

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

**CWP No.7255 of 2016 (O&M)
Date of decision : 22.08.2016**

Parmila

....Petitioner

Vs.

The State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. J.S. Bhatti, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed raising the following two prayers:

“(ii) To issue a writ in the nature of Mandamus directing the respondents to consider the claim of the petitioner in the light of the orders dated 08.01.2010 (Annexure P-6) passed by this Hon'ble High Court as the respondents are sitting tight over the illegally, arbitrarily, discriminatorily without any cogent rhyme or reasons and not applying the judicious application of mind and with an object to deprive the petitioner from her claim for the post of restorer.

(iii) To issue a writ in the nature of Certiorari for quashing of impugned act and action (copy of which has never ever been supplied to the petitioner) which creates hindrance or impediment for applying and considering the claim of the petitioner.”

Counsel for the petitioner has been heard at length.

Pleadings on record would indicate that the petitioner along with another had approached this Court by filing CWP No.197 of 2010 raising an apprehension that she had been engaged on the post of Restorer on contractual basis and the respondents/Authorities were adopting a methodology of replacing her by another contractual appointee. CWP

No.197 of 2010 came to be disposed of by this Court in the light of order dated 08.01.2010 and which reads in the following terms:

“Notice of motion.

Mr. Rameshwar Malik, Addl. A.G., Haryana has been asked to accept notice on behalf of respondents-State.

The petitioners were engaged as Restorers in response to the advertisements (Annexures P-1 & P-2) issued by respondents no.3 and 4 respectively on contract basis at the rates fixed by the Deputy Commissioner concerned. They are still working on their respective posts. Petitioners have an apprehension of being replaced by somebody else for the similar arrangement.

It is settled principle of law that a temporary arrangement cannot be replaced by a similar temporary arrangement. The respondents are, however, at liberty to make appointment on regular substantive basis by making appropriate advertisement in consonance with Articles 14 and 16 of the Constitution. However, the respondents cannot be permitted to replace the petitioners to substitute them by similar arrangements.

In view of the above circumstances, this petition is disposed of with a direction to the respondents that the petitioners be not replaced by similar arrangements. However, the respondents are at liberty to make appointment on regular substantive basis by following the appropriate procedure under law. In that eventuality the petitioners would be at liberty to apply for the post as per their qualifications and eligibility.”

Apparently, the services of the petitioner were disengaged in the year 2012 as another employee was brought in her place by way of transfer. This led to the filing of COCP No.56 of 2013. Petitioner while filing the contempt petition alleged violation of the order passed by this

Court dated 08.01.2010 in terms of which CWP No.197 of 2010 had been

disposed of. The contempt petition preferred by the petitioner stands decided vide order dated 27.09.2013 at Annexure P-11.

Perusal of the order would reveal that the Contempt Court took a view that there was no violation of the order of this Court as the respondents/State was fully competent to transfer an employee and to man a post which the petitioner was incidentally earlier manning. At that stage, it had been asserted on behalf of the petitioner that a number of posts were lying vacant and just in order to defeat her rightful claim to continue on the post, the respondents/Authorities are resorting to filling of the post by way of promotion. Even on this count, the Contempt Court took a view that the respondents would also be well within the rights to fill up the post by way of promotion if the rules so envisaged. While disposing of the contempt petition, it was noticed that the post in question had not been filled up by appointing anyone on contractual basis. While disposing of the Contempt Petition, observations were made that the claim of the petitioner seeking engagement be considered sympathetically against the backdrop that there were vacancies available and she had served for a period in excess of three years.

In the light of such brief factual backdrop, the instant petition has been filed.

As per pleadings on record and even during the course of hearing today, counsel has not demonstrated and pointed out any factual position whereby the petitioner while serving as a contractual employee has been replaced by another similar contractual arrangement. Mere fact that there are posts lying vacant cannot be made the basis for this Court to issue a writ of mandamus to the respondents/Authorities to fill up such posts. This

would be entirely within the prerogative of the employer. Suffice it to observe that as and when the respondents/State take a conscious decision to fill up the vacant posts, the same will have to be done strictly in accordance with law and in consonance with Articles 14 and 16 of the Constitution of India by way of issuance of advertisement and giving a chance to all eligible candidates to apply.

As of today, there is no occasion for this Court to intervene as no other employee is shown to have been engaged by the respondents/State on contractual basis and on account of which the petitioner stood disengaged in the year 2012.

Petition is dismissed.

22.08.2016

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**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | No |