

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

(1)

CWP No.18743 of 2015

Jaivir and others

....Petitioners

versus

State of Haryana and others

....Respondents

(2)

CWP No.19297 of 2015

Sanjay Kumar and others

....Petitioners

versus

State of Haryana and others

....Respondents

Date of decision: 21.09.2015

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Pankaj Jain, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

DEEPAK SIBAL, J. (Oral)

The facts and issue of law raised in **C.W.P. No.18743 of 2015** titled **Jaivir and others versus State of Haryana and others** and **C.W.P. No.19297 of 2015** titled **Sanjay Kumar and others versus State of Haryana and others** being the same were taken up together for hearing and are being decided through this common judgment. For the sake of convenience, the facts have been taken from **C.W.P. No.18743 of 2015** titled **Jaivir and others versus State of Haryana and others**.

Through the present petition, the petitioners lay a challenge to the advertisement dated 14.08.2015 through which applications have been invited to fill up vacant posts of drivers. The petitioners are aggrieved by the stipulation in the advertisement that the appointments

in pursuance thereof would be for a maximum period of one year or till the arrival of regular drivers which ever is earlier. The petitioners further seek a direction to the respondents to permit them to continue on contractual basis till regular appointments are made.

Learned counsel for the petitioners argues that the applicable Rules i.e. Haryana Transport Department Group-C Haryana Roadways Service Rules 1995 (hereinafter referred to as the '1995 Rules') do not contemplate appointment of drivers on a regular basis and thus, on this ground alone the above referred stipulation in the impugned advertisement is bad in law, rendering the entire advertisement as illegal.

A perusal of the impugned advertisement shows that applications have been invited for appointment to the posts of drivers. The period of such appointment is specified as one year or till regular drivers are appointed which ever is earlier. This condition is as per the outsourcing policy of the State of Haryana dated 06.04.2015 to which there is no challenge made by the petitioners.

Even otherwise, it is for the employer to stipulate the terms and conditions with regard to the appointment it wishes to make. Contractual appointments are not unknown to service law especially when, as per the arguments raised by the counsel for the petitioners himself that the applicable rules do not contemplate appointments on regular basis.

If the impugned condition in the advertisement provides that the appointments would be for one year or till regular appointments are made, whichever is earlier and the 1995 Rules do not provide for regular

appointments, then necessarily the appointments would be for one year.

For the prayer made to permit the petitioners to continue on contractual basis till regular appointments are made, identically placed persons like the petitioners had earlier approached this Court through CWP No.1624 of 2014. After considering the matter in detail, this Court rejected this plea by holding as under:-

“Petitioners have approached this Court impugning the action of the respondents in putting a rider in the appointment letter that they are engaged as Drivers on contract basis initially for a period not exceeding six months or till the other selected candidates are appointed, whichever is earlier for D.G.S.T.Haryana Chandigarh and as per the agreement made with them. This condition, the counsel contends, is not sustainable as the vacancies are still existing and no regular appointments are made. The petitioners may, therefore, be permitted to continue on the said posts till regular incumbents are appointed. His further contention is that in the light of the Full Bench decision of this Court in the case of Avtar Singh Versus State of Punjab and others, 2012(1) PLR 1, petitioners, who have since been appointed through a selection process based upon fairness and equality of opportunity to all other eligible candidates, are entitled to the regular pay scale from the date of their engagement, although their appointment is as contractual employees.

I have considered the submissions made by the counsel for the petitioners and am unable to accept the first contention where the counsel contends that the condition of appointment on contract basis, which qualifies the same for a period not beyond six months or till selected candidates are appointed whichever is earlier, to be in any manner illegal.”

Further, the posts in question, as per the argument of the counsel for the petitioners himself, as per the applicable 1995 Rules, have only to be filled up on contractual basis and this is what is being done. Thus, the prayer by the petitioners to allow them to continue till regular appointments are made is self contradictory.

In view of the above, both the writ petitions being **C.W.P. No.18743 of 2015** and **C.W.P. No.19297 of 2015** are ordered to be dismissed with no order as to costs.

(DEEPAK SIBAL)
JUDGE

September 21, 2015
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