

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

1. LPA-1008-2021 (O&M)

2. LPA-1011-2021 (O&M)

Date of decision : 28.10.2021

Dhanpati

.....Appellant

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

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

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This order shall dispose of LPAs No. 1008 and 1011 of 2021 filed against two separate orders and judgments of an even date i.e. 17.09.2021, passed by the learned Single Judge, vide which the Civil Writ Petitions (No. 24134 of 2016 and 14416 of 2019) filed by the appellant have since been dismissed.

The appellant had filed CWP No. 24134 of 2016 praying for quashing of letter dated 02.11.2016, issued by the Joint Commissioner, Municipal Corporation, Rohtak, whereby her services were terminated, and claimed re-employment by the Municipal Corporation, Rohtak – respondent No.3.

In brief, the case set out by the appellant was that she had jointed the Municipal Corporation, Rohtak (respondent No.3) as Assistant in the year 2012 and since then she had been in continuous

service of the Corporation. However, vide order dated 02.11.2016, her services were terminated by the Corporation without affording any notice or opportunity of hearing.

The respondents filed the written statement and contested the claim of the appellant. It was denied if the appellant was ever appointed as Assistant in the year 2012 or her services were terminated by the Corporation, vide order dated 02.11.2016. She had concealed the true and actual position from the Court: that there was no relationship of employer and employee between the parties. In fact, the appellant was an employee of M/s New Hindustan Security Service and Placement Bureau (Regd.), Anaj Mandi, Sampla (Rohtak): the manpower outsourcing agency and was deployed with the Corporation through the said agency. However, having found that services rendered by the workers provided by the Service Provider were not upto the mark and satisfactory, the Corporation, vide impugned communication dated 02.11.2016, asked the Service Provider to disengage those workers including the appellant. Therefore, the order if any terminating the services of the appellant would have been passed by the outsourcing agency and there was no cause of action to file and maintain the writ petition against the respondent-Corporation. Thus, the service provider was deliberately not impleaded as party to mislead the Court. Hence, the petition was liable to be dismissed even on account of non-joinder of the necessary parties. Copy of the work order dated 12.09.2014 (Annexure R2/2) and service agreement dated 16.09.2014 (Annexure R2/3) were appended with the written statement.

The learned Single Judge, after examining the matter, has recorded a finding of fact that there never existed any relationship of employee and employer between the appellant and the respondent Corporation; and that the appellant was an employee of the outsourcing agency. In such circumstances, the relief prayed for was denied and the writ petition was dismissed.

Learned counsel appearing for the appellant submits that the learned Single Judge has failed to take into consideration the fact that appellant had been engaged by the respondent Corporation and her salary was also being paid by the Corporation. In such circumstances, the impugned order passed by the learned Single Judge suffers from perversity.

We have heard learned counsel for the appellant at length and perused the records.

Upon being pointedly asked, learned counsel for the appellant failed to refer to the order of appointment, if any, vide which she was employed by the respondent-Corporation. Nothing is placed on record either to even remotely indicate that there existed a relationship of employer and employee between the parties. On the contrary, the categorically stand set out in the written statement by the Corporation was that appellant was never paid any salary by the Corporation and the wages, if any, drawn by her were paid by the outsourcing agency to its employees, has not been controverted. Rather, paragraph 5 of the impugned order shows that the learned Single Judge had specifically recorded that as per the case of the appellant herself she was appointed in September 2012 under the outsourcing policy, the fact that is not denied

by learned counsel for the appellant. Apart from the above, it is also noted that as per Clause 6 (a) of the agreement entered into by the respondent Corporation with the Service Provider (Annexure R-2/3), and the Work Order dated 12.09.2014 (Annexure R-2/2), appended therewith that there would be no relationship of employer and employee between the Department and the Service Provider; and that the Service Provider shall not by any acts, deeds or otherwise represent any person that the Service Provider is representing or acting as agent of Department. Clause 6 (b) of the agreement further stipulates that the agreement is not an agreement for supply of contract labour, and that it is clearly understood by the Service Provider that the persons employed by the Service Provider for providing services as mentioned herein, shall be the employees of the Service Provider only and not of the Department.

In such circumstances, as there is no relationship of employee and employer between the appellant and the respondent Corporation, the occasion to set aside any order terminating the services of the appellant or directing the respondent Corporation to re-employ the appellant does not arise.

It is pertinent to note at this stage that earlier the appellant had filed CWP No. 24134 of 2016, when her services were provided to the respondent Corporation by M/s New Hindustan Security Service. However, subsequently, the Corporation entered into a new contract with M/s Parvati Enterprises, Rohtak (respondent No.4), in the subsequent writ petition (CWP No. 14416 of 2019) filed by the appellant. The appellant was again engaged by the subsequent Service Provider to work with the respondent Corporation. But, vide order dated 27.02.2019, her

services were terminated by respondent No.4. The subsequent order of termination/disengagement from services of the appellant was assailed by her in CWP No. 14416 of 2019. However, as indicated earlier, the appellant failed to substantiate that there ever existed a relationship of employer and employee between her and the Corporation. Thus, the only and the inevitable conclusion the learned Single Judge could reach was to dismiss the petition. It was observed that services of the appellant were hired by way of outsourcing agency through M/s Parvati Enterprises, Rohtak, therefore, relationship, if any existed, between the outsourcing agency and the appellant. Further, M/s Parvati Enterprises, Rohtak, being a private entity the petition against the same was not even maintainable.

Upon being pointedly asked, learned counsel for the appellant could not refer to any material on record to show if the findings/conclusions recorded by the learned Single Judge were either perverse or contrary to the record or suffer from any infirmity or illegality.

Thus, in the given circumstances, we are dissuaded to interfere with the impugned orders/judgments. The appeals being devoid of merit are, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

October 28, 2021
Ndj/Manoj Bhutani

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