

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

LPA-404-2021 (O&M)
Date of Decision:-3.9.2021

Inamul Hasan and others

... Appellants

Versus

Sate of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Nafees Ahmad Khan, Advocate
for the appellants.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The appellants have filed this appeal against the order dated
2.3.2021 whereby the writ petition filed by the appellants seeking quashing
of impugned letter dated 18.2.2021 (Annexure P-8), was dismissed by the
learned Single Judge.

The brief facts of the case of the appellants are that they were
engaged as drivers by Civil Surgeon, Nuh on temporary basis for a period of

89 days through outsourcing agency i.e. respondent No.4-M/s Classic Manpower & Construction Services. Accordingly office of Civil Surgeon, Nuh passed order dated 10.8.2020 (Annexure P-3) and another order dated 27.8.2020 (Annexure P-4). The appellants were granted extension for 89 days vide letter dated 6.10.2020 (Annexure P-5). However vide impugned letter dated 18.2.2021 (Annexure P-8), Civil Surgeon, Nuh informed respondent No.4 that the driving licenses of the appellants were not found as per law and outsourcing agency was asked to replace the appellants with another three drivers. Accordingly, the appellants were disengaged by their employer. The appellants have challenged letter dated 18.2.2021 (Annexure P-8), through the writ petition.

The learned Single Judge heard both the parties and dismissed the writ petition vide order dated 2.3.2021 with following observations:-

“The petitioners were to perform their duties in the Health Department and their duties were supposed to be sensitive in nature. In case they do not fulfill the least minimum pre-requisite qualification of three years old HMTV licence, which is evident from their licenses Annexure P-10, then the petitioners do not have any right to continue with the same. Therefore, there is no perversity or illegality in the order passed by the Civil Surgeon, Nuh vide Annexure P-8 in asking the outsourcing agency to recall the petitioners and to send another set of three drivers.

Consequently, the present petition is dismissed. ”

The appellants being not satisfied, have filed the present appeal against the order dated 2.3.2021 passed by the learned Single Judge.

The counsel for the appellants contended that the appellants are being replaced by another set of temporary drivers as is clear from impugned letter (Annexure P-8). However the same is not permissible under law. In this regard the counsel for the appellants placed reliance on **Hargurpratap Singh vs. State of Punjab & Others, 2007(13) SCC 292**, wherein it was held that a person employed on *ad-hoc* / temporary basis cannot be replaced by another *ad-hoc* / temporary arrangement of the same nature.

The counsel for the appellants further argued that there is no dispute regarding the fact that three other outsourced drivers who are not having requisite experience are still working in the office of Civil Surgeon, Nuh. The counsel for the appellants while seeking parity, contended that the similarly situated persons should be treated in a similar manner. The counsel for the appellants further argued that as the other ineligible drivers are retained in service, the respondents could not disengage the appellants just on the ground that they were not having requisite experience. The counsel for the appellants further contended that necessary direction be issued to the respondents to retain the appellants as drivers.

We have considered the submissions made by the counsel for the appellants.

Civil Surgeon, Nuh approached outsourcing agency i.e. respondent No.4 to engage temporary drivers for a period of 89 days on outsourcing basis in District Nuh, as is evident from Annexure P-1 and Annexure P-2. Only the drivers having three years old valid HMTV license

to drive heavy vehicle were eligible. On the basis of the said requisition, the office of Civil Surgeon, Nuh engaged the appellants as drivers through respondent No.4 by way of outsourcing. It means, the appellants were not directly under the employment of Civil Surgeon, Nuh. Actually Civil Surgeon, Nuh has engaged them as drivers through outsourcing agency i.e. respondent No.4, which a private firm. Thus, there was no direct contract of employment between the appellants and Civil Surgeon, Nuh.

The services of all the drivers hired on outsourcing were extended for another 89 days vide letter dated 6/9.10.2020 (Annexure P-5). Their services were further extended for another 89 days vide letter dated 5.1.2021 (Annexure P-7). Thereafter it was found that the appellants were not having requisite experience as driver as per the Rules of National Health Mission. Accordingly, Civil Surgeon, Nuh disengaged the appellants and asked respondent No.4 to provide three other drivers having requisite experience, in place of the appellants. Undoubtedly, the services of appellants were discontinued by Civil Surgeon, Nuh as they were not having requisite basic qualification / experience. The appellants are to be replaced by three other drivers having the requisite experience. So it cannot be said that the appellants are being replaced by another similar set of arrangement. It being so, the appellants cannot take any benefit of the judicial pronouncement in **Hargurpratap Singh's** case (supra).

We are of the view that the appellants could not take any advantage of the fact that some other ineligible drivers are still retained by the office of Civil Surgeon, Nuh. The reason being the right to equality

cannot be extended to claim parity in illegal acts. If the appellants who are not eligible to be retained as drivers under National Health Mission are retained in service on the direction of the Court, it would amount to perpetuation of illegality. In these circumstances the plea of the parity taken by the appellants is totally misconceived. Thus we are in agreement with the view taken by the learned Single Judge that the appellants (petitioners therein), who do not possess minimum pre-requisite qualification / experience of three years old HMV license, have got no right to continue in the job.

In view of the above, we do not find any illegality or perversity in the impugned letter (Annexure P-8) as well as the order dated 2.3.2021 passed by the learned Single Judge.

Consequently, the appeal is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

3.9.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No