

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

CWP-22792-2021 (O&M)

Date of decision : November 16, 2021

Rajender Singh and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Munish Kumar Garg, Advocate for the petitioners.

Mr. Randhir Singh, Addl. AG, Haryana.

Mr. Kshitij Sharma, Advocate for respondent No. 6.

LISA GILL, J.

Petitioners were admittedly appointed on contractual basis through an outsourcing agency i.e. one Shivalik House Keeping Services at the post(s) of Fireman, Civil Supervisor, DG Operator, Painter, Plumber, Electrician etc. It is submitted that they performed their duties for about 4-5 years. However, with the change of service provider by respondent No. 3, vide service agreement dated 27.07.2021/06.08.2021, petitioners were thereafter not allowed to continue with their services. Present writ petition has, therefore, been filed with a prayer that petitioners be allowed to continue in service which has been satisfactory and without any blemish. It is further submitted that one set of contractual employees cannot be replaced by another set of employees. Reliance is placed on a decision of the Hon'ble Supreme Court in **Hargurpartap Singh versus State of Punjab** reported in (2007) 13 SCC 292. Moreover, petitioners'

service, it is submitted, cannot be dispensed with without affording them an opportunity of hearing.

Heard learned counsel for the petitioners as well as learned counsel for the State to whom advance copy of the writ petition had been supplied.

Issue sought to be raised is no longer res integra. The fact that petitioners were appointed through a service provider is not in dispute. It is, thus, apparent that there is no privity of contract between the petitioners and the official respondents, thus, present writ petition is not maintainable. In such a situation, writ petition is not maintainable. The matter stands conclusively settled by a number of judicial pronouncements. Gainful reference can be made to decision dated 28.11.2018 of a co-ordinate Bench in CWP-29655- 2018 titled Anmol Garg and another versus State of Punjab and others, which has been upheld in LPA-1910-2018. The First Division Bench of this Court in LPA-1910-2018 upheld decision dated 28.11.2018 of the Single Bench while specifically observing as under:-

“ 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.”

A Division Bench of this Court in **Nishan Singh and others versus State of Punjab and others 2014 (11) RCR (Civil) 262** has clearly observed that a service provider is not an agency of the State. The service provider enters into a agreement with the State agency to provide the work force on certain terms and conditions. The candidates are selected by the service provider and supplied to the Government department. Thus, in this scenario it cannot be held that there is any privity of contract between the contractual employees and the State/department. The 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/her contract renewed from time to time.

Learned counsel for the petitioners being faced with this situation had referred to communication dated 12.10.2021 issued by the Director General, Health Services, Haryana, Panchkula wherein it is stated that all employees engaged under Outsourcing Policy Part-I prior to financial year 2020-21 will not be replaced and that in case they had been replaced, the same should be ‘re-joined’.

Learned counsel for the State was asked to seek instructions in respect to this communication and the matter adjourned for today.

Short reply of Dr. Veena Singh, Director General Health Services, Haryana on behalf of respondents No. 1, 2 and 5 in this respect filed in Court today is taken on record subject to just exceptions. It is specifically mentioned

therein that letter dated 12.10.2021 was issued inadvertently and being contrary to provisions of Outsourcing Policy of the Government, stands withdrawn. In this view of the matter, communication dated 12.10.2021 is of no avail to the petitioners and cannot vest them with any rights.

Keeping in view the facts and circumstances of the case, this writ petition is dismissed being not maintainable. Needless to say, petitioners are at liberty to avail remedy/remedies as may be available in respect to any grievance which they may have qua the service provider.

November 16, 2021
Rts

(Lisa Gill)
Judge

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