

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 17599 of 2016
Date of Decision: 29.8.2016

Chandi Ram and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Kataria, Advocate for the petitioners

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioners have been engaged through an independent contractor by the outsourcing mode adopted by the PWD (B&R) department. They were engaged through a middleman on 15th July, 2016. Vide Memo dated 22nd July, 2016 (Annex.P-2), all the Superintending Engineers including the Land Acquisition Officers, Haryana, Public Works Department (B&R), Haryana, have been informed while referring to Office Memo dated 4th February, 2016 that the Finance Department, Haryana has not made provision of Budget grant under object Head 69-Contractual Services under Head "N-51-08-2059-80-001-R-V Direction and Administration for the Current financial year 2016-2017. In view of this, a request has been made to the various departments under the control of the Administrative Department not to appoint/engage any candidate on contract basis as per Out Sourcing Policy (OSP) issued by the Government from time to time till further orders due to non-availability of budget grant during the current financial year 2016-2017. It may be noted that the petitioners' appointments in July, 2016 were not by name. In the present petition, they claim that they should not be replaced by similar arrangement and they be paid their salary for the

intervening period and their services be not terminated. In this petition, it is not possible to hold that the petitioners have any right to the cadre post of Clerks or Peon since they have been engaged through a Contractor and their claim can only be determined and satisfied by the Contractor, the ostensible employer through a proceeding brought by aggrieved persons under the Contract Labour (Regulation and Abolition) Act, 1970 and for claim to unpaid wages before the authorities in the districts concerned appointed under the Payment of Wages Act, 1936. Neither the petitioners have any right to continue on the posts nor has any adverse order been passed against them for whatever status they may enjoy in the organization. Therefore, the writ petition is premature and no declaration can be issued as prayed on the material presented before this Court. Nor is any interference called for at this stage against the State and the writ petition is disposed of as not warranting interference in extraordinary writ jurisdiction of this Court where this Court is to limit itself to the issue, whether there exists a direct employment relationship on contract with the department determining the jural relationship between the parties governed by rights and duties as between the petitioning workers and the State which appears prima facie not to be direct, nor the State under statutory or legal obligation towards the petitioners. If the veil has to be lifted it can be only upon evidence which is not within the province of the High Court in its extraordinary original jurisdiction under Article 226 of the COI. The forum appropriate would be the industrial adjudicator under the Industrial Disputes Act, 1947 applying law in the 1970 Act to determine by trial if the contract is a camouflage or unfair labour practice to which end no opinion is expressed in the present proceeding so as not to prejudice the parties. If Budget is not passed or approved the Court can't create financial liability by a mandamus to the State. Besides, the

admitted duration of employment is far too short starting 15th July, 2016 to be actionable in this Court.

2. In view of the above discussion, I find no merit in this petition worthy of interference which is accordingly dismissed with liberty to the petitioners to approach the proper forum for relief, if advised.

29.8.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No