

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
211

CWP-5393-2015

Date of decision: 22.01.2020

SUMIT DHIR AND ANOTHER

...PETITIONERS

V/S

STATE OF PUNJAB & ORS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioners.

Mr. Charanpreet Singh, AAG, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court praying for issuance of a writ of certiorari quashing the letter dated 06.02.2015 (Annexure P-12) and thereby setting aside the action of the official respondents in appointing respondents No. 4 and 5 in place of the petitioners in violation of law as has been laid down by the Division Bench judgment of this Court in **Gordhan Singh Gulia vs. State of Haryana**, 1996 (3) S.C.T. 412, where it has been held that a contractual employee cannot be replaced by another set of contractual employee. Prayer has also been made for regularizing the services of the petitioners for continuing them in service till the appointments on regular basis are made.

Petitioner No. 1, admittedly, was initially appointed through

NIC, Punjab under the Department of Information Technology, Ministry of Communications & Information Technology on contractual basis. He joined as Data Entry Operator w.e.f. 14.07.2011 with the Superintendent, Central Jail, Tajpur Road, Ludhiana-respondent No. 3. He continued as such till a decision was taken by the Government of Punjab vide letter dated 15.10.2013 (Annexure P-6) that henceforth, the appointments would be made directly by the department on contract basis. In pursuance thereto, petitioner No. 1 was granted extension. Another employee, who was appointed in the similar manner as the petitioner, having left the job, petitioner No. 2 joined in his place on 06.02.2014. This appointment was directly made by the competent authority on contract basis and continued till letter dated 06.02.2015 was issued by the Government of Punjab wherein further extension, as proposed by respondent No. 3, was declined and in pursuance thereto, the services of the petitioners came to an end on 28.02.2015. It is then when the petitioners have approached this Court by way of the present writ petition.

On notice having been issued, the respondents have filed the reply, wherein initial response to the writ petition was as a mode of denial with regard to the factum of the petitioners having been appointed by the respondent-department directly after the initial appointment through NIC. However, in pursuance to the order passed by this Court on 09.01.2017, whereby a specific affidavit was sought for from the respondents relating to the aspect whether the petitioners were under the direct contract employment of the Department or through the service provider and as to whether the replacements, as have been provided by the Punjab Ex-Servicemen Corporation, were earlier employed i.e. the petitioners. In

pursuance thereto, affidavit dated 27.09.2018 has been filed where the fact with regard to the petitioners being appointed on contract basis after the decision dated 15.10.2013 (Annexure P-6) having been taken, was admitted. However, the factum with regard to the replacement of the petitioners has not been specifically so denied or admitted.

In another affidavit dated 07.11.2019, a plea has been taken that respondents No. 4 and 5 have not been appointed in place of the petitioners, which aspect, as stated in the affidavit, is not acceptable in the light of the fact that on a question being put forth by this Court to the counsel for the State, he, on instructions from Sh. Sukh Bahadur, Senior Assistant, Central Jail, Ludhiana, has stated that the work, which was being performed by the petitioners, is being performed by respondents No. 4 and 5 and the employees, who have been provided by the Punjab Ex-Servicemen Corporation, are also working on contract basis. It has also been stated that the duty of the petitioners was to train the jail staff for the purpose of Prison Management System (PMS) and Visitor Management System (VMS) at Central Jail, Ludhiana.

Having considered the respective submissions of the counsel for the parties and keeping in view the pleadings of the parties, the fact, which turns up, is on the basis of the various affidavits which have been filed and the statement as made in Court today that the petitioners have been replaced by respondents No. 4 and 5. Petitioners were appointed on contract basis and similarly respondents No. 4 and 5. The duties and responsibilities, which were being performed by the petitioners, are being performed by respondents No. 4 and 5 now.

If that be so, the action of the respondents in appointing

respondents No. 4 and 5 in place of petitioners No. 1 and 2 would be hit by the Division Bench judgment of this Court in Gordhan Singh Gulia's case (supra) where it has been specifically held that an employee appointed on contract basis cannot be replaced by another employee on contract basis. It may be added here that the work and conduct of the petitioners has not been found to be unsatisfactory or up to the mark nor is there any allegation against them relatable to the conduct or service.

The stand of the respondents with regard to the duties of the petitioners for training of the jail staff with regard to the Prison Management System (PMS) and Visitor Management System (VMS) at Central Jail, Ludhiana cannot be accepted to be correct as nowhere in the affidavit, it has been mentioned that the jail staff has been fully trained and their services are no more required rather respondents No. 4 and 5 have been appointed in their place and they are performing the same duties as the petitioners.

In view of the above, the present writ petition is allowed.

Petitioners shall report to the respondents on 27.01.2020 and they would be taken back in service on the same terms and conditions. They would also be entitled to the salary for the period they have been forced to remain out of service because of the action of the respondents which is in violation of the law laid down by this Court as referred to above. The salary will be released to the petitioners within a period of four weeks from today.

January 22, 2020
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No