

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17454-2020 (O&M)
Date of decision : 02.12.2020

Naresh Kumar and others

...Petitioners

Versus

Haryana State Warehousing Corporation and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Ashutosh Kaushik, Advocate for the petitioners.

Mr. Samarth Sagar, Addl. A.G. Haryana.

ANIL KSHETARPAL, J.

Through this writ petition filed under Article 226/227 of the Constitution of India, the petitioners pray for issuance of a writ in the nature of certiorari, quashing the action of the respondents in replacing the petitioners with fresh set of contractual employees.

The petitioners claim that they were employed by Oscar Service and Fire Services Limited, Outsourcing Agency as Security Guards. In para 8 of the writ petition, the petitioners have compiled the information regarding their engagement, which is extracted as under:-

<i>Petitioner No.</i>	<i>Name</i>	<i>Date of joining</i>	<i>Last place of Posting</i>
1.	Naresh Kumar	11.12.2009	Haryana State Warehouse, Pipli, Kurukshetra
2.	Vipin Panwar	20.03.2020	Haryana State Warehouse, Pipli, Kurukshetra

3.	<i>Raj Kumar</i>	<i>1.1.2020</i>	<i>Haryana State Warehouse, Pipli, Kurukshetra</i>
4.	<i>Jasmeet</i>	<i>20.6.2020</i>	<i>Haryana State Warehouse, Pipli, Kurukshetra</i>
5.	<i>Rajat Kumar</i>	<i>01.06.2020</i>	<i>Haryana State Warehouse, Pipli, Kurukshetra</i>

The writ petitioners further claim that they have been replaced on 16.09.2020 by respondent No. 4 to 8 as a new Outsourcing Agency i.e. respondent No.3. M/s Scientific Security Management Services Private Limited has been awarded contract by the Haryana State Warehousing Corporation.

This Court has heard learned counsel for the petitioners as well as Mr. Samarth Sagar, Addl. A.G. Haryana.

Learned counsel for the petitioners contends that in view of the principle that a contractual employee cannot be replaced by a contractual employee, the replacement of the petitioners by another set of contractual employees is illegal. He, in support thereof, relies upon judgment passed on 26.02.2019 in Umed Singh Vs. State of Haryana and others, CWP-8019-2017. He further relies on an interim order dated 22.09.2020 passed in CWP-14966-2020 titled as Ram Pal and others Vs. State of Haryana State Warehousing Corporation and others.

On the other hand, Mr. Samarth Sagar, Addl. A.G. Haryana, has drawn attention of the Court to a short judgment passed on 10.12.2018 by the Division Bench in Sharanbir Kaur Vs. State of Punjab and others, LPA-1910-2018 and a detailed order passed on 11.12.2019 in the case of Vikash Vs. State of Haryana and others, CWP-19762-2018. He further contends that the petitioners were employees of a private outsource agency i.e. Oscar

Service and Fire Services Limited and there was no privity of contract between the Corporation and the petitioners. He further submitted that there was no relationship of employer and employee between the Corporation and the petitioners. He also contended that the respondent No.3, a new Outsourcing Agency is not an authority in terms of the Article 12 of the Constitution of India. Hence, the writ petition against respondent No. 3 is not maintainable.

After analyzing the arguments of learned counsel for the parties, this Court is of the considered view that the writ petition filed by the petitioners has no substance and, therefore, liable to be dismissed. The reasons for forming an opinion are as under:-

- 1) In Umed Singh (Supra), the Court relied upon the judgment passed in Shiv Kumar and another Vs. State of Haryana and another, CWP-17441-2013, decided on 03.08.2016. This Court has carefully time and again read the judgment in Shiv Kumar (Supra). In that case, two employees were directly recruited on contract basis by the State or an authority in terms of Article 12 of the Constitution. Shiv Kumar's case was not a case of employees who were engaged through Outsourcing Agency. Still further, in the case of Umed Singh (Supra), the learned counsel appearing for the State failed to draw attention of the Court to the fact that Outsource Agency is a private entity and is not an authority in terms of the Article 12 of the Constitution.
- 2) Respondent No.3 is the Outsource Agency, which is not an authority in terms of Article 12 of the Constitution. Hence, no writ is maintainable against respondent No.3. Further, attention of the Bench

was not drawn to a Division Bench judgment in Sharanbir Kaur (Supra). In this short order, the Division Bench upheld the dismissal of the writ petition filed by an employee. The relevant discussion in para 2 is extracted as under:-

“2. Learned Single Judge finding that the appellant was an employee of outsourcing agency which was having a license under the contract to supply manpower held there was no privity of contract between the appellant and the employer and she was not even a contractual employee. The principle being canvassed before us applies only in case there is a privity of contract between the employee and the employer. In the case in hand, the appellant was an employee of the service provider. The benefit of the said principle is not liable to be extended to her and, thus, we do not find any illegality committed by learned Single Judge in dismissing the writ petition.”

Still further, another Single Bench of this Court in the case of Vikash (Supra), have also held that no writ against private security agency is maintainable.

- 4) The petitioners are not in employment since 16.09.2020 and they have already been replaced by respondent No. 4 to 8. Therefore, the petitioners are praying for their reinstatement. In these circumstances, the petitioners have equally efficacious alternative remedy of invoking jurisdiction under the Industrial Disputes Act, 1947.
- 5) The judgment of the Supreme Court in **Hargurpartap Singh vs. State of Punjab (2007) 13 SCC 292**, relate to a contractual employee and not Outsourced employees.

In view of the aforesaid reasons, this Court does not find it appropriate to issue writ, as prayed for, by the learned counsel for the petitioners.

In view of the aforesaid final judgment passed by a Division Bench, this Court also do not find it appropriate to place reliance on an interim order.

Accordingly, the present writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

02.12.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No