees of the Government of Punjab are not *ipso facto* applicable to employees of the respondent-Society. Learned counsel places



reliance on the judgment rendered by this Court in *Sukhwant Kaur vs. District Red Cross Society, Moga and another 2015 SCC OnLine 9171* in this regard. The petitioner refixed her pay, at her own behest, from Rs.3132/- to Rs.3220/-, in accordance with a set of instructions that were never adopted by the respondents. Since the respondent-Society is struggling financially, this erroneous conduct has been correctly dealt with by refixing the pay of the petitioner, modifying the admissible retiral dues and initiating recovery of Rs.18,003/-, subsequently. Thus, the present writ petition deserves to be dismissed.

5. In rebuttal, learned counsel for the petitioner submitted that the petitioner was merely placed to the post of Junior Assistant and was never promoted to it. No resolution of the Executive Committee of the respondent-Society has been placed on record to prove that the petitioner was granted such promotion. Further, the petitioner had no role in granting the pay scale of Rs.103000-34800 +3600 grade pay, as the same was sanctioned by the competent authority, as also mentioned in Annexure R-3. Moreover, the gratuity and other retiral benefits are required to be calculated on the basis of last pay fixed, in terms of the formula provided in the Payment of Gratuity Act, 1972. Learned counsel further submitted that the New ACP Scheme, 2006 clarifies that those who have availed the Old ACP Scheme, 1996 can also avail benefits of the former by opting for it. In such a case, the pay is to be refixed retrospectively but arrears are to be paid from 03.11.2006 onwards. Lastly, nothing has been brought to the forefront to establish that the respondents are facing financial constraints.

6. Having heard learned counsel for the parties and after perusing the



record of the case with their able assistance, it transpires that the petitioner worked for the Red Cross Society, District Branch Patiala and retired from service on 28.02.2015. A perusal of retirement order dated 20.02.2015 (Annexure R-4) of the petitioner mentions the Red Cross Patiala Service Rules, 2008, which apparently governed the service of the petitioner. Before delving further into the matter, it must be noted that neither has learned counsel for the petitioner relied upon the Red Cross Patiala Service Rules, 2008, nor indicated any other statutory framework to justify invocation of the writ jurisdiction of this Court.

7. 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 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)

8. 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 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)

9. 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)

10. The respondent-Society is an independent entity with its own set of rules meant for internal regulation of the service of its staff. Admittedly, the respondent-Society often adopts certain rules and regulations issued by the Government of Punjab for its employees, after modifying them to suit the needs of the Society. However, mere adoption of some of these rules and regulations by the respondent-Society does not turn the employees of the respondent-Society into government servants, who are mechanically covered by all other notifications issued by the Government of Punjab as well. The petitioner has



claimed erroneous retrospective re-fixation of her pay, however, a perusal of the impugned order dated 16.10.2015 (Annexure P-1) clarifies that the government notifications dated 03.10.2011 and 15.12.2011 were never adopted by the Red Cross Society, District Branch Patiala. Therefore, the petitioner, being a retired employee of the respondent-Society, cannot claim benefits of the government notifications which have not been adopted by the respondent-Society, as the same only meant to create a vested right qua the same in the employees of the State government. Moreover, as discussed above, in absence of any statutory rules, the nature of relationship between the respondent-Society and its employees is akin to that of a private employer and a private employee as it does not involve any public law element.

11. Additionally, a two-Judge bench of the Hon'ble Supreme Court in ***South Indian Bank Ltd. and others vs. 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 the prescription of fees and use the constitutional remedy as an alternative...”*



12. 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, this Court is of the considered opinion that interference in the present case would not be justified. Accordingly, the present petition is dismissed.

13. However, the petitioner shall be at liberty to invoke alternate remedies, including approaching the Controlling Authority under the Payment of Gratuity Act, 1972 for seeking the payment and quantum of gratuity.

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

(HARPREET SINGH BRAR)
JUDGE

07.04.2026

Neha

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