

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CWP No.9763 of 2020(O&M)
Date of Order:28.01.2021

Jai Parkash and another

..Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Kumar Singh Goyat, Advocate,
for the petitioners.

Ms. Kirti Singh, DAG, Haryana

ANIL KSHETARPAL, J(Oral)

Hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioners after having worked for a considerable period as contractual Canal Patwaris were directed to be relieved on attaining the age of superannuation prescribed for regular employees i.e. 58 years. The petitioners claim that they are required to be re-engaged on DC rates.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel for the petitioner first relied upon a judgment in **Shivkesh and others Vs. State of Haryana and others in Civil Writ Petition No.13555 of 2013 decided on 02.06.2013**. From a careful reading of the judgment, it is apparent that in that case Respected Brother Judge decided the case while relying upon a previous decision in Civil Writ Petition No.2346 of 2013, decided on 04.02.2013. A reference was also made to an executive order passed by the Executive Engineer, Adampur,

District Hisar on 17th May, 2013 and to an outsourcing policy of the Haryana government dated 16.02.2009. He further drew the attention of the Court to various orders passed for granting sanction for engaging Patwaris on contractual basis. He further relied upon a judgment passed in Civil Writ Petition No.23400 of 2014 decided on 17.08.2016 (**Promod Kumar Sharma Vs. State of Haryana and others**). He further contends that in view of the judgment passed in **Hargurpartap Singh Vs. State of Punjab & Ors. (2007)13 SCC, 292** that a contractual employee cannot be replaced by another contractual employee.

Learned counsel for the petitioner has failed to show any legal right to continue as a contractual Canal Patwari or a corresponding duty of the respondents to continue to engage him after the age of 58 years.

On the other hand, learned State counsel has drawn the attention of the court to the instructions issued on 25.11.2019, wherein decision was taken by the Engineer-in-Chief, Irrigation and Water Resources Department, Haryana, discontinue the services of the contractually engaged Canal Patwaris after they attain the age of 58 years.

It is further stated in the reply-affidavit that no contractual employee has been retained in service after attaining the age of 58 years in Bhakra Water Services Circle, Kaithal.

After having heard learned counsel for the parties at length, this Court is of the considered view that there is no substance in the present writ petition.

As noticed above, Civil Writ Petition No.13555 of 2013 was decided on the basis of instructions prevalent at that time. As regards judgment in Civil Writ Petition No.23400 of 2014, the same pertains to an employee who was engaged as a Junior Engineer in a Municipal

Corporation. On expiry of the terms of contract, his services were sought to be replaced by another contractual employee. The Court while disposing of the writ petition directed that the corporation would be entitled to make a regular employment and replace the contractual employee.

In **Hargurpartap Singh's case (supra)**, the Hon'ble Supreme Court did hold that contractual employees cannot be replaced by another set of contractual employees. However, the aforesaid judgment does not deal with a case where the contractual employee has already attained the age of 58 years which is the normal age of superannuation of a regular employee.

Still further, once a conscious decision has been taken by the Engineer-in-Chief to the effect that no contractual Canal Patwari shall be retained or re-engaged after attaining the age of 58 years, this Court does not find such decision to be inappropriate or arbitrary. In the considered view of this Court, such decision falls in the realm of policy decision which can only be interfered with, if it is proved to be totally arbitrary or perverse. In the absence thereof, the High Court in exercise of its power of judicial review is not expected to interfere.

In view thereof, no ground to issue the writ as prayed for.

Dismissed.

January 28, 2021
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(ANIL KSHETARPAL)
JUDGE

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