



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-15154-2019 (O&M)

Date of Decision:- 08.07.2026

Avinash @ Kaley and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Mansi, Advocate for
Mr. B. K. Majoka Advocate
for the petitioners.

Mr. Suneel Ranga, DAG, Haryana.

NIDHI GUPTA, J.

Present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed by the petitioners for issuance of a Writ in the nature of mandamus directing the respondents to allow the petitioners to continue in service till joining of the regularly selected candidates against the sanctioned vacant posts, in view of the law laid down by this Court in Shamsheer Singh Vs. State of Haryana and Polu Ram Vs. State of Haryana and others and grant the petitioners the minimum of the regular pay scale from the date of their appointment, together with all consequential benefits, including arrears and interest, in accordance with the law laid down by this Court and the Hon'ble Supreme Court.



2. It is *inter alia* submitted by learned counsel for the petitioners that the 13 petitioners herein were engaged on posts of Sewerman, Plumber, Carpenter, Baildar on contract basis as they fulfilled the requisite qualification and eligibility for the said posts. Accordingly, the petitioners joined their duties on the said post. In para No.2 of the present writ petition, it is averred that ‘*details of the qualification and date of joining of the service by the petitioners is given below:*

<i>Sr. No.</i>	<i>Name</i>	<i>Post</i>	<i>Date of Joining</i>
1.	<i>Avinash @ Kaley</i>	<i>Sewarman</i>	<i>April 2011</i>
2.	<i>Beer Bhan</i>	<i>Sewarman</i>	<i>May 2011</i>
3.	<i>Rajesh</i>	<i>Sewarman</i>	<i>April 2011</i>
4.	<i>Mukesh</i>	<i>Sewarman</i>	<i>May 2013</i>
5.	<i>Sudhir</i>	<i>Plumber</i>	<i>15.02.2015</i>
6.	<i>Avdesh</i>	<i>Plumber</i>	<i>23.10.2016</i>
7.	<i>Shailender</i>	<i>Plumber</i>	<i>23.10.2016</i>
8.	<i>Devraj</i>	<i>Carpenter</i>	<i>March 2013</i>
9.	<i>Dayachand</i>	<i>Baildar</i>	<i>03.04.2011</i>
10.	<i>Satya Prakash</i>	<i>Baildar</i>	<i>April 2011</i>
11.	<i>Sanjay Singh</i>	<i>Baildar</i>	<i>16.01.2015</i>
12.	<i>Ombir</i>	<i>Baildar</i>	<i>March 2015</i>
13.	<i>Deepak</i>	<i>Baildar</i>	<i>February 2014</i>

3. It is submitted that since the dates of their appointment, the petitioners have been working to the satisfaction of their seniors and no complaint in respect of their work and conduct has ever been made. Moreover, petitioners have been working without any break since the dates of their appointment and have rendered continuous service on the post, however, on contract basis. As such, the petitioners are eligible for regularization.



4. However, instead, suddenly on 16.04.2019, when the petitioners had reported for duty as usual, they were not allowed to join duty and were verbally informed that their services are no longer required. Accordingly, petitioners had submitted a representation dated 16.04.2019 (Annexure P-1), to the respondents stating that they may be allowed to continue in service till regular appointments are made by the respondent-authority. However, to no avail.

5. Ld. counsel contends that the said action of the respondents is in the teeth of voluminous case law on the subject wherein it has been held time and again by this Court as well as the Hon'ble Apex Court that temporary employee should be allowed to continue till regular selections are made; that temporary employees are entitled to salary and also to minimum pay scale admissible to regular employees.

6. It is further submitted that in relieving the petitioners, the respondents have ignored the fact that petitioners were appointed on contract basis after following due procedure. Thus, the petitioners cannot be stated to be a back door entry. As demonstrated above, petitioners have been working for sufficient length of time. Thus, they should be allowed to continue till the scheme is continuing and is in existence. In case of ***Hargurpartap Singh and others Vs. State of Punjab and others***, the Supreme Court has given the direction not to displace one *ad hoc* arrangement with another *ad hoc* arrangement. As such, petitioners are entitled to continue in service till the scheme is continued or regular candidate is appointed. It is accordingly prayed that the present petition be allowed and a writ in the nature of mandamus be



issued directing the respondents to allow the petitioners to continue in service till arrival of regular candidates as sufficient vacant posts are available with the respondent department.

7. Per contra, learned counsel for the respondent-State has vehemently opposed the submissions advanced on behalf of the petitioners by stating that the petitioners have intentionally concealed material facts from this Court inasmuch as, the petitioners have failed to disclose that they were engaged only on part-time basis. It is submitted that the petitioners are not even contractual employees as petitioners are not working with the respondent-department as petitioners have in actual fact been engaged with a contractor at their own level; and it was the contractor who had dispensed with the services of the petitioners in March 2019. Even no salary was being paid by the respondent-department to the petitioners. It is accordingly submitted that the present Writ Petition be dismissed being without merit.

8. No other argument is made on behalf of learned counsel for the parties. I have heard Id. counsel and perused the case file and record in detail.

9. I find no merit in the submissions advanced on behalf of the petitioners.

10. The respondents have filed written statement dated 16.09.2019 wherein in paras 2 and 3, it has been categorically stated as follows: -

“2. That the present writ petition filed by the petitioners is against the law and facts and the same is not maintainable. Vide the present writ petition, the petitioners have sought relief for issuance of a writ in the nature of mandamus directing the respondents to allow the petitioners to continue in service till arrival of regular candidates. In this regard, it is



submitted that the petitioners have concealed the material facts from the Hon'ble court knowingly and intentionally. It is brought to the notice of Hon'ble Court that the petitioners are not working under the establishment of this office. They have been deployed by contractor/agency who had engaged them at their own level were dispensed off during March, 2019. Moreover, no salary is paid by the department to the Petitioners. Further, it is brought out that the Govt. of Haryana had appointed regular employees/candidate against the sanctioned vacant post in whole of the State of Haryana through Subordinate Selection Board and accordingly 56 Nos. Group-D regular employees had joined their duty in the office of the answering respondent during January-2019 and the services of the persons deployed by contractor/agency, who had engaged them at their own level were dispensed off during March, 2019. This fact is very much in the knowledge of the petitioners. Accordingly, the services of the contractual/ agency who had engaged them were dispensed off as the regular candidates had joined. Hence, the petitioners have no cause of action to file the present writ petition and the same deserves dismissal. Moreover, the petitioners have not impleaded the contractor/agency as necessary party in this case.

3. That the petitioners have also prayed for directing the respondent to grant minimum of regular pay scale to the petitioners from the date of their appointment. In this regard, it is once again brought to the notice of Hon'ble Court at the cost of repetition that the petitioners are not working under the establishment of this office. They have been deployed by contractor/agency who had engaged them at their own level. Further, the answering respondent has never issued any appointment letter nor the petitioners were directly working under the control of answering respondents. The answering respondent had never made any payment in the name of petitioners. Moreover, there is no record of any work done available on the books of respondent. Hence, the petitioners are not entitled to get any claim from the respondents. As the petitioners have no cause of action to file the present writ petition and the same deserves dismissal."

11. No replication has been filed by the petitioners to the above said written statement dated 16.09.2019 refuting the above said averments. It thus, amounts to an admission on part of the petitioners to the truth of the above



said factual position. The petitioners have therefore admitted that they were not working under the respondent-department; that they had only been deployed by their contractor/agency which had engaged the services of the petitioners at his own level; that no appointment letters were issued to the petitioners by the respondent-Department; and the said contractor/agency had dispensed with the services of the petitioners at his own level; that no salary is being paid to the petitioners by the respondent-department; that petitioners have been relieved after regular appointments through proper process have been made against sanctioned posts; and that there is no service record available of the petitioners. Even no service record has been attached by the petitioners along with the present writ petition. As noted above, petitioners have also not denied that regular appointments have been made by the respondent-department against the sanctioned posts to which the regularly appointed incumbents have joined duty in January 2019. As such, no right accrues to the petitioners.

12. The present case is squarely covered and the said issue of engagement/deployment through contractor/agency, has been considered and settled by a Division Bench of this Court in **Nishan Singh Vs. State of Punjab**

(P&H)(DB): Law Finder DOC Id # 487412 as under: -

“Appellants neither selected under Service Rules applicable to be regular employees or the Punjab State nor there was any advertisement issued by the State under which they applied for their engagement as regular or contractual employees of the State - It was the service provider who entered into an agreement with the State agency to provide work force on certain terms and condition The service provider selected the candidates and supplied the same to the Government Department-provider is not an agency of the State to make recruitment against the civil posts. The acceptance of claim of the appellants shall amount to back door entry to public employment in total disregard to the



mandate of Articles 14 and 16 of the Constitution - No factual or legal infirmity in the judgment of the learned Single Judge in dismissing the writ petitions.

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16. The State has taken a policy decision for regularization of services of the contractual employees who were appointed after fulfilling eligibility criteria as per proper procedure. In the case of appellants neither they were selected under the Service Rules applicable to the regular employees of the Punjab State nor there was any advertisement issued by the State under which they applied for their engagement as regular or contractual employee of the State. It was the service provider who entered into an agreement with the State agency to provide work force on certain terms and conditions. The service provider selected the candidates and supplied the same to the Government Department. A service provider is not an agency of the State to make the recruitment against the civil posts. The selection made by the service provider, if taken as appointment made by the State, will have serious repercussions and violates the rights of thousands of more meritorious candidates who might not have applied for engagement by a Service Provider but would definitely be keen to seek public employment under the State. The acceptance of claim of the appellants shall thus amount to back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution."

13. The said view of the Division Bench has been reiterated by this Court in subsequent decision rendered in **CWP-20305-2021 title as Krishan Kumar Vs. State of Haryana and others** decided on 28.09.2022 wherein it is held as under:

"The petitioner is an outsourced employee. It is settled law that no writ petition would lie against an outsourcing agency, as it is not an authority in terms of Article 12 of the Constitution of India. Reference can be made to the judgment of a Division Bench of this Court in the case of Nishan Singh and others versus State of Punjab and others, 2014(11) RCR (Civil) 262, wherein it has been held that the service provider who has selected the candidates for work in the government department, is not an agency of the State. The appellants therein were neither selected under any service rules applicable to regular employees of the State of Punjab nor did they apply under any advertisement for their appointment as contractual or regular employees of the state. It was further held that the acceptance of the claim of the appellants therein for continuation of services



would amount to a back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution of India.

In the case of Anmol Garg and another versus State of Punjab and others, bearing CWP No. 29655 of 2018, decided on 28.11.2018, a Coordinate Bench of this Court dismissed the writ petition preferred by an employee engaged through outsourcing agency which was upheld by a Division Bench in LPA No. 1910 of 2018, decided on 10.12.2018 and the operative part thereof is reproduced hereunder:-

"Learned Single Judge finding that the appellant was an employee of outsourcing agency which was having a license under the contract to supply manpower held there was no privity of contract between the appellant and the employer and she was not even a contractual employee. The principle being canvassed before us applies only in case there is a privity of contract between the employee and the employer. In the case in hand, the appellant was an employee of the service provider. The benefit of the said principle is not liable to be extended to her and, thus, we do not find any illegality committed by learned Single Judge in dismissing the writ petition."

Reference can also be made to the orders of the Coordinate Benches of this Court in the cases of 'Vikas versus The State of Haryana and others' bearing CWP No. 19762 of 2018, decided on 11.12.2019, 'Kailash Chand and others versus Urban Local Bodies Department, Haryana and others', bearing CWP No.21345 of 2021, decided on 18.01.2022 and 'Naresh Kumar and others versus Haryana State Warehousing Corporation and others', bearing CWP No.17454 of 2020, decided on 02.12.2020, wherein similar petitions of outsourcing employees were also dismissed."

14. Learned counsel for the petitioners is unable to dispute the above said factual and legal position. Consequentially, the present Civil Writ Petition stands **dismissed**.

15. Pending application(s), if any, also stands disposed of.

(NIDHI GUPTA)
JUDGE

08.07.2026
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Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No