

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.4379 of 2021

DATE OF DECISION: 26.02.2021

Ranbir

.....Petitioner

versus

State of Haryana & Ors.

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Dalbir Singh, Advocate for the petitioner.

Mr. Minderjeet Yadav, DAG, Haryana.

ALKA SARIN, J.

Heard through video conferencing.

The present civil writ petition under Article 226 of the Constitution of India has been filed inter-alia for issuance of a writ in the nature certiorari to set aside the impugned oral order dated 09.09.2020 regarding relieving of the petitioner by respondent Nos.3 and 4 and thereafter replacing him with private respondent No.6 on the post of Mali.

The brief facts, relevant to the present *lis*, are that the State Government has a policy for outsourcing of services/activities. Respondent Nos.3 and 4 are service/manpower providers. Since 01.01.2016 the petitioner is working as a Mali with respondent No.3 through respondent No.4 (the service/manpower provider). As per the averments in the writ petition, during this period the petitioner was asked to do other jobs by respondent No.3 like waterman, tube-well operator, night guard, support staff during examinations, etc. According to the petitioner, the respondent

No.4 (the service/manpower provider) did not pay/deposit the EPF of the petitioner and other similarly situated persons despite demand having been made. In 2017 respondent No.3 changed the service/manpower provider and gave the contract to respondent No.5 who also did not pay/deposit the EPF of the petitioner and other similarly situated persons despite demand having been made. In 2020 respondent No.3 again changed the service/manpower provider and gave the contract to respondent No.4. It is averred that without any show cause notice the petitioner has been asked not to come for duty to respondent No.3 and instead respondent No.6 has been appointed after the petitioner.

It is contended that the petitioner is entitled to continue since he was appointed as per proper channel and till a regular appointment is made, he has a prior right to the job, that the petitioner has been relieved only because he raised demands for EPF, that the actual employer of the petitioner was respondent No.3 who was assigning him works as thought fit, that replacing a contractual employee with another contractual employee is against the decision by the Supreme Court in '**Hargurpratap Singh vs. State of Punjab & Ors.**' (2007 (13) SCC 292).

Since an advance copy of the writ petition was supplied to the office of Advocate General, Haryana, Mr. Minderjeet Yadav, DAG has put in appearance for respondent Nos.1 to 3. He has submitted that the petitioner is not an employee of the State or respondent No.3 but was an employee of respondent No.4 or respondent No.5 (the service/manpower providers) at different points in time. According to the State counsel, it is not the State Government or respondent No.3 which has removed the petitioner from service but it is the service/manpower provider who has removed him and that there is no binding contract between the petitioner and respondent No.3.

He has placed reliance upon the decisions by this Court in '**Sharanbir Kaur vs. State of Punjab & Ors.**' (LPA-1910-2018 decided on 10.12.2018); '**Zamir vs. State of Haryana & Ors.**' (CWP-14135-2015 decided on 20.02.2020); '**Vikash vs. The State of Haryana & Ors.**' (CWP-19762-2018 decided on 11.12.2019); and '**Sunil vs. The State of Haryana & Ors.**' (CWP-3536-2019 decided on 26.11.2020).

I have heard learned counsel for the petitioner and learned State counsel. The petitioner was never given an appointment by respondent Nos.1 to 3. There is no appointment letter issued by respondent Nos.1 to 3 on the record. Rather, the petitioner was an employee of respondent No.4 or respondent No.5 (the service/manpower providers) during different years. This is also patent from the fact that demands for EPF were made by him to respondent No.4 or respondent No.5 (the service/manpower providers) and not to respondent No.3 which would also imply that his salary was paid by respondent No.4 or respondent No.5 (the service/manpower providers). There is no binding contract between the petitioner and respondent Nos.1 to 3. Further, the decision in **Hargurpartap Singh's case** (*supra*) related to ad hoc employees and not an outsourced worker and is thus not applicable to the facts and circumstances of the present case. Moreover, the petitioner cannot agitate and seek redressal of his dispute with respondent No.4 or respondent No.5 (the service/manpower providers) in the present proceedings since they are private entities and not an authority in terms of Article 12 of the Constitution of India. The judgements cited by the State counsel can be safely relied upon while reaching the above conclusions.

In view of the discussion above, this Court finds no merit in the present writ petition and the same is dismissed. However, this dismissal shall not preclude and come in the way of the petitioner from taking recourse to

appropriate remedies available to him, in accordance with law, before the competent forum with regard to any grievance he may have against respondent No.4 or respondent No.5 (the service/manpower providers).

Dismissed.

(ALKA SARIN)
JUDGE

26.02.2021
Yogesh Sharma

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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