

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

LPA-546-2021

Date of Decision:- 23/9/2021

Mukesh Kumari and others

... Appellants

Versus

State of Haryana and others

... Respondents

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

Present:- Mr. Chirag Kundu, Advocate
for the appellants.

Ms. Palika Monga, DAG, Haryana.

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
20.5.2021 passed by the learned Single Judge whereby CWP-9996-2021
filed by the appellants was dismissed.

The case of the appellants is that they were appointed as
Computer Operators in the office of respondent No.2 through private service

provider i.e. respondent No.3-Shine & Sind Security Solutions Pvt. Ltd. The petitioners have been relieved by respondent No.2 vide Annexure P-1 dated 5.5.2021 and sent back to respondent No.3 on the ground that their services are not required. The appellants had filed writ petition assailing Annexure P-1.

The learned Single Judge heard the counsel for the petitioners (appellants herein) and the State counsel who was having advance copy of the writ petition and dismissed the writ petition with the following observations:-

“Perusal of the order passed by the learned Single Judge in CWP No.13348 of 2018, which has been impugned in LPA No.469 of 2013, reliance upon which is being placed by the petitioners so as to claim the relief makes it clear that the contractual employees were being replaced by another set, which is not a fact in the present case as already noticed. The reliance being placed by the learned counsel on the interim order passed by LPA Bench is also misplaced and cannot be accepted especially when the question of maintainability of the writ petition and claim of outsource employees qua the State and replacement of its employees by the private contractor has already been settled by the Division Bench in LPA No.469 of 2013 titled as Nishan Singh and others versus State of Punjab and others, as the similar claim by the outsource employees has been negatived by the Division Bench already.

Dismissed. ”

Appellants being not satisfied, have filed present appeal.

We have heard the counsel for the appellants and the State counsel.

The counsel for the appellants contended that the learned Single Judge dismissed the writ petition mainly on the ground that it was not maintainable. The counsel for the appellants while referring to the decisions in K.K. Saksena vs. International Commission on Irrigation and Drainage & Ors. 2015(2) SCC (Civil) 654; Secretary, Haryana State Electricity Board vs. Suresh, 1999(3) SCC 601; Ravneet Kaur vs. The Christian Medical College, Ludhiana, 1997(3) SCT 210, contended that the writ petition filed by the appellants is maintainable against the State of Haryana and its instrumentalities. The counsel for the appellants further argued that in the present case real employer was the State Government. Respondent No.3 was just intermediary between the Government and the appellants. The appellants were working under the control of the State Government and thus there was relationship between the Government and the appellants. The counsel for the appellants while referring to judgment of Hon'ble Supreme Court in Secretary, Haryana State Electricity Board's case (supra) submitted that in the instant case, the so called contract system involving service provider was a mere camouflage. It was further contended that real contract of employment was between the State on the one hand and the appellants i.e. the employees on the other hand. The counsel for the appellants further referred to Hussainbhai vs. The Alath Factory Tezhilali Union and other 1978(4) SCC 257, wherein the Hon'ble Apex Court while

applying the principle of 'lifting the veil', held that the real employer is management and not the immediate labour contractor.

The counsel for the appellants further argued that the appellants were not replaced by the regular employees and rather they are being replaced by other set of contractual employees, which is impermissible under law. In support of his arguments the counsel for the appellants referred to **Hargurpratap Singh vs. State of Punjab & Others, 2007(13) SCC 292**, wherein it was held that a person engaged on *ad-hoc* basis cannot be replaced by another *ad-hoc* arrangement of the same nature. The counsel for the appellants also referred to **Narinder Singh Ahuja and others vs. Secretary, Ministry of Health and Family Welfare and others 2014(23) SCT 450 (Delhi)**. The counsel for the appellants while summing up his arguments contended that in the light of aforementioned settled position of law the present appeal deserves to be accepted.

On the other hand, the State counsel submitted that there is no illegality or infirmity in the impugned order passed by the learned Single Judge. The learned State counsel further submitted that there was no relationship of employer and employees between the State and the appellants who were engaged through private service provider. The State counsel further argued that the citations referred by the appellants are not applicable to the case in hand. The learned State counsel while concluding her arguments submitted that the appeal filed by the appellants deserves to be dismissed.

We have considered the contentions raised by the counsel for the parties.

In the instant case, the appellants failed to produce their appointment letters, if any, issued by the Haryana Government or any of its department. Rather, it is admitted case of the appellants that they were engaged by the private service provider i.e. respondent No.3 and their services were put at the disposal of respondent No.2. Thus making it clear that appellants were not appointed by the Haryana Government or its department and they were actually hired by private outsourcing agency. It being so, the learned Single Judge rightly concluded that there is no master and servant relationship between respondent No.2 and the petitioners (appellants herein). The similar view was taken by learned Single Judge of this Court in **CWP-19762-2018** titled as **Vikash vs. State of Haryana and others** decided on **11.12.2019** wherein it was held that the petitioner therein has no direct relationship with the Municipal Corporation, Gurugram where he was working as an outsourced employees.

We are of the view that the judgments relied upon by the counsel for the appellants are not applicable to the facts and circumstances of the present case. The judgment of the Hon'ble Supreme Court in **Secretary, Haryana State Electricity Board's** case (supra) was passed in the light of the provisions of Contract Labour Act 1970 which was enacted with the object to abolish contract labour and to regulate working conditions of contract labour in the industry. The case of **Hussainbhai** referred by the counsel for the appellants was relating to workmen who raised industrial

dispute and consequently Award was passed in their favour and the factory owner unsuccessfully challenged the said Award on the ground that the workmen were not his workmen but were engaged by the private contractor.

The judgment rendered by the Hon'ble Supreme Court in **Hargurpratap Singh's** case (supra) is relating to contractual employees directly engaged by the authorities of the Government college. Aforementioned decision is not relating to outsourced employees as is the case in the present petition. So the appellants cannot take any assistance of the law laid down in **Hargurpratap Singh's** case (supra).

As has already been noticed above, the appellants have failed to show that they were under the direct employment of respondents No.1 and 2. Besides, this it appears on the record that actually the appellants were hired by respondent No.3 which is a private outsourcing agency. So, there is no binding contract between the Government and the appellants. That being so, the learned Single Judge rightly observed that the writ petition is not maintainable against respondents No.1 and 2. We are of the view that the judicial pronouncements referred by the counsel for the appellants with regard to maintainability of the writ petition are not of any help to the appellants. The judgments in **K.K. Saksena; Secretary, Haryana State Electricity Board** and **Ravneet Kaur's** case were delivered by the Hon'ble Supreme Court and High Court in totally different context and are not relating to employment of outsourced employees. The reliance placed by the appellants in **Narinder Singh Ahuja's** case is also misplaced as in the said case, petitioners were aggrieved by non-extension of their contractual

appointment. It is not out of place to note that the Hon'ble Apex Court in Yogesh Mahajan vs. Prof. R.C. Deka, Director All India Institute of Medical Sciences, SLP Nos. 22475-22476 of 2012 decided on 31.01.2018 has clearly observed that it is settled law that no contract employee has a right to have his or her contract renewed from time to time. It is also to be noted that Hon'ble Supreme Court in State of Karnataka vs. Uma Devi, 2006(4) SCC 1, deprecated the tendency of the Government and its departments regarding all types of irregular appointments being made by them without following the due procedure under the rules.

In the light of the above, we do not find it a fit case to interfere in the impugned order passed by the learned Single Judge and letter (Annexure P-1). Consequently, the appeal is hereby dismissed being devoid of merits. Pending application (if any), also shall stand disposed of.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

23.09.2021

Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No