

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

CWP-9081-2020 (O & M)
Date of Decision: 24.09.2020

Sunita Soni and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Harnaresh Singh Gill

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. Jitender Singh Gill, Advocate,
for the petitioners.

Mr. Gaurav Gulzar Singh Chauhan, AAG, Haryana.

Mr. Deepak Balyan, Advocate,
for respondent No.2.

Harnaresh Singh Gill, J.

Case was taken up for hearing through video conferencing.

Petitioners, 84 in number, challenge the order dated 23.04.2020 (Annexure P-24) issued to Chamanpreet Kaur, petitioner No.35, vide which contract of substitute and stop-gap vocational trainers had been terminated w.e.f. 31.03.2020 despite the letter dated 01.04.2020 (Annexure P-21) issued to the similarly situated vocational trainers extending their services.

Since respondent No.2 is the only contesting respondent, therefore, the present petition is taken up for hearing with the contest of said respondent.

As per the facts of the present case, National Skill Qualification Framework (hereinafter referred to as 'the Scheme'), a vocational educational scheme, was introduced by the Government of India and implemented in all the States and the Union Territories in the country for transcending general and vocational education and training and the expenses therefor were to be incurred by the Government of India and the State Government(s) on 60:40 ratio. Respondent No.2, Haryana School Shikha Parishad (hereinafter referred to as 'Shikha Parishad'), in order to implement the Scheme, had engaged twenty two service providers for implementation of the said Scheme and directed them to engage teachers (trainers) as per the guidelines after issuing the advertisements.

Learned senior counsel for the petitioners has submitted that respondent No.2-Shikha Parishad had appointed the candidates as vocational teachers (trainers) on 17.08.2016 on contract basis upto 31.03.2017 at a consolidated remuneration of Rs.25,000/- per month. The petitioners had been engaged as vocational teachers (trainers) as a stop gap arrangement on account of the vacant posts. The petitioners had been appointed in different schools on different dates. The contract of the petitioners was extended upto 31.03.2020. Thereafter, the All India Society for Electronics and Computer Technology (hereinafter referred to as 'AISECT'), the service provider, issued a letter dated 01.04.2020 extending said stop gap arrangements for two months i.e. from 01.04.2020 to

31.05.2020, whereas the service period of other vocational trainers had extended their services upto 30.06.2020.

It has further been submitted that respondent No.2-Shikha Parishad, vide letter dated 21.04.2020 (Annexure P-22) had directed Vocational Training Providers (for brevity, 'VTPs') to submit the reimbursement claims of vocational trainers for the month of April, 2020 by 01.05.2020. Respondent No.2-Shikha Parishad had issued a letter dated 01.04.2020 to all the VTPs recommending the extension of contract of vocational trainers for further three months from 01.04.2020 to 30.06.2020. But despite the representations made to the authorities and the legal notice dated 09.06.2020, the petitioners are not taken back in the service, whereas similarly situated vocational teachers are performing their duties.

It is still further submitted that if a vocational trainer engaged through service provider resigns, then as per the guidelines, the said post is to be filled up within 15 days as stop gap arrangements for two months. Petitioner No.1-Sunita Soni and petitioner No.44-Nirmal Kaur Virk were appointed on contract basis, but by treating them as the stop gap vocational teachers, their services were also terminated w.e.f. 01.04.2020, whereas similarly situated persons are performing their duties even though the qualification and selection process are the same and the scheme under which the petitioners were appointed, is still in force. It is further submitted that as per the settled law on the subject, a contractual employee cannot be replaced by another contractual employee. In this regard, learned senior

counsel for the petitioners has relied upon a decision rendered by the Hon'ble Supreme Court in Binny Ltd. and another Vs. V. Sadasivan and others, (2005) 6 SCC 657. Reliance was also placed upon a decision dated 03.08.2016 rendered in CWP-17441-2013, titled as 'Shiv Kumar and another Vs. State of Haryana and another'.

On the other hand, learned counsel for respondent No.2-Shiksha Parishad has not disputed that the petitioners were engaged as the stop gap arrangements on account of maternity leave or resignation of contractual vocational teachers (trainers). An agreement was executed between respondent No.2 and the VTPs to implement the Scheme through respondent No.2, which is an autonomous body and a society registered under the Societies Registration Act, 1860. He has further contended that the agreement was executed with the VTPs with an object to introduce the vocational education in the Schools in the State of Haryana. As per Clause 7.9 of Bid document dated 19.05.2016 (Annexure R-6), the vocational teachers (trainers) deployed by VTPs/contractors are not the employees of respondent No.2. It is clearly mentioned in the aforesaid clause of the agreement that the vocational teachers (trainers) so employed through VTPs/contractors shall not be the employees of respondent No.2 in any manner and that they shall not claim any salary or allowances, compensation, damages or anything arising out of their employment/duty under the contract from respondent No.2.

Based on the aforesaid assertions, learned counsel for respondent No.2 has vehemently contended that there being no employer-employee relationship between respondent No.2 and the vocational teachers (trainers) employed through the VTPs/contractor, the petitioners' claim that they should be retained in the service and that their services could not have been dispensed with, has no force as they had been employed on the outsource basis and there is no contractual obligation(s) between the petitioners and respondent No.2.

Learned counsel for respondent No.2 has further contended that even as per the communications dated 24.07.2020 [Annexure R-8(colly.)] received from the different VTPs, it was intimated that they had clearly mentioned in the intent letter that the appointments of the petitioners were purely on temporary basis as the stop gap arrangements to fill up the vacant positions only for the time being as per the requirement and that no extension beyond 31.03.2020 was given to the trainers mentioned in the said communications. It was further mentioned therein that the trainers were not hired by following the proper procedure of public advertisement(s).

Learned counsel for respondent No.2 has yet further submitted that neither respondent No.2 is the principal employer nor the petitioners are under the control and supervision of respondent No.2. In support of his contentions, he has relied upon the judgment of the Hon'ble Supreme Court rendered in International Airport Authority of India Vs. International Air Cargo Workers' Union (2009) 13 SCC 374.

I have heard the learned counsel for the parties and with their able assistance, have gone through the documents available on the file.

Admittedly, the petitioners were engaged as vocational teachers (trainers) as the stop gap arrangements. Even as per the letter of intent, the contract ending date was specifically mentioned. Moreover, no advertisement was given and interview was conducted on telephone. Therefore, it cannot be said that a proper procedure emanating from Article 14 read with Article 16 of the Constitution had been followed while appointing the petitioners.

Though from the factual position narrated above, it is clear that there is no employer-employee relationship between respondent No.2 and the petitioners, yet assuming such relationship for the sake of arguments, suffice it to say that even if appointed on contractual basis, the public employment must not be in violation of the proper procedure. In other words, the proper procedure as stipulated above completely rules out the process of backdoor entry.

Such is the view taken by the Hon'ble Supreme Court in Secretary, State of Karnataka Vs. Uma Devi and others, (2006) 4 SCC Page 1. In the said judgment, the Hon'ble Supreme Court while delineating the principles of public employment and examining them on the touchstone of Article 14 read with Article 16 of the Constitution held that the Court would certainly be disabled from passing an order upholding violation of Article 14 or in ordering the overlooking of the need to comply with the

requirements of Article 14 read with Article 16 of the Constitution. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It was further held that the Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein. The spirit of discrimination and equity runs through the law laid down in the said judgment.

The judgments relied upon by the learned senior counsel for the petitioners have no applicability in the present case as admittedly, the services of the petitioners had been availed on outsource basis through VTPs and in the letter of intent, it was clearly mentioned that there would be no employer-employee relationship between respondent No.2 and them and further, their services were purely temporary and even the ending date of the contract was also mentioned therein.

Considering the factual situation involved in the present case, it may be noticed that the appointments had been done on the basis of the interview taken on the telephone. It was only the stop gap arrangement(s) and the contractual period was specifically mentioned therein, therefore, it does not create, in such a situation, any binding force for or against respondent No.2 to continue with the services of the petitioners.

Clause 7.9 of the agreement stipulated that there shall be no relationship of employer-employee between respondent No.2 and the petitioners and the petitioners were only engaged to meet out the requirements arising out of the vacant positions on account of maternity leave or resignation of the regular employees.

In view of the above, I do not find any merit in the present writ petition.

Finding no merit in the present petition, the same is dismissed.

It is made clear that if there are any dues payable to the petitioners, the same shall be paid by the VTPs to them, after claiming the same from respondent No.2.

24.09.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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