

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

Date of Decision:-10.12.2018

CWP No.13348 of 2018(O&M)

Rajiv Kumar & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

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CWP No.11624 of 2018(O&M)

Ajay Kumar & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

AND

CWP No.14348 of 2018(O&M)

Sudarshan Kumar & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Sunny Singla, Advocate for the Petitioners
(in CWP Nos.13348 of 2018 &14348 of 2018).

Mr. P.K. Goklaney, Advocate for the Petitioners
(in CWP No.11624 of 2018).

Mrs. Anu Chatrath Kapoor, Additional Advocate General,
Punjab for official respondent nos.1 & 2.

Mr. D.K. Singla, Advocate for respondent no.3
(in CWP No.13348 of 2018 & 14348 of 2018).

Mr. Joginder Sharma, Advocate for respondent no.3
(in CWP No.11624 of 2018).

JASWANT SINGH, J.

Vide this common order, I shall dispose of the aforementioned three writ petitions, as all of them are based upon similar facts and common questions of law arises for consideration before this Court. However, for sake of convenience, facts are being taken from CWP No.13348 of 2018.

Twenty petitioners, who are allegedly working under Municipal Council, Nangal-respondent no.3 have filed the instant writ petition, praying for a direction from this Court to respondent no.3 for permitting them to continue in service, in discharge of their duties and further for release of their salary for the last 4-5 months, which has been withheld by respondent no.3-Corporation. Further, prayer has been made for directing the said respondent-Corporation to regularize their services as they have been working in the respondent-Corporation for the last approximately 6-15 years.

Learned Counsel for the petitioners has argued that the petitioners who have been working for the past many years continuously, have been illegally stopped from working on their posts by the respondent-Corporation on 12.05.2018, without issuing any show cause notice or any order, despite the fact that petitioners have been working under the respondent-Corporation directly. It is further submitted that a representation to this effect was given by the petitioners on 17.05.2018 (P-4), whereby they had sought arrears of their salary for the last 4-5 months and had also requested the corporation to permit them to join their duties.

However, without following any due procedure and instead of regularizing their services, petitioners have been left jobless and, therefore, the instant writ petition has been preferred. It has further urged that since petitioners have been working continuously for the last many years, therefore, they have a vested right to be regularized on the posts they have been working, as it is to be presumed that there is existence of regular work and requirement of regular posts in the Corporation. Finally, it is argued that in view of the settled position of law that no contractual employee can be replaced with another contractual employee, till regular appointments are made, the petitioners cannot be removed from services. In support of this contention, he has relied upon **Hargurpratap Singh Vs. State of Punjab & Ors. 2007(13) SCC, 292**, **Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan 2003(3) SCC 485**, **Harinder Kaur & Ors. Vs. Union of India & Ors. 2006(1) SCT 64**, **Smt. Parvinder Mohindru Vs. Shri Mata Mansa Devi Shrine Board, Panchkula & Anr. 2007(4) SCT 827** & **Surinder Singh Vs. State of Haryana 2003(2) SCT 124**.

On the other hand, learned Counsel for respondent no.3-Corporation has argued that the petitioners are working directly under the various manpower contractors, who have been outsourced with the work of engaging private employees for respondent-Corporation through public tenders, which are floated every year. It is further submitted that said decision of outsourcing the work was taken by Department of Local Government, Punjab vide its letter dated 21.05.1999 and while approving the budge for respondent-Corporation for the years 2014-15, 2018-19, said condition was again imposed vide letters dated 12.08.2014 **R-3/2-A** and **R-3/2-B**. Consequently, it is argued that the practice of engaging employees

through manpower contractors is in existence for the last 18 years and, therefore, it cannot be said that petitioners are the employees of respondent-Corporation. Finally, it is urged that in view of the fact that petitioners are contractual employees under an outsourced agent, they have no right to be regularized and no situation can they be permitted to continue on the basis of judgments relied upon by them. Thus, prayer has been made for dismissal of the writ petition.

I have heard learned Counsel for the parties at length and have also perused the paper book with their able assistance. However, I am of the view that present petition deserves to be dismissed.

Admittedly, Petitioners are working as contractual employees under an outsourced manpower agency till the year 2016-17 and it is for the first time for the year 2017-18, that petitioners were offered contractual employment under the respondent-Corporation vide appointment letter/s **Annexure P-3**. To understand the matter in right perspective, it is necessary to go into the background of the case.

It is seen that respondent-Corporation is totally dependent upon the policies and decisions taken by the Department of Local Government, Punjab who is entrusted with the work of regulating Corporations like respondent no.3, as all the funds for working of the Corporations are released by said Department. On 21.05.1999, respondent no.1-Department took a conscious decision to the effect that all private employees of all Corporations would be engaged through a manpower agency/contractor, who would be responsible for engaging the employees and paying them their salaries etc and the Corporations shall be paying the manpower contractors a lump-sum amount. It is further evident that the said practice

continued for the year 2016-17 as well, and respondent-Corporation had also invited tenders through open bids and the contract for the year 2017 stood awarded to various contractors i.e. Markanda Khurad Co-op L/C Society Limited, M/s Kamal Electrical and The Capital Co-op L/C Society Ltd. In the meantime, respondent no.1-Local Government, Punjab had promulgated the Punjab Ad hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees Welfare Act, 2016 (in short the Act of 2016) vide Notification dated 24.12.2016, under which a criteria was laid down for Group A, B, C and D employees working on contractual/temporary/daily wages etc under the State Government and its entities. The said Notification/Act, 2016 was adopted by the Corporation vide resolution dated 26.12.2016 and accordingly, the petitioners were directly engaged as contractual employees for one year i.e. 2017 by the Corporation. However, said appointment was subject to approval by the respondent no.2-Director Local Government, Punjab of the resolution dated 26.12.2016, as the Corporation is bound by approval from the Local Government Department.

Consequently, the said resolution was sent to respondent no.2-Director for his approval, however, the same was not approved and instead a communication was sent by him to the Corporation that in view of the fact that Notification dated 24.12.2016 is under challenge before this Court in a separate matter, therefore, the resolution be not given effect. Thus, it was directed by the Director that the status of employees such as the petitioners would be as if they have been engaged through manpower contractor, who would be liable to pay their salaries etc. This fact further stands reiterated by the respondent no.1-Department, while approving the funds for

respondent no.3-Corporation vide its letter dated 21.05.2018 (**R-3/2-B**) . These facts are even more fortified from the documents Annexure **R-3/10** to **R-3/18**, whereby respondent no.3-Corporation is shown to have invited open tender/s from manpower agents and the contract for the year 2017 & 2018 has been given to many contractors on the basis of their successful bids. Even further, the contractor/s have supplied a list of employees who have been engaged for discharging various duties, which included the names of petitioners (Annexure **R-3/23 to R-3/25**). Meaning thereby, the petitioners were engaged by the respondent no.3 through the said contractor.

From the afore-stated facts, this Court has no hesitation to hold that the petitioners were very well in the knowledge of the aforesaid developments all this time, as they were being paid their salaries by the manpower contractor himself. Factum of drawing their salaries from the said contractor has been candidly admitted by petitioners in their writ petition itself and not denied during the course of arguments.

Hence, it is seen that the petitioners were being paid salary by the said manpower contractor and not by the respondent no.3-Corporation as alleged. It is further seen that the said engagement entered into between petitioners and respondent no.3-Corporation through appointment letter (**P-3**) directly at one stage, stood frustrated/not acted upon , in view of the communication received by the Corporation from respondent no.2-Director. Therefore, this Court has no hesitation to hold that petitioners are not the employees of respondent no.3-Corporation. Unfortunately, the said manpower contractors are not even party respondent in the present case, despite specific objection having been raised by respondent-Corporation, so as to elicit any response from them qua the assertions made of non-release

of salary.

Since, this Court has held that the petitioners are not even employees under the respondent no.3-Corporation, therefore, it is needless to say that they are not entitled to any relief of regularization under the respondent no.3-Corporation.

As far as the arguments of learned Counsel for the Petitioners that they are being replaced by another set of contractual employees, which is impressible under law, is concerned, it is seen that they are working under the private contractors, who have been entrusted with the job of providing employees for the respondent no.3-Corporation. It is not the Corporation who has removed the Petitioners from services and it is the manpower contractors who have removed them. There is no binding contract between the petitioners and respondent no.3-Corporation. In case, there is any cause of action/grievance of petitioners, same accrues against the manpower contractors and not the respondent no.3-Corporation. Thus, the judgments relied upon by learned Counsel for the petitioners are not at all applicable to the facts of present case.

In view of the foregoing discussion, all the aforesaid three writ petitions are hereby dismissed.

(JASWANT SINGH)

JUDGE

December 10th, 2018

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>