

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-17070-2017

Date of decision : 11.08.2017

Priyanka Jagga

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Lajpat Sharma, Advocate
for the petitioner.

Mr.R.K.Doon, AAG, Haryana.

Ms.Nupur Chaudhary, Advocate
for respondents no.3 & 5.

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioner seeks that she be not removed from service, being an employee employed by respondent no.6, M/s K.B. Enterprises, to work as a Clerk in the respondent Municipal Committee, Rajound, respondent no.6 being a contractor with whom a contract of sanitation work and other works was entered into by the Municipal Committee, (i.e. respondent no.3), even though the contract with respondent no.6 has been cancelled by the Municipal Committee.

Upon notice having been issued by this Court vide its order dated 02.08.2017 and it having been directed that the post in question be not filled up by another set of contractual employees till the next date of hearing, i.e. today, Ms. Nupur Chaudhary, Advocate, appears for the Municipal Committee, respondent no.3, and its Chairperson, respondent

was cancelled by the Municipal Committee within the two month trial period stipulated in the contract, on account of numerous complaints having been received against the contractor, the allegations being that the contractor was not carrying out necessary works required.

The cancellation of the contract has been challenged by respondent no.6 before the Civil Court, which is stated to have referred the matter to an Arbitrator (whether in terms of the contract itself or otherwise is not clear).

Be that as it may, whether the petitioner, not being an employee of the Municipal Committee, would have a right to continue or not by virtue of any provision in the Industrial Disputes Act, 1947, even in terms of the instructions of the Chief Secretary, Government of Haryana dated 12.01.2011 (Annexure P-1), would not be a question which would be gone into by this Court in writ jurisdiction, as the appropriate remedy with the petitioner to contend that any provisions of that Act has been violated, whether by the respondent Municipal Committee or by the Contractor, in respect of the employment of the petitioner, would be with the Industrial Tribunal / Labour Court concerned.

Undoubtedly, this Court from time to time, in various petitions, has been holding that a contractual employee should not be replaced by another contractual employee unless on grounds of misconduct etc. However, the petitioner in the present case not being an employee of the respondent municipality but of the contractor engaged by the municipality, with that contract itself having been cancelled, in my opinion, in the absence of the contract itself being revived, an employee of the erstwhile contractor cannot claim to have a right to continue in employment with the

Municipality.

Accordingly, this petition is dismissed, with liberty to the petitioner to avail of her remedy before the Industrial Tribunal/ Labour Court.

As regards the salary of the petitioner for the period that she continued to work as an employee of respondent no.6, Ms. Choudhary, learned counsel for the municipality, submits that salaries of all the employees of respondent no.6 who were working in the municipality as employees of the said respondent, pursuant to the contract with the said respondent, have been deposited in the account of the said respondent today, by the municipality, for onward disbursement to the employees (by respondent no.6).

(AMOL RATTAN SINGH)
JUDGE

August 11, 2017.

Davinder Kumar/dinesh

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No