

CWP-2738-2021

Date of decision : February 08, 2021

RAMESH KUMAR

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gaurav Grover, Advocate for the petitioner.

Mr. Ashish Yadav, Addl.AG, Haryana.

LISA GILL, J.

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

Petitioner seeks a direction to the respondents to allow him to continue on the post of Peon with the Department of Women and Child Development. Petitioner was admittedly appointed on contract basis through an outsourcing agency namely Oscar Security and Fire Service on 30.09.2019 and thereafter through respondent No. 5. Petitioner continued working till 30.12.2020. His services, it is submitted, have not been continued and respondent No. 5 i.e. the private contractor is not offering his services without any justification whatsoever as there is no complaint against the petitioner. It is further submitted that the petitioner is in effect an employee of the State and present writ petition is, thus, maintainable.

Learned counsel for the petitioner is unable to deny that the petitioner has been appointed purely on a contract basis, under outsourcing policy of the State of Haryana through a service provider.

It is settled position that no privity of contract exists between the petitioner and the State authorities. In such a situation therefore, writ petition is not maintainable. The matter 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.”

Gainful reference in this regard can be made to the judgment of the Hon'ble Division Bench of this Court in **Nishan Singh and others versus State of Punjab and others 2014 (11) RCR (Civil) 262** wherein it has been clearly observed that a service provider is not an agency of the State. The service provider enters into a agreement with the State agency to provide the work force on certain terms and conditions. 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 privity of contract between the contractual employees and the State/department.

Keeping in view the facts and circumstances, no ground is made out for any interference in this writ petition.

Accordingly, present writ petition is dismissed.

However, petitioner is at liberty to avail remedy/remedies as may be available to him qua respondent No. 5 and under the Industrial Disputes Act.

February 08, 2021
Rts

(Lisa Gill)
Judge