

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

**CWP No. 8019 of 2017
Date of decision :26.02.2019**

Umed Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Daaria, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana.

Mr. Hitesh Pandit, Advocate for respondents No. 2 and 3.

RITU BAHRI, J. (Oral)

The case of the petitioner is that he has been working as Driver of vehicle No. HR-46D-5143 from 01.12.2011 to 31.12.2011 and 01.04.2017 to 04.04.2017 as per Annexure P-1. Thereafter new service provider namely M/s. Parwati Enterprises has been appointed by the Municipal Corporation, Rohtak and the petitioner has been relieved.

Learned counsel for the petitioner has referred to the judgment passed by this Court in ***CWP-17441-2013 Shiv Kumar and another V/s. State of Haryana and another***, decided on 03.08.2016 whereby it has been held that if a new service provider is engaged, he cannot replace the contractual employee and he has to retain all the contractual employees unless their work and conduct is found to be unsatisfactory.

On notice of this petition, short reply has been filed by the Municipal Corporation, Rohtak, admitting that the petitioner was working as Driver and was initially engaged through outsourcing agency namely M/s. New Hindustan Security Services and has also placed on record

contract/order dated 28.03.2017 (Annexure R-1) whereby a new service provider namely M/s. Parwati Enterprises was engaged by Municipal Corporation, Rohtak. In the short reply, there is no finding that the work and conduct of the petitioner is not satisfactory. He has been driving the vehicle of the Municipal Corporation and only the salary has been paid by the service provider. Since the work and conduct of the petitioner has not been found unsatisfactory, there was no reason to discontinue his services by the second outsourcing agency i.e. M/s. Parwati Enterprises, appointed vide order dated 28.03.2017 (Annexure R-1). A Coordinate Bench of this Court has considered this issue and the only objection taken by Municipal Corporation is that the service provider is engaged for providing manpower and the Municipal Corporation has no role to play. This issue has been considered in *Shiv Kumar's case (supra)* and this writ petition was allowed by observing that rights of contractual employees cannot be defeated merely by making a reference to an outsourcing policy and to thereby enable the State Government to shirk from his responsibilities even with regard to any contractual engagement that may have been entered into. The agency which would engage and make contractual engagement is only an interface between the appointee and the Government and if the work and conduct is found to be satisfactory, contractual engagement cannot be replaced since new outsourcing agency has been engaged.

Writ petition is being allowed and direction is given to respondent No. 3 to engage the petitioner afresh on contract basis as a Driver through outsourcing agency as per contract/order dated 28.03.2017 (Annexure R-1). Further direction is given that if any Driver has been engaged after replacing the petitioner, replacement will be done on the principle of 'last come first go' basis. It has also been clarified that in future

petitioner will continue to work on contract basis unless regularly selected candidate is appointed or his work and conduct is not found satisfactory.

26.02.2019
Divyanshi

(RITU BAHRI)
JUDGE

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