

CWP No.17446 of 2020

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2020.12.18 10:35
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.17446 of 2020

DATE OF DECISION *December 18, 2020*

RISHPAL SINGH GILL

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Arvind Seth, Advocate,
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

SUDHIR MITTAL, J.

The straight forward case set up by the petitioner is that he was appointed against sanctioned post of Driver in the office of respondent No.2-Director General, Department of Horticulture, Haryana in the year 2015, but on contract basis. He possesses the requisite qualifications prescribed in the Haryana Horticultural (Group-B) Service Rules, 1998 (hereafter referred to as the Service Rules) and to establish this fact documents have been annexed with the writ petition. He has been working with utmost sincerity and devotion to duty and was even assigned work when offices were closed on account of Covid-19 pandemic. The Department has been directly issuing instructions regarding assigning of duties. Suddenly, his service has been discontinued and he has been

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replaced by respondent No.3 who has also been appointed on contract basis. Replacement of one contractual employee with another contractual employee is illegal and thus, a writ in the nature of prohibition be issued restraining the respondents from replacing the petitioner with another contractual employee.

2. Pursuant to issuance of notice, written statement has been filed by the Joint Director, Horticulture Haryana. According to the written statement, the principle that one contractual employee cannot be replaced with another contractual employee is not attracted in the facts of this case as the petitioner has not been directly employed on contract basis. The Department has signed an agreement dated 28.07.2017 with respondent No.4 for provision of manpower. In accordance therewith, the petitioner was deployed as a Driver. On 30.09.2020, a communication of even date was addressed to the said contractor for replacing the petitioner and accordingly he was replaced by respondent No.3 on the same date. Replacement was sought because there were complaints that the petitioner was making false entries in the log-book of the vehicle allotted to him. Objections regarding the maintainability of the writ petition have also been raised as there is no privity of contract with the petitioner, him being the employee of a private entity i.e. contractor who has been assigned the job of manpower provision through agreement dated 28.07.2017 signed under outsourcing policy part-I of Government of Haryana dated 06.04.2015 and the salary of the petitioner is being paid by respondent No.4.

3. However, the specific averment made in the writ petition that the petitioner was appointed against a sanctioned post in the year 2015 has not been denied.

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4. No rejoinder has been filed to the written statement.

5. Thus, it is evident that the petitioner was appointed in the year 2015 and respondent No.4 was contracted to supply manpower vide agreement dated 28.07.2017. It thus, appears that at the time of appointment of the petitioner, there was no intermediary and that he was appointed directly. However, on the basis of the pleadings of the parties, I would not hazard to return any finding. Certain other questions also remain unanswered i.e. (a) whether the petitioner was appointed against a sanctioned post (b) whether, at the time of his appointment on contract basis, an intermediary was in existence and (c) whether the intermediary was interposed at a later date. These questions can only be answered if the parties are permitted to lead evidence.

6. Learned counsel for the petitioner has argued that a contractual employee cannot be replaced by another contractual employee and that the petitioner is the employee of respondent No.2-Department as is evident from the fact that the Department is directly allocating work to him. Reliance has been placed upon letters dated 20.04.2020 (Annexure P-5), 03.05.2020 (Annexure P-6), 31.08.2020 (Annexure P-7) as well as document (Annexure P-8) in this regard whereby, respondent No.2 has issued office orders for deployment of certain personnel during the Covid-19 pandemic. On the basis of the written statement, it has been argued that the petitioner has been removed from his job on account of allegations of misconduct and the same could not be done without conducting an inquiry. Reliance has been placed upon a Division Bench judgment of this Court in ***Union Territory of Chandigarh and others vs. Central Administrative Tribunal, Chandigarh Bench and others, 2011(1) SCT 777.***

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7. In support of the argument that a contractual employee cannot be replaced by another contractual employee, reliance has been placed upon *Shiv Kumar and another vs. State of Haryana and another, 2017(1) SCT 197* and judgment dated 03.09.2020 passed in CWP No.11376 of 2020 titled as *Sangeeta vs. State of Haryana and others*.

8. Learned State counsel has argued that since the petitioner is the employee of a private entity-service provider, the writ petition is not maintainable. That apart, it has been submitted that the principle that a contractual employee cannot be replaced by another contractual employee is not attracted in this case as the petitioner has been provided by his employer i.e. respondent No.4-the service provider.

9. It cannot be over emphasized that employees are equal partners in progress of society. The employer is duty bound to look after their welfare and to ensure the same. A number of laws have been enacted providing for social security, minimum wages, health and pensionary benefits. These laws have been enacted on account of constitutional mandate enshrined in Articles 14, 16, 19, 21 and 23 which are included in part III of the Constitution pertaining to fundamental rights. Articles 38, 39, 43 and 43-A also provide for taking positive action for ensuring that a just and equitable social order prevails in the country and that the policy of the State should be guided by these principles in the governance of the country. Thus, it is the duty of Courts to ensure that employees are fairly treated. A contractual employee cannot be replaced by another contractual employee as it would permit the employer to keep a sanctioned post vacant and make a person work on reduced remuneration against the said post.

10. The State is however right in contending that the aforementioned principle does not apply in this case. From the material placed on record, I cannot return a finding that the petitioner was directly appointed by the Government and that respondent No.4 has been introduced as an intermediary at a later stage. The fact that respondent No.2 was issuing direct orders for allocating work to the petitioner does not in any way lead to the conclusion that he was directly appointed by the said respondent. The agreement dated 28.07.2017 is for provision of manpower and in case of such an agreement it is but natural for the second respondent to allocate specific duties. Overall control however, remains with respondent No.4 who would be the employer of the petitioner. If the manpower supplied is replaced by the contractor, he continues to be the employee of the contractor and can be deployed elsewhere. He does not become jobless and in case wages are not being paid to him, he can invoke the jurisdiction of the Industrial Adjudicator. The Industrial Adjudicator can also pierce the veil and return a finding that the contract in the present case is a sham but to return such a finding evidence would need to be led.

11. The judgments relied upon by learned counsel for the petitioner are not attracted in the facts and circumstances of this case. In ***Union Territory Chandigarh (supra)*** although it was held that a contractual employee cannot be removed from service without conducting an inquiry if the order of termination is stigmatic, there was no dispute regarding the employee therein being directly appointed by the Department on contract. In the instant case, there is a dispute regarding the status of the petitioner and thus, the judgment cannot apply. In ***Shiv Kumar (supra)*** also a finding had been returned that the employee had been directly appointed by the

Department. The judgment in *Sangeeta (supra)* is not applicable because the petitioner therein had been appointed as a Guest Teacher and his services were governed by a statute i.e. Haryana Guest Teacher Service Act, 2019.

12. For the aforementioned reasons, the writ petition deserves to be dismissed. However, the petitioner shall have liberty to approach the Industrial Adjudicator for redressal of his grievances as aforementioned.

December 18, 2020
Ankur

(SUDHIR MITTAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>