

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.24885 of 2018
Date of Decision : 14.02.2020

Subhash Saini

....Petitioner

Versus

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Rajiv Kumar Saini, Advocate for the petitioner.

B.S. Walia, J.,

1. Prayer in the petition under Articles 226/227 of the Constitution of India, is for the issuance of a writ of Certiorari for quashing order (Annexure P-9) dated 21.09.2018, terminating the services of the petitioner on outsourcing basis, as also order (Annexure P-10) dated 22.09.2018, appointing respondent No.4 in place of the petitioner on outsourcing basis, with a further prayer for the issuance of a writ of Mandamus for directing the respondents to reinstate the petitioner in service w.e.f. 21.09.2018 along with all consequential benefits.

2. Learned counsel contended that the petitioner was appointed as Legal Assistant in Municipal Corporation, Gurugram under the outsourcing police w.e.f. June, 2010 to July 2011 but vide order (Annexure P-1) dated 20.10.2013, he was appointed as Legal Assistant in the office of Municipal Corporation, Rohtak and vide order (Annexure P-2) dated 26.10.2017, he

was also appointed as Member of the *Sexual Harassment Committee of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* and further vide order (Annexure P-3), he was made Incharge, Legal Cell but respondent No.2 with a view to oblige the local MLA, who is from the ruling party in Haryana, terminated the services of the petitioner and instead appointed respondent No.4, that respondent No.4 had submitted an application dated 13.08.2018 (Annexure P-4) for the post of Legal Assistant, despite the fact that no post was available for the same, that the opinion of the ADA had also been sought about the performance of the petitioner, who had reported that there was no adverse remark or any enquiry – Annexure P-6, dated 12.09.2018, that respondent No.2 got served Show Cause Notice on the petitioner through respondent No.3 i.e. the outsourcing agency to the effect that as per the report of the Municipal Corporation, Rohtak, the petitioner was not taking interest in official work and remained non-cooperative with the staff - Annexure P-7, dated 18.09.2018, that the appointing authority of the petitioner was respondent No.2 and respondent No.3 had no power to terminate the services of the petitioner, that petitioner had submitted detailed reply to the Show Cause Notice on 21.09.2018 i.e. Annexure P-8 but his services were terminated on the same day, without giving opportunity of hearing or examining any witnesses vide order (Annexure P-9) dated 21.09.2018, that the petitioner fulfills the requisite qualifications for the post in question, his work and conduct was up to the mark for the past 05 years, no regular candidate selected by the Haryana Service Commission had been appointed, the post which the petitioner was holding was continuous and work was still existing, that services of the petitioner were terminated contrary to well

settled law, that an outsourced /contractual employee could not be replaced by another outsourced contractual employee.

3. Reply has been filed on behalf of respondent No.2, taking up the stand that the petitioner was engaged as Legal Assistant in the Municipal Corporation, Rohtak in the year 2013 through outsourcing agency and not directly by the Municipal Corporation, Rohtak, that the salary of the petitioner was also being paid by the outsourcing agency and that neither the Municipal Corporation, Rohtak had appointed the petitioner, nor had removed him from service and it was respondent No.3, outsourcing agency, which had dispensed with the services of the petitioner having found the work and functioning of the petitioner non- satisfactory after calling for his explanation and not finding the reply submitted by the petitioner to be satisfactory. On termination of the services of the petitioner by respondent No.3, respondent No.2 had requested for being provided with another Legal Assistant and respondent No.4, who was recommended by respondent No.3 was well qualified, besides was L.L.M. in 1st Division and was having experience as an Advocate at the District Court level, and had also published three books on the subject of Competition Law, Insurance Law and Private Inter-national Law, that respondent No.4 had joined as Legal Assistant, Municipal Corporation, Rohtak on 24.09.2018 and ever since he was working with the Municipal Corporation, Rohtak after termination of services of the petitioner vide order (Annexure P-9) dated 21.09.2018, that vague allegations had been levelled against respondent No.2 and the local MLA without impleading the said MLA as a respondent, that the services of the petitioner had been dispensed with by respondent No.3 i.e. the outsourcing agency after assessing the functioning and working of the

warnings were issued to the petitioner *qua* his performance but still there were no improvement, that mere assigning of duties as Member of the *Sexual Harassment Committee of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* did not imply that the work and conduct of the petitioner was satisfactory, the averment that petitioner was nominated as Incharge of Legal Cell was factually incorrect as order (Annexure P-3) dated 09.03.2018 had been procured by the petitioner from an officer who was having no power to issue said office order and the said power as per Section 401(2) of the Haryana Municipal Corporation Act, 1994 vested in the Commissioner, Municipal Corporation, Rohtak and vide order (Annexure R-4), directions had been issued to the Additional District Attorney to perform his own duties and that the aforementioned aspect of the matter had been concealed by the petitioner, that the allegations against the local MLA or of pressure having been put on respondent No.2- Department by the said MLA were factually incorrect, that it was for the outsourcing agency to assess the performance of the petitioner and despite issuance of warning on receipt of complaint from the Municipal Corporation, Rohtak the petitioner had not improved, thereupon the outsourcing agency dispensed with the services of the petitioner, that no cause of action accrued in favour of the petitioner against respondent No.2, besides the writ petition was not maintainable against a private outsourcing agency. In the aforementioned background prayer is for dismissal of the writ petition.

3. Reply by respondent No.4 is on the same lines.

4. Learned counsel by relying upon the decision of Hon'ble the Supreme Court in '*Hargurpratap Singh* versus *State of Punjab and*

to displace one contractual employee by another and that too, without conducting a regular departmental inquiry, where the termination is on allegations of misconduct. The learned counsel has also relied upon the decision of a co-ordinate Bench of this Court in '**Shiv Kumar and others versus State of Haryana and others**', 2017(2) RSA 333 to contend that rights of employee could not be defeated by making reference of an outsourcing policy. Learned counsel has also relied upon the decision on similar lines in the case of '**Paramjit Singh and others versus State of Punjab and another**', 2016 LIC 2244.

5. *Per contra*, learned counsel for respondent No.2 has relied upon the decisions of a co-ordinate Bench in CWP No.19762 of 2018 in case titled as '**Vikash versus State of Haryana and others**', CWP No.27687 of 2018 in case titled as '**Dr. Nishant Munjal and others versus State of Punjab and others**', '**Rajiv Kumar and others versus State of Punjab and others**', CWP No.13348 of 2018, '**Ajay Kumar and others versus State of Punjab and others**' in CWP No.11624 of 2018, '**Sudarshan Kumar and others versus State of Punjab and others**', CWP No.14348 of 2018, besides a Division Bench of this Court in LPA No.1559 of 2019 in case titled as '**Dr. Madhu Bala and others versus State of Punjab and others**' to contend that since the appointment of the petitioner was through an outsourcing agency and the decision of Hon'ble the Supreme Court in '**Hargurpratap Singh's**' case (*supra*) was applicable only in the case of an contractual employee and not an outsourced employee, no writ petition would lie against an outsourcing agency being a private entity and not being an authority in terms of Article 12 of the Constitution and the employee having no direct relationship with the Municipal Corporation. To similar

well as in CWP No.11624 of 2018, CWP No.13348 of 2018 and CWP No.14348 of 2018.

6. In the aforementioned writ petitions, the plea that the petitioners were being replaced by another set of contractual employees, although was found to be tenable in law but was objected on the ground that the petitioners therein were working under private contractors, who had been entrusted with the job of providing employees for the Corporation and that it was not the Corporation, who had removed the petitioners from service but the manpower contractor and there being no binding contract between the petitioners and the Corporation, the cause of action/grievance of the petitioners therein, if any, was against the manpower contractor and not the Corporation. In the case, in hand, the petitioner was kept as Legal Assistant under the outsourcing policy through approved outsourcing agency, till the arrival of regular incumbent or 06 months whichever was earlier with the right to cancel the assignment at any time, without giving any notice if the work was not found satisfactory. Show Cause Notice (Annexure P-7) was served by the outsourcing agency i.e. respondent No.3- M/s Parvati Enterprises on the petitioner for dereliction of duties.

7. Reply (Annexure P-8) was submitted by the petitioner to respondent No.3 in respect thereto, whereafter respondent No.3, i.e. the outsourcing agency, dispensed with the services of the petitioner from the outsourcing agency, as well as the Municipal Corporation, Rohtak. Thereafter on the requisition sent by the petitioner, respondent No.3 recommended the name of respondent No.4, who is working as such w.e.f. 24.09.2018. The payment of the salary of the petitioner was also made by respondent No.3 i.e. outsourcing agency. Moreover, the overall control

which issued a Show Cause Notice, considered the reply and not finding the same satisfactory, dispensed with the services of the petitioner. The outsourcing agency is a private entity, which is not amenable to the jurisdiction of this Court. Accordingly, the writ petition, is dismissed on grounds of maintainability while leaving it open to the petitioner to take recourse to appropriate remedy available to him, in accordance with law, before the competent forum *qua* grievance of termination of his services by the outsourcing agency i.e. respondent No.3.

(B.S. Walia)
Judge

14.02.2020
'Rajneesh'

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No