

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

CWP No.20748 of 2012 (O&M)

Date of decision:06.10.2017

Bhupinder Singh & others

... Petitioners

Vs.

State of Punjab & others

... Respondents

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

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

Mr. Avinit Avasthi, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J.

Counsel for the parties have been heard and pleadings on record have been perused.

The uncontroverted factual premise is that the petitioners herein were appointed on the post of Lab Chemists under the Water Supply and Sanitation Department, State of Punjab purely on contractual basis for a period of 89 days on different dates between the years 2010-11. Thereafter, petitioners were granted extension of three months at that time.

The instant writ petition was instituted in the year 2012 impugning the advertisement dated 28.09.2012 (Annexure P-16), whereby applications were invited for filling up 27 posts of Lab Chemists apart from other posts again on contractual basis.

On 15.10.2012, when the petition came up for preliminary hearing, notice of motion was issued and interim directions were issued that the services of the petitioners would not be dispensed with till the next date

of hearing. It is not in dispute that apart from petitioners No.1 and 23, who have left the contractual appointment of their own accord, the other petitioners have continued to serve on contractual basis till date under the garb of the interim order dated 15.10.2012.

The precise case set up on behalf of the petitioners is that they have worked continuously since the years 2010-11 and it would not be open for the respondent-authorities to replace one set of contractual/ad hoc employees with another similar arrangement.

On behalf of the State, an attempt has been made to oppose the prayer made in the petition by contending that a number of petitioners were engaged through the process of outsourcing. Be that as it may, the factual position is that the petitioners have been paid the salary by way of cheque and directly by the respondent/department concerned.

It is by now well settled that one contractual employee cannot be replaced by another similar arrangement. A reference in this regard may be made to the judgment of Hon'ble Supreme Court in **Hargurpratap Singh Vs. State of Punjab & others 2007 (13) SCC 292.**

By following the dictum laid down in **Hargurpratap Singh's case (supra)**, the action of the respondent/Water Supply and Sanitation Department, State of Punjab in issuing advertisement dated 28.09.2012 (Annexure P-16) and making an attempt to replace the petitioners and by inviting applications to fill up 27 posts of Lab Chemists again on contractual basis is held to be bad in law.

The impugned advertisement dated 28.09.2012 (Annexure P-16) to the extent of inviting applications for filling up 27 posts of Lab Chemists on contractual basis is set aside. Services of the petitioners, as

such would not be dispensed with only on account of the issuance of the impugned advertisement.

It is, however, clarified that the benefit of this order would enure to the petitioners subject to the following observations:

(i) A contractual arrangement in favour of an employee would always be subject to the rights of the employer to resort to a method of regular appointment;

(ii) It would be open for the employer to dispense with the services of the contractual employees/petitioners, if the work and conduct is found wanting;

(iii) It would be open for the respondent/Water Supply and Sanitation Department, State of Punjab to dispense with the services of the petitioners, if there be no requirement or reduction of workload relating to the post of Lab Chemists. Even if, there be work and on account of budgetary/financial constrained, the employer chooses not to carry out the work in question or employment, it would again be open for the employer not to engage any contractual employee;

(iv) Since, the post in question i.e. Lab Chemists is governed under the Punjab Public Works (Public Health) Laboratory Staff Group 'C'

Service Rules, 2001, it would be open for the respondent/department to terminate the contractual arrangement with any of the petitioners herein, who do not fulfill the requisite qualifications prescribed under the Rules for direct appointment to the post.

Needless to observe that no rights can possibly accrue to such petitioners who have already left the contractual appointments on their own accord.

Petition is disposed of the aforesaid terms.

06.10.2017

harjeet

(TEJINDER SINGH DHINDSA)

JUDGE

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | No |