

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.13921 of 2017 (O&M)
Date of decision : 07. 02. 2020

Parvinder Pal Singh. Petitioner

Versus

State of Haryana and Ors. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Baldev Singh Dhillon, Advocate for the petitioner.

Mr. Pardeep Solath, advocate for respondent Nos. 2 and 3.

B.S. Walia, J.

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing the action of respondent Nos. 2 and 3, in not allowing the petitioner to continue in service with respondent No. 3 and in orally terminating the services of the petitioner on 15.06.2017. Prayer is also for the issuance of a writ of Mandamus for directing respondent Nos.2 & 3 not to replace the petitioner with another contractual employee till appointment on regular basis is not made.

[2] Brief facts of the case as per averments in the writ petition are that the petitioner claims to have been appointed as Clerk – cum – Computer Operator with respondent No. 3 through outsourcing by service provider i.e. respondent No. 4 vide appointment letter Annexure P/1 dated 29.06.2016 and ever since said date the petitioner is discharging his duties conscientiously without any

break and marking his presence in the register of respondent No. 3 regularly. However on 15.06.2017 to the utter surprise of the petitioner, respondent No. 3 did not allow the petitioner to mark his presence in the register of the bank and told that his services were no longer required in the bank although the post against which the petitioner was working was permanent in nature and the petitioner was working against said vacant sanctioned post, the petitioner was working under the complete supervision and control of respondent Nos. 2 and 3 and salary of the petitioner used to be given from government funds, his appointment was not under any scheme or project but against a permanent post under respondent No. 2 and 3. It is also the stand of the petitioner that the mother of respondent No. 4 is one of the directors on the Board of Directors of respondent No. 2 and 3, therefore respondent Nos. 2 and 3 wanted to initiate the process of fresh recruitment at the instance of respondent No. 4 who wanted to adjust his own near and dear ones on the post by initiating fresh recruitment process on contract basis in violation of well-settled principle of law in view of various decisions of the Supreme Court as well as High Courts.

[3] That it needs noticing here that notice of motion was issued at the time of preliminary hearing to respondent Nos. 2 and 3 only. Reply has been filed on behalf of respondent No. 2 and 3 contending that respondent No. 2 and 3 are a Cooperative Society under the Haryana Cooperative Societies Act 1984, therefore not covered under the definition of "State" under Article 12 of the Constitution of India, therefore not amenable to the jurisdiction of the High Court in view of the decision of the Supreme Court in 2007 (1) S. C. T. 74 in case titled as M. D., Bhadra Shahakari S.K. Niyamita versus President, Chitradurga Mazdoor Sangh and Others wherein it was held that a Cooperative

earn profits for the members of the Society is purely a non-governmental organisation and will not fall within the definition of State under Article 12 of the Constitution so as to maintain a writ under Article 226, that the writ petition was also not maintainable as the petitioner was not an employee of respondent No. 2 and 3 and there was no privity of contract with him as the action to challenge was regarding non employment by respondent No. 4 i.e. contractor. Thus the dispute was amongst private persons who did not fall within the ambit of writ jurisdiction under Article 226, that once the petitioner was an employee of respondent No. 4 and respondent No. 4 was responsible for assigning work to the petitioner, consequently it was respondent No. 4 against whom the petitioner's claim if any was maintainable and not against respondent No. 2 and 3 who had outsourced their requirement to respondent No. 4. Petitioner was not appointed by respondent No. 2 and 3 but was deputed by respondent No. 4 being the outsourcing agency of respondent No. 2 and 3 and respondent No. 4 withdrew the services of the petitioner from the office of respondent No. 3 therefore the petitioner could not be permitted to work in the office of respondent No. 3 and if the petitioner was having any grievance then his remedy lay to approach respondent No. 4 and not respondent No. 3, that even otherwise the contract of respondent No. 4 was going to expire on 19.01.2018 whereafter appointment of the outsourcing agency would be made through proper advertisement by the Board of Directors of respondent No. 3, that respondent 3 had nothing to do with the recruitment of employees by respondent No. 4, that on expiry of the contract between the respondent Cooperative Bank and outsourcing agency on 19.01.2018, fresh contract was allotted to some other outsourcing agency through e tendering, that writ was not maintainable against an outsourcing agency in view of the decision in

CWP No. 19762 of 2018 in case titled as Vikash versus State of Haryana decided on 11.12.2019 as also CWP No. 13348 of 2018 in case titled as Rajeev Kumar and Others Versus State of Punjab and others decided on 10/12/2018.

[4] Replication has been filed by the petitioner to the written statement filed on behalf of respondent No. 2 and 3 taking up the plea that in view of the decision of the State Information Commission Haryana in case titled as Sh. Ishwar Das and others versus The Fatehabad Central Cooperative Bank Limited, Fatehabad and others, writ was maintainable against respondent Nos. 2 and 3, that the petitioner was appointed by respondent No. 4 on the demand of respondent Nos. 2 and 3, that the petitioner was contractual employee of respondent Nos. 2 and 3 and it was settled law that contractual employee could not be replaced by another contractual employee in view of the decision of the Supreme Court in the case of Hargurpratap Singh versus State of Punjab and Others (2007) 13 SCC.

[5] I have considered the submissions of Ld. counsel and with their able assistance have gone over the pleadings. Admittedly the name of the petitioner was forwarded to respondent Nos. 2 and 3 by the outsourcing agency for work vide Annexure P/1 dated 29/09/2016. It is the categorical stand of respondent Nos. 2 and 3 that the contract of respondent No. 4 expired on 19.01.2018 whereafter appointment of the outsourcing agency was to be made through proper advertisement by the Board of Directors of respondent Nos. 2 and 3. During the course of hearing Ld. counsel for respondent Nos. 2 and 3 contended that contract between respondent Nos. 3 and 4 came to an end on 19.01.2018 whereafter fresh contract was allotted to another outsourcing agency through e tendering whereupon the new outsourcing agency deployed its own employees and the petitioner and some other employees of the

previous outsourcing agency were not engaged by the new outsourcing agency. Admittedly the petitioner has no direct relationship with respondent Nos. 2 and 3 and was deputed to work under respondent Nos. 2 and 3 by respondent No. 4 i.e. outsourcing agency vide communication Annexure P/1 dated 29.09.2016. In view of the decision of the coordinate bench of this Court in CWP No. 19762 of 2018 in case titled as Vikash versus the State of Haryana and others decided on 11.12.2019 no writ petition lies against an outsourcing agency being a private entity which is not an authority in terms of article 12 of the Constitution of India. No material has been referred by Ld. counsel for the petitioner to substantiate that the petitioner was working under respondent No. 3 by virtue of appointment by respondent No. 3. On the contrary it is crystal clear from Annexure P/1 i.e. communication from respondent No. 4 to respondent No. 3 that the petitioner was deputed to work in respondent No. 3 office by the outsourcing agency i.e. respondent No. 4. Thus, in the circumstances, the claim if any of the petitioner is against respondent No. 4 and not against respondent No. 3. In view of the fact that respondent No. 4 is a private entity and is not amenable to the writ jurisdiction of this court, the writ petition is dismissed by leaving it open to the petitioner if so advised to avail of appropriate remedy as may be available to him in accordance with law before a competent forum with regard to the action of respondent No. 4 i.e. the outsourcing agency. Dismissed as above.

07.02.2020
DP &S

(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.