

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

218+219

CWP-15403-2017

Date of decision: 18.02.2020

**The Principal, Pt. Chiranji Lal Sharma Govt. College Sector-14, Urban
Estate, Karnal**

.....Petitioner

versus

Daya Ram and others

....Respondents

CWP-16727-2017

**The Principal, Pt. Chiranji Lal Sharma Govt. College Sector-14, Urban
Estate, Karnal**

.....Petitioner

versus

Pala Ram and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Ms. Safia Gupta, AAG, Haryana.

Mr. Diwan S. Adlakha, Advocate
for respondent No.1.

Ms. Kajal, Advocate for
Mr. Nitin Bhardwaj, Advocate
for respondent No3.

GIRISH AGNIHOTRI, J. (Oral)

This order shall dispose of two writ petitions namely CWP-15403-2017 and CWP-16727-2017. For the sake of reference, facts have been taken from CWP-15403-2017.

The present writ petition has been filed by the Principal, Pt. Chiranji Lal Sharma Government College, Sector-14, Urban Estate, Karnal,

inter alia praying for issuance of a writ in the nature of certiorari to quash the award dated 25.01.2017 (Annexure P-1).

Perusal of the award shows that vide order dated 25.01.2017, the Labour Court decided the reference in favour of the workman to the effect that he is entitled to reinstatement with continuity of service and 50% back wages from the date of filing of the demand notice. Against the said award, State of Haryana through the petitioner/College, has filed the present writ petition.

The records of the case show that on 30.11.2017, notice of motion was issued.

It is not disputed between the parties that during pendency of the writ petition, respondent No.1 has been taken back in service/reinstated. At this stage, learned counsel for the petitioner, however submits that the workman has only been taken back in service in the capacity as a contract worker through the service provider/Contractor.

Learned counsel for the petitioner further mentions that the execution was filed by the workman and orders dated 16.05.2019 and 19.10.2019 show that the Executing Court has noticed that the judgment debtor has reinstated the decree holder through contractor and not directly.

On resumed hearing of the case, offer was made to counsel for the workman, if the workman is ready to forego the award of back wages subject to the fact that the Management does not challenge the award qua reinstatement with continuity of service to the workman.

Learned counsel for the workman has taken instructions from the workman and has stated that he has instructions to forego the back wages

subject to the above condition.

Learned counsel for the petitioner submits that as has also been noticed by this Court in the order dated 15.09.2017, the case of the petitioner before this Court was that petitioner-College is governed by the rules of recruitment. She submits that it has been noticed in the order that the recruitment to the post should be filled through outsourcing/Contractor. The order dated 15.09.2017, passed by this Court reads as under:-

“Petitioner is hereby directed to file an affidavit for the purpose of recruitment to the post of Chowkidar and other posts to the extent that the same are governed by rules of recruitment; under what circumstances, petitioner-college can over ride the rules of recruitment and proceed in recruiting Group-C and Group-D posts through outsourcing; rules of recruitment are amended appropriately to the extent that the posts should be filled through outsourcing/contractor and respondents' action is contrary to rules of recruitment. In this regard, petitioner is directed to file an affidavit stating how they proceed to fill up the various posts through outsourcing on the next date of hearing. Petitioner is also hereby directed to produce relevant material to show that outsourcing agency has directed workman/respondent to discharge duties in the petitioner's office.

List this matter on 23.10.2017.”

In view of the above, this Court finds merit in contention of counsel for the petitioner that in fact, since the workman on the alleged date of termination, was working through an outsourcing Agency, he could only be reinstated through the service provider. This Court in view of the above, deems it appropriate to dispose of the writ petition with the following directions:-

- (i) The award dated 25.01.2017 is upheld but modified to the extent that the award of 50% of back wages (as foregone by the workman) shall not be read as part of the award.
- (ii) The workman who has been reinstated in service, if temporarily,

shall continue in pursuance to the direction/award dated 25.01.2017.

- (iii) It is further directed that the Competent Authority i.e. the petitioner, shall examine the issue as to if the workman is to be granted the same treatment as other similarly situated employees are getting. It is directed that in case, any other similarly situated workman like respondent No.1, who may have been appointed along with respondent No.1 or who may have been appointed after the date of appointment of respondent No.1, as aforementioned, has been on the regular employment of the petitioner, respondent No.1 shall also be given the same benefit.

Accordingly, the present writ petitions are disposed of by upholding the award except with the modification that the workman shall not be entitled to the payment of 50% back wages.

Regarding Civil Writ Petition No.16727 of 2017, the same is disposed of in the same terms as above. However, the date of appointment of the workman in the present writ petition is 27.08.2011. Learned counsel for the petitioner also submits that the date of order passed by the Executing Court be read as 16.05.2019.

CWP-16727-2017 is disposed of in the same terms as in CWP-15403-2017.

(GIRISH AGNIHOTRI)
JUDGE

18.02.2020
anju rani

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