

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

CWP-20873-2021

Date of Decision: 13.10.2021

VIRENDER KUMAR

..... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Dalbir Singh, Advocate
for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

This writ petition has been filed by the petitioner, who was admittedly appointed as Sweeper through a service provider (respondent no.5) on 16.11.2015 till 31.03.2019. Petitioner's services came to an end on 31.03.2019, though, it is stated that petitioner continued to work up till 16.09.2019 when respondent no.5 had replaced the petitioner with respondent no.6.

Learned counsel for the petitioner has vehemently argued that petitioner has acquired a vested right to continue working on the post of Sweeper with respondent-Department in terms of Guidelines dated 12.01.2011 (Annexure P-2) and Memo dated 06.11.2020 (Annexure P-5). Learned counsel further submits that respondent-administration itself has considered giving priority to workers who have been appointed earlier on contract. Therefore, petitioner should be re-employed.

I have heard learned counsel for the petitioner at length.

Learned counsel for the petitioner is unable to deny that petitioner was appointed on contractual basis through a service provider as per Outsourcing Policy of the State (Part I). Privity of contract clearly does not exist between the petitioner and respondents No.1 to 4 and 7.

The issue raised in this writ petition 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”*.

In similar circumstances, this Court in CWP No.11911 of 2020 (Joginder Singh v. State of Haryana and others) rejected a similar claim. 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.”

Similar was the fate of CWP No.19762 of 2018 titled Vikash v. The State of Haryana. Hon'ble Supreme Court in Yogesh Mahajan versus Prof. R.C. Deka, 2018 (3) SCC 218 has reaffirmed that even a contractual employee does not have a vested right to have his or her contract renewed from time to time.

Argument raised by learned counsel for the petitioner that any vested right would accrue to the petitioner in terms of circular dated 12.01.2011 (Annexure P-2) is without merit and insofar as Memo dated 06.11.2020 (Annexure P-5) is concerned, same is admittedly in respect to adjustment of contractual persons of Group C (Clerks of the outsourcing policy). Therefore, I do not find any ground to interfere in this matter.

No other argument raised.

This writ petition is accordingly dismissed.

13.10.2021
Sunil

(LISA GILL)
JUDGE

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