

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

CWP-24134-2016(O&M)

Date of decision:-17.9.2021

Dhanpati

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Anil Kumar Goyat, Advocate
for the petitioner.

Ms.Shubhra Singh, Additional A.G., Haryana.

Mr.Lokesh Sinhal, Advocate
for respondents No.2 and 3.

H.S. MADAAN, J.

1. Petitioner – Dhanpati wife of Rajbir, resident of House No.208/34, Janta Colony, Rohtak has filed the instant writ petition under Articles 226 and 227 of the Constitution of India against respondents i.e. the State of Haryana through Secretary to Government of Haryana, Department of Local Government, Joint Commissioner, Municipal Corporation, Rohtak and Municipal Corporation, Rohtak through Executive Officer/Secretary, Rohtak, craving for issuance of a writ in the nature of certiorari for quashing the impugned order dated 2.11.2016 passed by respondent No.2 - Joint Commissioner, Municipal Corporation, Rohtak, whereby services of the petitioner have been illegally terminated.

The petitioner is further seeking a writ in the nature of mandamus directing respondents to consider the case of the petitioner on the basis of outsourcing policy for re-appointment from the date when the junior were re-appointed with all consequential benefits.

2. As per the version of the petitioner, she had initially joined service as Assistant in the office of Municipal Corporation, Rohtak and she has been working there since then without any complaint against her from any quarter; that services of the petitioner had been terminated vide order dated 2.11.2016 by Joint Commissioner, Municipal Corporation, Rohtak without affording any opportunity of hearing to the petitioner or serving any prior notice to her; that petitioner had been appointed in September, 2012 under the outsourcing policy and she has been serving the department since then; that petitioner got information from some reliable sources that some employees had been re-appointed by the respondents by ignoring the present petitioner; that vacancies for the post of Assistant are available and services of petitioner are required by the respondents; that petitioner is fully eligible and competent for that post having more than five years experience; the action of respondents in terminating the services of the petitioner by appointing other candidates on identical terms and conditions is against settled law; that in identical matter i.e. CWP No.13555 of 2013 titled as 'Shivkesh and others Versus State of Haryana and others', this Court was pleased to allow the writ petition vide order dated 2.7.2013 and a direction was issued to respondents to reappoint the contractual employees in terms of outsourcing policy and cost of Rs.10,000/- was imposed upon the

Government for unnecessarily forcing the petitioners to approach this Court. When the respondents did not accede to the claim of the petitioner, she was compelled to file the present writ petition.

3. On notice the respondents put in appearance. Respondents No.2 and 3 filed joint written statement contesting the writ petition. Inter alia, they have raised preliminary objections contending that petitioner was appointed as Sewadar and not Assistant with answering respondents; as a matter of fact petitioner was an employee of M/s New Hindustan Security Services, which is a manpower outsourcing agency and there is/was no relationship of employer and employee between the answering respondents and the petitioner, therefore no cause of action arose in favour of the petitioner to maintain the present writ petition against the respondents; the writ petition is liable to be dismissed for non-joinder of necessary parties inasmuch as petitioner has failed to implead her employer M/s New Hindustan Security Services; that the answering respondents had never terminated the services of the petitioner and it was only on the basis of report submitted by the Land Officer, Municipal Corporation, Rohtak that the Joint Commissioner, Municipal Corporation, Rohtak requested M/s New Hindustan Security Services to terminate the services of the petitioner as her work was not satisfactory; the order, if any, terminating the services of the petitioner had been passed by that outsourcing agency, therefore no cause of action arose to the petitioner to file the present writ petition. According to the respondents, they had not issued any appointment letter to petitioner nor paid any salary to her; the salary was being paid to the outsourcing agency for the employees

provided by it; that there is an arbitration clause No.24 contained in agreement dated 16.9.2014 between the answering respondents and outsourcing agency, which categorically provide for an alternative dispute redressal mechanism by way of arbitration for any dispute arising out of the agreement. On merits, such respondents reiterated the assertions in the preliminary objections. Refuting the remaining assertions those respondents prayed for dismissal of the writ petition.

4. I have heard the learned counsel for the parties besides going through the record and I find that the writ petition lacks merit and is bound to fail.

5. Even as per own case of the petitioner, she was appointed in September, 2012 under the outsourcing policy. The outsourcing agency in this case is stated to be M/s New Hindustan Security Services. In that way, the petitioner is employee of that agency and there is certainly no relationship of employee and employer between the petitioner and respondents. It being so, the writ in this case is not maintainable.

6. Learned counsel for the respondents has drawn my attention to various documents i.e. i.e. Service Agreement between Governor of Haryana acting through Urban Local Bodies Department, Government of Haryana and M/s NHSS and P.S. Company. As far as the plea raised on behalf of the petitioner for her regularization in service under the circumstances, there is no such policy for doing so. If there is no relationship of employee and employer between the petitioner and respondents No.2 and 3 on account of lack of privity of contract, she cannot claim regularization.

6. Learned counsel for the respondents had placed reliance upon judgment **Hargurpratap Singh Versus State of Punjab and others, 2007(13) SCC 292**, wherein the Apex Court had observed that ad hoc appointees seeking minimum pay scale and continuance till regular incumbents join, though such appellants may not be entitled to regular appointment as such it cannot be said that they will not entitled to the minimum of the pay scale; however appellants are not entitled to regularization.

7. As regards the authorities referred to by learned counsel for the petitioner i.e. **Shiv Kumar and another Versus State of Haryana and another** passed by a Single Bench of this Court in CWP No.17441 of 2013, **Parmod Kumar Sharma Versus State of Haryana and others** passed by a Single Bench of this Court in CWP No.23400-2014, **Municipal Corporation, Faridabad Versus Parmod Kumar Sharma and others** passed by Division Bench of this Court in LPA No.531 of 2017 and **Hussainbai Versus The Alath Factory Tezhilali Union and others, 1978 AIR(SC) 1410** passed by Hon'ble Apex Court, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

8. Finding no merit in the petition, the same stands dismissed.

17.09.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No