IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17478-2020 **(**O&M)
Date of Decision:December 07, 2020

Balbeer Singh and others .....Petitioners

Versus

Haryana State Warehousing Corporation and others ..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

Mr. Vivek Chauhan, Addl.AG, Haryana.

Mr. Mohit Garg, Advocate for
Mr. Ashish Yadav, Advocate for Warehousing Corporation.

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Lisa Gill, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioners, in this case, were admittedly employed on contractual basis as Security Guards through a service provider. Present writ petition has been filed seeking a direction that the respondent-authorities allow the petitioners to continue to work for them and not to replace the petitioners with a fresh set of contractual workers. It is submitted that the petitioners were appointed in terms of Outsourcing Policy – I and they were initially appointed through service provider namely 'Oscar Service and Fire Services Limited'. The said service provider has admittedly not been impleaded as a party to this writ petition. Thereafter, the petitioners' services were provided through outsourcing company namely 'M/s Scientific Security Management Services Pvt. Limited'. Respondent State/department engaged the services of respondent No. 3 as the service provider

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w.e.f. 16.09.2020. Respondent No. 3, admittedly a private entity did not engage services of the petitioners and has chosen to offer services of other persons to the respondent – department. Hence, aggrieved, this writ petition has been filed.

It is vehemently argued that even though the petitioners have been appointed through service providers on a purely contractual basis, privity of contract does exist between the petitioners and the State/department and they cannot be replaced by another set of similarly situated employees and neither can the subsequent service provider, which may be engaged by the State authorities, dispense with services of the petitioners in a situation, when the work and conduct of the petitioners is satisfactory and there is nothing adverse thereto. It is submitted that ultimately and in effect the petitioners are working with the respondent - State authorities and their salaries were also being released by the State. In this scenario, it is urged that privity of contract between the petitioners and the State/department cannot be denied. Learned counsel for the petitioners further argues that a change of the service provider cannot entail jeopardising of the petitioners' employment as they are in fact rendering service to the State/department and that their services cannot be replaced with another set of contractual employees. Learned counsel for the petitioners has submitted that writ petitions involving similar questions are pending for 20.01.2021, therefore, the present writ petition should also be adjourned for the said date. Learned counsel for the petitioners also relies upon decision dated 26.02.2019 passed in CWP-8019-2017, titled Umed Singh versus State of Haryana and others.

I have heard learned counsel for the parties and have gone through the file.

Learned counsel for the petitioners is unable to deny that the petitioners were appointed on a contractual basis through a service provider as per

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Outsourcing Policy of the State (Part-I). No appointment letters were admittedly issued to the petitioners and neither is there any termination of services by the respondent – State/department.

In this view of the matter, it is clear that privity of contract does not exist between the petitioners and respondents No. 1 and 2. The matter in any case stands conclusively settled by a judgment of a co-ordinate Bench in CWP-29655-2018 titled Anmol Garg and another versus State of Punjab and others, which has been upheld in LPA-1910-2018. The First Division Bench of this Court in LPA-1910-2018 upheld the decision of the Single Bench while specifically observing as under:-

> " 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."

Reference in this regard can also be made gainfully to CWP-19762-2018 titled Vikash versus The State of Haryana and others.

A Division Bench of this Court in **Nishan Singh and others versus State of Punjab and others 2014 (11) RCR (Civil) 262** has clearly observed that a service provider is not an agency of the State. The service provider enters into an agreement with the State agency to provide the work force on certain terms and conditions. The candidates are selected by the service provider and supplied to the Government department. Thus, in this scenario it cannot be held that there is any

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privity of contract between the contractual employees and the State/department. The Hon'ble Supreme Court in **Yogesh Mahajan versus Prof. R.C. Deka 2018 (3) SCC 218** has reaffirmed that even a contractual employee does not have a vested right to have his/her contract renewed from time to time.

In an identical situation, another co-ordinate Bench has refused to interfere in the matter on 02.12.2020 in CWP-17454-2020. Similar contentions on behalf of the petitioners in the said case, including the applicability of decision of **Umed Singh's** case (supra) as well as **Hargurpartap Singh versus State of Punjab (2007) 13 SCC 292** have been succinctly dealt with and I am in agreement with the same. The petitioners, in this case, are no longer in employment since 15.09.2020. The argument that they should not be replaced by another set of another employees also lacks merit and is hence, rejected. It is a matter of record that the Outsourcing Policy Part – I in any case is not under challenge and moreover once there is no privity of contract between the petitioners and the respondent – Department/State, the said argument does not hold good.

Another argument vehemently urged by learned counsel for the petitioners is that this writ petition should be adjourned, to be taken up with some other similar matters stated to be listed on 20.01.2021. Keeping in view the definitive pronouncement of the Division Bench of this Court, I do not find any ground or justification for adjourning these matters for the said date.

Accordingly, this writ petition is dismissed with no order as to cost.

Needless to say, the petitioners are at liberty to avail alternate remedy, if any, as may be, available to them qua the service provider.

(Lisa Gill)
Judge

December 07, 2020
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Whether speaking/reasoned: Yes/No Whether reportable: Yes/No

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