

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12805 of 2015 (O&M)

Parmjit Singh & others

... Petitioners

Versus

State of Punjab & others

... Respondents

CWP No.18416 of 2015 (O&M)

Deepak & others

... Petitioners

Versus

State of Punjab & others

... Respondents

Reserved on:01.03.2016

Decided on :06.04.2016

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.M.S.Sindhu, Advocate, for the petitioners
(in CWP-12805-2015).

Mr.Deepankur Sharma, Advocate, for the petitioners
(in CWP-18416-2015).

Mr.Pankaj Mulwani, DAG, Punjab.

Mr.Puneet Jindal, Sr.Advocate
with Mr.Amrinderjit Singh, Advocate,
for respondent No.2.

Mr.Vivek Sharma, Advocate, for respondent No.3.

Mr.Ajay Pal Singh, Advocate, for respondent No.4.

G.S. Sandhawaliala , J.

This judgment shall dispose of CWP-12805 & 18415-2015, as common questions of law and facts arise. However, to dictate judgment, facts have been taken from CWP-12805-2015 titled *Parmjit Singh & others Vs. State of Punjab & others*.

Petitioners, who claim to have been appointed on contractual basis, as per the appointment letter dated 06.09.2012, on various posts, like Peons and Data Entry Operators etc., were deputed in the office of the Punjab State Board of Technical Education-respondent No.2 and Punjab Information & Communication Technology Corporation Ltd.-respondent No.4, seek quashing of the action of the respondents whereby their services were terminated w.e.f. 01.05.2015, without affording any opportunity of hearing. Directions, accordingly, are sought to permit them to continue working against their posts, which are duly sanctioned and lying vacant.

A perusal of the appointment letters would go on to show that the appointments were made by respondent No.3, Punjab Ex-Serviceman Corporation (for short, "PESCO"). It is the case of the petitioners, who are working from the year 2006 in one case and from 2012, in the other cases, that they were suddenly not allowed to work after 30.04.2015, without any justification. The replacement of the petitioners by similarly situated persons was, thus, stated to be arbitrary. Regarding petitioner No.3, it has been averred that he has been allowed to work till 15.06.2015, but no salary for the said period had been given.

The Board, in its reply, submitted that since it conducted semester and annual examinations of all the

Polytechnic Pharmacy, Art & Craft and ITI Institutes of the State of Punjab and therefore, to keep up with the job work, agreement was made with the service provider to provide the required manpower at DC rates. Respondent No.3-PESCO, which was the Ex-Serviceman Association, was the service provider. The petitioners were not regular employees of the Board but employees of the PESCO. They were informed that their services were not required beyond 30.04.2015 and that they would be relieved of their duties w.e.f. 01.05.2015. Fresh agreement was made with the service provider for the year 2015-16 and there was no cause of action to issue any formal letter of discontinuance of service or give them any opportunity of hearing. The petitioners had been engaged through PESCO and they had no right of regularization of service. 12 information Assistants and 7 Peons had joined duties between 09.07.2015 to 13.07.2015, as per the requisition sent and the petitioner could not be allowed to continue in their respective posts and accordingly, it was submitted that the action of the respondent-Board was not arbitrary.

Thereafter, an affidavit of the Administrative Officer of the respondent No.2 was filed, further clarifying the arrangement between the petitioners and the respondent-Board. It was mentioned that the petitioners were not regular employees of the Board but the employees of the PESCO. Reference was made to

the letter dated 11.06.2012 (Annexure R2/1) wherein 13 vacant posts of Class III & IV employees had to be filled and as per Service Rules, the qualifications had been given to PESCO at the time of requisition of the posts. The test in Punjabi Typewriting was one of the essential qualifications and none of the petitioners, except petitioner No.5 knew Punjabi Typewriting and therefore, they were not in a position to qualify the said test. The contract had come to an end with PESCO on 13.07.2013. Thereafter, w.e.f. 01.05.2015, fresh agreement had been signed and requisition for the personnel had been sent. No appointment letter had been issued by the Board and therefore, there was no question of giving any opportunity of hearing to the petitioners as they had never been recruited against a regular post. Admission was made that 12 Information Assistants and 7 Peons had joined between 09.07.2015 to 13.07.2015. The salary was paid by the Board and the petitioners were daily wagers, being paid at DC rates, only for the days they worked. There was no public advertisement and there was no selection, as such, by the appointing authority, taking the process of selection.

In the reply filed by respondent No.3, it has been averred that the contract for supplying manpower was given to the answering-respondent by respondent No.2, in the year 2012. The agreement dated 30.07.2012 (Annexure R3/1) was relied upon. It

is averred that the said agreement had been terminated w.e.f. 30.09.2013 (Annexure R3/2). Thereafter, the petitioners were relieved by the answering-respondent. Thereafter, a fresh agreement had been signed on 25.06.2015, for supply of manpower for a period of one year. It was submitted that the petitioners were not on the roll of respondent No.3 since August, 2013.

Respondent No.4-Corporation also took a similar plea that out of the 5 petitioners, 2 were engaged by the answering respondent on contractual basis from 17.11.2011 to 30.06.2012. The contract was neither renewed nor continued. There was an arbitration clause in the employment agreement which had not been resorted to.

Vide interim order dated 24.08.2015, keeping in view the fact that the Board required the services of similarly situated persons and there was no regular recruitment being done and there was nothing adverse, as such, against the petitioners, they were permitted to be taken back in service, subject to the final decision of the writ petition and subject to regular appointment being made by the respondents. Resultantly, an application came to be filed that the said order be recalled since the petitioners did not know Punjabi Typewriting.

Resultantly, directions were issued on 10.09.2015 that

the Punjabi Typewriting test would be conducted within 2 weeks and the petitioners were allowed to rejoin and the test would not be conducted for a period of 3 days after the petitioners were reinstated in service. The 2 petitioners, who were Peons, being petitioners No.1 (in CWP-12805-2015) and petitioner No.4 (in CWP-18416-2015) had to show that they had the Matriculation certificate and that they were qualified to be appointed as Peons. The said order was challenged in LPA-1382 & 1384-2015, whereby the appeals were disposed of on 15.12.2015, by holding that the test should be held by the last week of January, 2016. However, on merits, the issue was left open to be decided by this Court. The order reads as under:

“The short point that arises for adjudication, particularly as the main dispute is pending before a learned Single Bench, is the time-frame within which the appellants can be asked to sit for a Punjabi type-test.

We have heard counsel for the parties. The matter has been pending for the last more than two months. The appellants must be suitably prepared to sit for the Punjabi type-test particularly as their original grievance was that they could not prepare for the test which was ordered to be held within 3 days. We, therefore, dispose of the appeal by directing the concerned respondent(s) to ensure that the Punjabi type-test is held in the last week of January 2016.

It is clarified that this order shall not be construed to be an expression of opinion on the merits of dispute that is pending before a learned Single Bench.”

Thereafter, this Court was informed that out of the petitioners, only petitioner No.3 had passed the test whereas the other petitioners had not passed the said test.

Counsel for the petitioners, accordingly, submitted that the petitioners were directly working under the control of the Corporation and admittedly, new appointments had been made on 30.06.2015. Therefore, the action of the respondents was totally arbitrary and the dispensing with the services of the petitioners, in such circumstances, was not justified. It was further submitted that the type test was held in a very claustrophobic circumstances with a large number of officials supervising the test and therefore, on account of the pressure, the petitioners could not qualify and should be given another opportunity.

Counsel for the Corporation, on the other hand, submits that the petitioners were not selected through any advertisement and they were employees of the service provider and could not be permitted to continue. They also do not fulfill the requisite terms and conditions of the requirements which had been given to PESCO and having failed to qualify for the Punjabi test within 1 year from the date of appointment, did not have any legal right, as such. It was submitted that even the persons now appointed had to comply with similar terms and conditions and if they did not comply with the same, their services were also liable

to be dispensed with. Reliance was placed upon the Division Bench judgment of this Court in **Nishan Singh & others Vs. State of Punjab & others 2014 (1) SCT 33** to submit that it was a backdoor employment and there could be no regularization.

A perusal of the agreement in question, between PESCO and the Board, would go on to show that though the appointments were at DC rates but the employees were of PESCO, for all purposes, who was to remain the principal employer. Relevant clause of the agreement dated 30.07.2012 (Annexure R3/1) reads as under:

“5. The personnel provided by PESCO are PESCO employees for all purposes. However, the First Party will be the Principal Employer for the purposes of Contract Labour (Regulation & Abolitions) Act, 1970, Employees State Insurance Act, 1948 and Workmen's Compensation Act, 1923.”

Though the contract of PESCO expired with the respondent-Board on 30.09.2013, however, the petitioners continued to work with the Board till 30.04.2015. However, as per the terms of requisition dated 11.06.2012, they were to fulfill certain conditions which the Board had required from PESCO. The conditions read as under:

<u>Information Assistant under Class 3</u>	<u>Peon under Class 4</u>
a) Should be Graduate of a recognized university of institution; and b) Should possess knowledge of Punjabi language of matriculation standard or its equivalent; c) Should qualify a test in Punjabi typewriting, to be conducted by the Board or by the appointing authority at a speed of thirty words per minute within a period of one year from the date of appointment; and d) Should possess at least one hundred and twenty hours course with hands on experience in the use of personal Computer or information Technology in office productivity applications or Desktop Publishing applications from Government recognized institution or a reputed institution, which is ISO 9001 certified; OR Should possess a Computer Information Technology course equivalent to “O” level certificate of Department of Electricity Accreditation of Computer Course (DOEACC) of Government of India. Maximum Age Thirty Five.	(a) Should have passed Matriculation Examination with Punjabi as one of the subjects; (b) Maximum age : Thirty five years.

It is not disputed that in pursuance of the directions issued by this Court, apart from petitioner No.3, none has been able to qualify the type test. It is also not disputed that the persons who had been, thereafter, employed would also be required to fulfill similar conditions which would be clear from the requisition dated 30.06.2015 (Annexure P6). The method of recruitment and the manner in which the respondent-Board has acted, though, cannot be appreciated, in any manner. Once the persons had continued working, they could have been put to adequate notice that they were required to qualify or fulfill the conditions and admittedly, they continued to be paid by the respondent-Board even after the

contract expired on 30.09.2013. At no point of time, the Board ever asked them that they had not qualified as per the terms and conditions of the appointment and they continued to work till the year 2015, when similarly situated persons were again employed on the same terms and conditions. The said persons were also to qualify the necessary conditions. If that was so, the Board could have put the petitioners also to notice and thereafter, issue show cause notice and could dispense with their services, in case they failed to qualify and it was only on the orders of this Court that any test was held.

This defence was taken for the first time by the Board in the additional affidavit filed, which is apparently to wriggle out of the fact that the present set of contractual persons were sought to be replaced by another set of contractual persons. For the Board to submit, in such circumstances, that they were the employees of the Corporation, also does not put the Board in any good light since, admittedly, the contract had expired with PESCO, who had been asked to take back the employees. This would be clear from Annexure R3/2, which reads as under:

“Please refer to the agreement dated 30/07/2012 signed between the Punjab State Board of Technical Education and Industrial Training (First Party) and the PESCO on the other party for provision of the services of information Assistants and Peons. In consonance with the Condition No. 14 of the agreement notice of one month is hereby served and it is conveyed that the competent

authority of the Board has decided to terminate the said contract w.e.f. 30/09/2013. Accordingly you may withdraw your manpower (Information Assistants and Peons) from the Board office w.e.f. 30/09/2013 (A.N.)

Sd/- Administrative Officer”

Thereafter, the contract had been renewed later on 23.06.2015 (Annexure R2/2), on the basis of which, fresh appointments had been made. However, there is no gain saying the fact that the petitioners have not been recruited in any competitive process. The employment by virtue of selection through PESCO, a service provider, cannot, as such, amount to a public employment, by following a proper procedure. To this extent, counsel for respondent No.2 is justified in contending that the petitioners are back door entrants.

Reliance upon the judgment in Nishan Singh's case (supra) however, will not help the respondent-Corporation, in any manner. In the said case, the employees had been engaged by the service provider and had been put to the disposal of the office of the Deputy Commissioner and the Department of Excise and Taxation, who had sought regularization of their services. The relief had been declined on the ground that they would not be covered under the State policy and there was no relationship of employer and employee between the appellants and the employees. The order had been upheld by the Learned Single Bench, which was further upheld by the Division Bench by posing

the following question:

“12. The question which arise for consideration is whether the appellants can claim any right against the respondent-departments under the policy of regularization dated 18.3.2011 or 17.11.2011 despite they being employees of Service Provider?”

Same has been answered as under:

“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.

17. The arguments of learned counsel for the appellants that the Deputy Commissioner of some district or the Chief

Secretary recommended their absorption on regular basis too has not impressed us. No provision of any service Rules exhibiting the competence of a Deputy Commissioner or the Chief Secretary to make such recommendations has been cited before us. Such recommendations will rather amount to encouraging pick and choose policy for regular government jobs by depriving hundreds and thousands of eligible candidates in total contrast of the observations made by the Apex Court in Secretary State of Karnataka v. Uma Devi and others 2006 (2) SCT 462.

18. In the light of above discussion, we find no factual or legal infirmity in the judgment of learned Single Judge.

19. The appeals have no merit and are consequently dismissed.”

The petitioners, in the present case, as noticed above, do not seek regularization but only have approached this Court that their services have been terminated without affording any opportunity of hearing and a perusal of the above facts would go on to show that they are only being replaced by another set of contractual persons. No regular appointments have been made. In such circumstances, the action of the respondent-Corporation is arbitrary. The reasons for discontinuance of the petitioners does not seem to be on account of unsatisfactory performance but only that they have been replaced by another set of contractual employees. The Apex Court in **Hargurpratap Singh Vs. State of Punjab & others 2007 (13) SCC 292**, while considering the cases of the employees, who were employed on ad hoc basis in colleges, had protected said set of employees till the regular appointments

were made. Relevant portion of the judgment reads as under:

“3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this court. It is clear that though the appellants may be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one adhoc arrangement by another adhoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on adhoc basis. Therefore we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale.”

The said view was followed by a Division Bench of this Court in **Balraj Singh & others Vs. State of Haryana & others** **2006 (5) SLR 792** by holding that until the process of regular recruitment, the guest faculty would be allowed to remain in place. As noticed above, it is not that there is no work with the Corporation and the petitioners' services were not regular. The only issue remains as to whether they had fulfilled the necessary requirements, as per the terms and conditions on which they were taken by the Board through the service provider. The interim

directions which have been issued and that the petitioners have not qualified also, would not, as such, stand in the way of the petitioners, since, admittedly, even the Division Bench, while disposing of the appeal, left it open that the directions would not be an expression of opinion and would not affect the merits of the case pending before this Court.

Resultantly, the respondents are restrained from dispensing with the services of the petitioners and the petitioner shall continue in their services. In case the services are to be dispensed with, a show cause notice shall be issued to the petitioners by giving them adequate opportunities to fulfill the terms and conditions , within a reasonable period of time, as has been granted to the similarly situated set of persons, now employed, which is one year. Resultantly, the petitioners will also be entitled for the financial benefits for the period from which their services were arbitrarily dispensed with.

Writ petitions are allowed, in the above-said terms.

APRIL 6, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE