

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16531-2021

Date of Decision: 28.10.2021

VINOD KUMAR

..... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.K. Bishnoi, Advocate
for the petitioner.

LISA GILL, J.

This writ petition has been filed by the petitioner, who was admittedly appointed as a contractual employee on the post of Data Entry Operator through an outsourcing agency i.e. respondent no.3 on 08.12.2020. He continued working up till 30.04.2021. It is contended that with a change of service provider, petitioner was not permitted to work in an illegal and arbitrary manner despite his work and conduct being satisfactory.

Learned counsel for the petitioner submits that the official respondent is in fact the principal employer and is under a legal responsibility to protect the interest of petitioner. Petitioner, it is submitted, cannot be replaced by another contractual employee. Mere change of service provider should not lead to a change in the work force. Learned counsel for the petitioner has further argued that petitioner has acquired a vested right to continue working on the post of Data Entry Operator in terms of Guidelines dated 12.01.2011 (Annexure P-5) and that respondent-Administration itself has considered giving priority to workers who were appointed earlier on contract. It is, thus, prayed that petitioner should be

permitted to join back on the post of Computer Operator/Data Entry Operator till regular selection/appointment is made.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner is unable to deny that petitioner was appointed on contractual basis through a service provider. There is indeed no privity of contract between petitioner and respondents no.1 and 2.

The issue raised in this writ petition is no longer *res integra* and is squarely covered by the decision of the Division Bench in ***Nishan Singh and others Vs. State of Punjab and others, 2014(1) SCT 33***, wherein it has been clearly held that “*it was the service provider who entered into an agreement with the State agency to provide work force on certain terms and conditions. The service provider selected the candidates and supplied the same to the Government Department. A service provider is not an agency of the State to make recruitment against the civil posts. The acceptance of claim of the appellants shall amount to back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution*”.

This Court while dealing with a similar issue in CWP-20873-2021, titled Gurmukh Singh Vs. State of Punjab and others, decided on 13.10.2021, has rejected a similar claim while referring to the decision of this Court in CWP No.11911 of 2020 (Joginder Singh v. State of Haryana and others). Reference can gainfully be made to decision dated 28.11.2018 in CWP No.29655 of 2018 titled Anmol Garg and another v. State of Punjab and others, which was upheld in LPA-1910-2018 with the following observations:-

“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.”

It is trite to note that even a contractual employee does not have a vested right to have his or her contract renewed from time to time as has been held by the Hon'ble Supreme Court in **Yogesh Mahajan versus Prof. R.C. Deka, 2018 (3) SCC 218.**

Finding no merit, this writ petition is dismissed.

Needless to say, petitioner is at liberty to seek redressal of his grievance, if any, qua respondents no.3 and 4.

28.10.2021

Sunil

(LISA GILL)
JUDGE

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