

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

**CWP No. 7711 of 2018
Date of Decision: 27.03.2018**

Hari Om Singh

...Petitioner

Vs.

The State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Tejpal Singh Dhull, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

The Haryana Irrigation and Water Resources Department has put a press notice in Punjab Kesri (Hindi) issued dated 15.03.2018 inviting applications for filling up 10 posts of Canal Patwari from amongst the retired Canal Patwarsi of the Irrigation Department working either on this post or any higher post. Interviews had been fixed for 03.03.2018. The petitioner has been serving in the department as Canal Patwari on the contract basis for the last 10 years at Halqa Kalayat-1st (Section Kalayat) at Narwana W/S Division Narwana. He has approached this Court fearing that he might be replaced by virtue of the advertisement.

The petitioner is not similarly placed as the retired persons are to take the benefit of the principle in Hargurpratap Singh Vs. State of Punjab and others, (2007) 13 SCC 292 apprising the doctrine that

normally contract employees shall not be replaced by another contract employee unless for dissatisfactory work and conduct.

The cadre strength of Canal Patwaris in the Water Services Division, Narwana is not pleaded in the petition to gauge the effect of induction of retired patwaris. One would not know as a matter of fact, whether the petitioner would in fact be replaced if 10 retired officials from the Irrigation Department come in. In case 10 posts are filled without disturbing the petitioner, then the Irrigation Department would obviously be free to continue with the selection process to its logical end, but not if it involves replacing the petitioner. In which case he would not be disturbed till regular recruitment is made except on ground of shortcomings found in work and conduct.

Having said so, a word of caution is entered. When a department proposes to induct fresh hands in a situation of the present kind, it would be well worth for it to clarify in the advertisement itself or website whether persons like the petitioner inevitably be replaced, so that aggrieved persons can take appropriate steps to safeguard his interest and not rush blindly to Court.

Therefore, the Chief Secretary Haryana would consider issuing instructions/advice to the departments issuing advertisements in appointment process of the present kind (Annex.P-2) incorporating the condition that the induction of fresh candidates, retired persons or otherwise, would or would not lead to displacement of incumbent

employees, including as in this case Canal Patwaris etc. working on contract basis since the law is settled that a contract employee should not be replaced by contract employee in the same arrangement. This advance information may obviate filing of unnecessary petitions only for Court to search out answers from the respondent-State.

Mr. Harish Rathee, Senior DAG Haryana accepts notice on behalf of the respondents on the issue of considering issuance instructions/guidelines with a view to curtail litigation.

The proposal in this order may be considered by the Chief Secretary for implementation in all the Departments of Haryana. In the meantime, the petitioner is permitted to continue as contractual Canal Patwari till such time regular appointments are made, whichever is earlier, and his work and conduct is satisfactory.

Copy of this order be given to Mr. Rathee.

(RAJIV NARAIN RAINA)
JUDGE

27.03.2018

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*