

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

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Date of Decision: 27.03.2019

CWP No.13024 of 2015 (O&M)

Lalit Kumar

...Petitioner

Vs.

State of Haryana and others

...Respondents

CWP No.22278 of 2017

Mukesh

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr.Johan Kumar, Advocate
for the petitioner.

Mrs.Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

This order will dispose of the aforesaid two writ petitions by a common order as the facts involved therein are the same. Brief facts are taken from CWP No.13024 of 2015 for adjudication of the said writ petitions.

Notice of motion was secured on 30.11.2015 by relying on pending CWP No.13999 of 2015. The order dated 30.11.2015 reads as

under:

“Relies on the pendency of CWP No.13999 of 2015 where the following order has been passed:

“Learned counsel for the petitioners submits that since policy dated 18.06.2014 is under challenge before this Court in CWP No.17206 of 2014 and thus, claim of petitioners vis-a-vis regularization may be kept pending and matter qua regularization may be considered after the decision rendered in the aforementioned writ petition. However, the respondents are resorting to the unfair labour practice by causing advertisement dated 12.06.2015, Annexure P-13 through out-sourcing employees and petitioners have even threat of termination of services though they are discharging duties to the satisfaction of the respondents and there is no allegation of misconduct.

In support of aforementioned contention, relied upon the judgment of Hon'ble the Supreme Court in Hargurpratap Singh vs. State of Punjab and others 2007(13)SCC 292.

Notice of motion for 30.11.2015, vis-à-vis claim of dispensing of the services of the petitioners till the respondents do not undertake the exercise of initiating the process of regular appointees.

In the meantime, services of the petitioners shall not be dispensed with till the process of recruiting regular employees is not initiated.”

Notice of motion for 16.5.2016.

Interim order in the same terms as in CWP No.13999 of 2015.”

Services of the petitioner are covered by contract through outsourcing policy. There is a service agreement dated 29.5.2013 signed between the Civil Surgeon, Faridabad representing the ‘Hospital’ and Service Provider i.e. J.M.D. Consultant.

The terms of the contract stipulate the obligations of the service provider, terms of payment, submission of bills for verification and matters of discipline. The agreement was effective from 1.6.2013 to 31.5.2014.

The matters of discipline are covered under Clause IV. The Service provider is enjoined to issue identity cards on their own name and trading style to its personnel deputed for rendering the said services in the 'Hospital', which at department's option would be subject to verification at any time. The 'Hospital' may refuse the entry into its premises to any personnel of the service provider not bearing such identity card or not being perfectly dressed. More important, it is understood between the parties that service provider alone shall have the right to take disciplinary action against any person (s); to raise any dispute and/or claim whatsoever with or from the 'Hospital'. Clause V (d) prescribes that 'Hospital' shall under no circumstances be deemed or treated as the employer in respect of any person/s engaged/deployed by the Service Provider for any purpose, whatsoever nor would 'Hospital' be liable for any claim (s) whatsoever, of any such person (s).

In the written statement filed by the State of Haryana to contest the case it has been mentioned that original service agreement was extended for the period mentioned in para No.6. As a matter of fact, it would be apposite to quote para No.6 of the written statement:

“6. That the petitioner has not completed three years service without break in service as on 30.06.2014 as the break in service of the petitioner is more than 30 days during the year 2010 and 2013. The petitioner has worked during the following period during three years preceding the cut-off date i.e. 30.06.2014:-

- i) From 12.07.2010 to 12.1.2011
- ii) From 18.04.2011 to 17.10.2011
- iii) From 11.4.2012 to 08.10.2012
- iv) From 08.11.2012 to 08.05.2013
- v) Oct 2011 for 11 days
- vi) Nov 2011 for 14 days
- vii) Mar 2012 for 15 days
- viii) Apr 2012 for 7 days
- ix) 01.06.2014 to 15.08.2014

The petitioner was not on roll during the below mentioned period during the 3 preceding year the cutoff date 30.6.2014.

- i) Nov 2011 for 16 days
- ii) During Dec 2011 - entire month
- iii) Jan 2012 - entire month
- iv) Feb 2012 - entire month
- v) 09.10.2012 to 07.11.2012
- vi) 09.05.2013 to 31.05.2013

Hence, the petitioner has not worked for 3 years regularly without any break of 30 days during year 2011-2012. The break in service of any employee/worker will be condoned only up to the period of 30 days in a year. The break in service of the petitioner is more than 30 days in a year during the years 2011, 2012.”

Clause Nos.1, 7, 8 and 10 of the service agreement are relevant to the controversy, which are reproduced as under:-

“Clause No.1- The contract can be terminated at any time without assigning any reason by the appointing authority.

Clause No.7- The services rendered by you on contract basis will not count towards benefit like pension, gratuity or others”.

Clause No.8- This offer of appointment will not be counted as services and will not bestow upon you any claim for regular appointment against any post.

Clause No.10- You will not be eligible for membership

towards GPF/EPF.”

Still further, the petitioner has been issued an experience certificate dated 10.6.2014 by J.M.D. Consultant for the work performed by the petitioner, which was found satisfactory. They wish him success in future endeavours.

In view of terms of the agreement, the relationship between the petitioner and the service provider is purely contractual in nature which does not involve any direct employer and employee relationship with the ‘Hospital’, meaning thereby, department of Health in the State of Punjab. The petitioner does not hold a permanent post directly under the State in any form including as daily wager, contractual, ad hoc, temporary etc. he can make no claim whatsoever like regularization sought in this petition.

Accordingly, neither the decision of Division Bench of this Court in Hargurupartap Singh Vs. State of Punjab 2017 (13) SCC 292 or the pendency of the Special Leave Petition in the Supreme Court in case arising from the Division Bench's judgment in CWP No.17206 of 2014 titled “Yogesh Tyagi and another vs. State of Haryana and others”, which two cases have been relied on, can be of any assistance to the petitioners, their services being covered by contract with the service provider. Therefore, they could be dealt with in terms of the contract.

Still further, it is pleaded in the written statement filed by the department that the petitioner does not even have a right to claim regularization since he does not fulfill the terms and conditions of the policy of the State Govt. This argument was raised in abundant caution without prejudice to the status of the petitioner as person on contract. It is not for this

Court in original jurisdiction to convert or change the status of the petitioners other than what they possess.

Accordingly, I find no merit in these petitions and would dismiss them.

27.03.2019
sd

(RAJIV NARAIN RAINA)
JUDGE

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