

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 16652 of 2018

Date of Decision: 8.08.2018

Simarjit Singh and Others

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Amit Sharma, Advocate
for the petitioner(s).

Mr. Vivek Chauhan, Advocate
for respondents No.1 to 4.

Mr. Amit Arora, Advocate
for respondent No.5.

Shekher Dhawan, J.

Present writ petition is for issuance of direction to the respondents not to terminate the services of petitioners after 31.07.2018 by recruiting new candidates as A.C. Plant Operators in their place.

Facts, as detailed in the writ petition, that respondent No.4 had given a contract to respondent No.5-M/s Chaudhary Enterprises regarding manning, operation and comprehensive maintenance of A.C. Plants in zones “A” and “B” at Air Force Station, Halwara for 334 days with effect from 01.09.2017 to 31.07.2018. For that purpose, petitioners were appointed as A.C. Plant Operators by respondent No.5 to get the work of manning, operation and comprehensive maintenance of A.C. Plants done. Some of the

petitioners are working for more than 12 years, some of them are working for more than eight years and some of them are working for more than two years. However, respondent No.3 awards contract to different contractors every year. The nature of duties being performed by the petitioners were of emergent, regular and permanent nature. More so, respondent No.1 is required under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter referred to as “the Act”) to issue a notification to stop contractual employment seeing the nature of work being taken from the petitioners, despite the fact that work is available and continued and petitioners are working since long. Petitioners have apprehension that their services would be discontinued by new contractor, though the work is available and as such present writ petition before this Court.

In the reply, filed by respondent No.5-contractor, plea was taken that petitioners are seeking directions to the respondents not to terminate their services after 31.07.2018. However, present writ petition is not maintainable, rather the same is an abuse of process of law because the appointment of the petitioners was for a period of 11 months and their engagement was upto 31.07.2018 only.

Respondent No.5 also took the plea that there is dispute that respondent No. 4 gives contract to different contractors every year for a period of 11 months. In present case, contract is to expire on 31.07.2018; after that, there is no work available with the contractor; contractual appointment of the petitioners comes to an end on 31.07.2018 and thereafter, they have got no right to seek injunction against the answering respondent No.5 who had employed them and hence, present petition deserves

dismissal.

At the time of arguments, learned counsel for the petitioners contended that in the present case, *de facto* employer is respondents No.1 to 4 and not respondent No.5-contractor. Respondents No.1 to 4 be restrained from terminating the services of present petitioners. On this point, reliance was placed on the judgment rendered by the Hon'ble Apex Court in ***Hussainbhai v. The Alath Factory Tezhilali Union and Others 1978 AIR (SC) 1410.***

Learned counsel for respondents No.1 to 4 took the plea that petitioners have approached this Court against their termination, whereas their appointment was admittedly having been made by respondent No.5 for a specific period of 11 months, which has come to an end on 31.07.2018 and there is no relationship of employer and employee between the petitioners and respondents No.1 to 4. As such, present writ petition is not maintainable against the answering respondents No.1 to 4.

Learned counsel for respondent No.5 took the plea that petitioners were appointed on contractual basis for a period of 11 months and that term came to an end on 31.07.2018 and thereafter, there is no work available with them against which petitioners can be asked to perform their duties. As such, present petition is not maintainable against respondent No.5.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that there is no dispute on the basic fact that petitioners were appointed on contract basis for a period of 11 months as the work available with respondent No.5 in his capacity as contractor was also for a

period of 11 months and that period expired on 31.07.2018. The tenure of appointment of petitioners as contractual workers came to an end on 31.07.2018. As per respondent No.5, he is having contract for a specific period only and as such there is no question of petitioners to continue to perform their duties with him beyond that period. As regard to the plea taken by learned counsel for the petitioners that they are employees of respondents No.1 to 4 in terms of judgment rendered by the Hon'ble Apex Court in ***Hussainbhai's case*** (*supra*), this Court is of the considered view that facts of the present case are entirely different from that of the above said judgment because in this case, the appointment has been admittedly made by respondent No.5 for a period of 11 months and that period has come to an end on 31.07.2018. Thereafter, no work is available with respondent No.5. Thus, present petition is not maintainable and the same stands dismissed.

(Shekher Dhawan)
Judge

August 8, 2018

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No