

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
114(PROCEEDINGS THROUGH V.C.)**

CWP-16364-2020

Date of decision: 07.10.2020

RAJENDER

...PETITIONER

V/S

STATE OF HARYANA AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. Sajjan Singh, Advocate,
for the petitioner.**

**Ms. Kirti Singh, DAG, Haryana,
for the State.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for issuance of a writ of mandamus for directing the respondents to allow the petitioner to join as Chowkidar as he has been removed by the respondents in violation of the Policy Instructions dated 06.10.2016 and 02.02.2019 (Annexures P-8 and P-9 respectively).

It is the contention of the learned counsel for the petitioner that the petitioner was initially engaged on contract basis in pursuance to an advertisement dated 17.05.2013 (Annexure P-1) issued by The Principal, Government Women College, Julana, District Jind-respondent No. 3. He continued as such and discharged his services from 01.07.2013 to 31.12.2013 & 04.01.2014 to 31.05.2014 as Chowkidar. Petitioner, in the subsequent years, was engaged through an outsourcing agency i.e. Alert

Detectives and Security Private Ltd.-respondent No. 4 without any consent from him. He contends that the petitioner continued on the post of Chowkidar up to 15.06.2019 when he was relieved from the said post and he has not been re-engaged, rather someone else has been appointed in his place. This replacement of the petitioner by another person is unsustainable and is in violation of the Instructions dated 06.10.2016 and 02.02.2019 (Annexures P-8 and P-9 respectively). He, thus, contends that the action of the respondents in dispensing with the services of the petitioner is illegal and deserves to be set aside with a direction to the respondents to reinstate the petitioner in service.

On the other hand, learned counsel for the State has submitted that the petitioner is not an employee of the Department of Education rather a policy decision has been taken, according to which, the cadre of Chowkidar has been put as a diminishing cadre and no fresh appointment has been made on the said post. A decision has been taken to appoint people through outsourcing agencies wherever it is essential for appointment of persons. The cadre as such being a diminishing cadre, the vacancies, which became available because of retirement or other reasons, are not being filled up by the department. Thus, there is no vacancy as such available for appointment. Her contention is that the policy instructions dated 06.10.2016 and 02.02.2019 (Annexures P-8 and P-9 respectively) would not be applicable to the case of the petitioner.

Having considered the submissions made by the counsel for the parties and gone through the records of the case, I am of the considered view that the policy instructions dated 06.10.2016 and 02.02.2019 (Annexures P-8 and P-9 respectively) would not be applicable to the case of

the petitioner in the light of the fact that the petitioner has hardly worked with the department and that too, on contractual basis from 01.07.2013 to 31.12.2013 & 04.01.2014 to 31.05.2014 as a contractual employee. After that, the petitioner had been working through an outsourcing agency i.e. Alert Detectives and Security Private Ltd.-respondent No. 4. The petitioner, thus, is not a Government employee and, therefore, cannot claim the benefit of the guidelines/instructions dated 06.10.2016 and 02.02.2019. In any case, the said policy instructions would not be applicable to the case of the petitioner as at that time when these instructions came into force, the petitioner, admittedly, was working as a Chowkidar under the outsourcing contract, which was taken by the Alert Detectives and Security Private Ltd.-respondent No. 4 as after 31.05.2014, petitioner has not served as a contract employee under the Principal, Government Women College, Julana, District Jind.

In view of the above, finding no merit in the present writ petition, the same stands dismissed especially when the post of Chowkidar has been put in the diminishing cadre and the said posts, when became available, are not filled up because of the said reason.

October 07, 2020*pj***(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No