

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6167-2015(O&M)

Date of decision : 02.08.2018

Balwan Singh

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Niwas Sharma, Advocate for the petitioner.

Mr.Hitesh Pandit, Addl.AG, Haryana.

RITU BAHRI, J. (ORAL)

The present petition has been filed seeking a direction to the respondents not to dispense with the services of the petitioner or replace him by another wager or contractual employee.

The brief facts of the case are that respondent No.3 advertised posts of Peon, Mali and Chowkidar in newspaper and the petitioner applied for the post of Chowkidar and was selected by the Selection Committee constituted by the Principal. He joined his services on 12.08.2013. He was appointed against the vacant sanctioned post. The appointing authority was the Principal and he was not the regular Principal and was just the Drawing and Disbursing Authority. Vide letter dated 06.01.2015 respondent No.3 was restrained from regularising the services of the petitioner on the ground that he was not the regular Principal. In such circumstances the petitioner has the apprehension that either his services may be dispensed with or he

may be replaced by another ad hoc or contractual employee. That is the reason he has knocked the doors of this Court.

The respondents in their written statement have admitted that the petitioner was appointed through Out Sourcing Policy of the Government of Haryana issued in the year 2006 Annexure R-1 and was appointed through Out Sourcing Agency which provided the name of the petitioner and he was appointed on the basis of third party contract. Subsequently in the year 2013 advertisement was published in Dainik Tribune for recruitment of Class IV employees and accordingly the petitioner was engaged on contractual basis for a period of six months on D.C.rates. Thus his initial appointment was based upon third party contract whereas the later one was made directly by the college on contractual basis and thus he cannot ask for the relief of continuation of his service. Moreover he does not fulfil the required conditions of regularisation of his services as per policies Annexure P-2 and P-3. He had worked only for a period of nine months thus rendering him ineligible for regularisation in accordance with the terms and conditions of the policies Annexure P-2 and P-3.

Heard learned counsel for the parties.

The letter dated 06.04.2004 Annexure R-1 has been placed on record by the respondents with regard to Restructuring of the Education Department. As per this letter the post of Chowkidar has been kept in the diminishing cadre. Keeping in view this letter, on account of the death of Udai Ram Chowkidar on 28.04.2007, the post held by him stood abolished. Apart from Udai Ram there were three more persons namely Satya Narayan, Hazari Lal and Desh Raj who were working as Chowkidars.

Out of these three, Satya Narayan is already posted in respondent college since 31.03.1999 and Desh Raj has been transferred from this college to Govt. College, Sirsa. After his relieving, one post of Chowkidar fell vacant and the same was required to be filled up through Out Source Policy. Thereafter one Sombir Singh was engaged as Chowkidar on 01.07.2008. Hazari Lal also stood transferred and was relieved on 03.10.2008 and on the post which stood vacant in pursuance to his transfer, the petitioner was engaged through Out Sourcing Policy on 06.08.2013. On 03.08.2015 Bijender Singh Chowkidar joined vide Annexure R-5 and the present petitioner being junior to Sombir was relieved from service. In compliance of the order dated 31.07.2017, affidavit dated 09.01.2018 was filed giving the above details. This affidavit further informs that there is no regular post of Chowkidar lying vacant in the respondent-college. The petitioner has placed on record letter dated 27.07.2017(Annexure P-9) and order dated 29.12.2017 (Annexure P-10) by way of Civil Misc. Application No. 314-CWP-2018. Annexure P-10 shows that Satya Narayan Chowkidar was relieved from service on attaining the age of superannuation on 31.12.2017. That post has become available, however, learned counsel for the respondent-State has informed that keeping in view the letter Annexure R-1 dated 06.04.2004 this permanent post stands abolished and has thus fallen in the diminishing cadre, therefore, every appointment which is to be made that will be done through Out Sourcing Policy. Learned senior counsel for the petitioner submits that preference should be given to the petitioner as he had already been working as a Chowkindar since 12.08.2013 till August, 2015.

Resultantly this petition is disposed of giving directions to the respondents to give preference to the petitioner and appoint him as a

Chowkidar in College for Women, Mahendergarh-respondent through a service provider.

(RITU BAHDXRI)
JUDGE

02.08.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No