

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

CWP-23097-2021

Date of Decision: 15.11.2021

GURPREET

..... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Harish Nain, AAG, Haryana.

LISA GILL, J.

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

Prayer in this writ petition is for issuance of a writ in the nature of certiorari to quash/modify impugned Outsourcing Policy, Part-I, dated 06.04.2015 with a further prayer for issuance of direction to respondents to continue services of petitioner as Mali under Outsourcing Policy, Part-II, dated 06.04.2015.

Petitioner in this case was admittedly appointed as a Mali (Gardener) on contractual basis through an outsourcing agency i.e. respondent no.5 under the Outsourcing Policy Part-I. He worked for respondent no.4 w.e.f. 30.07.2020 upto 17.08.2021. It is contended that petitioner was continuously discharging his duties before he was advised rest for eight days from 18.08.2021 till 25.08.2021. However, he was not permitted to join his duties thereafter. Petitioner now seeks quashing of Outsourcing Policy, Part-I itself and at the same time seeks a direction to the

respondents to permit the petitioner to continue with his services with respondent no.4 or at any other nearby institution under the Outsourcing Policy, Part-II.

I have heard learned counsel for the petitioner.

State of Haryana formulated a Policy for engaging/outsourcing of services/activities on 06.04.2015 (Annexure P-2) while consolidating some earlier instructions as are mentioned therein. Policy was divided into two parts i.e. Part-I and Part-II. Part-I of the Policy deals with outsourcing of services and activities in the Departments where posts have not been sanctioned. It is stated that keeping in view the emergence of new areas in the field of effective governance and due to technological advancement, the State sought to outsource services/activities that were of an auxiliary or supporting nature to its functioning. The category of workers is duly mentioned in the Policy and it is provided that the persons shall be recruited through a service providing agency and not directly by the State and it is clarified that Part-I of the Policy is meant only for outsourcing such services and activities for which no sanctioned post(s) are available. It is mentioned that Services/activities may be outsourced as and when required partly or completely by the departments, where posts have not been sanctioned, for instance, cleaning of premises, horticultural work, housekeeping services, maintenance of buildings, transport services, courier services, information and communication technology related services, highly technical and professional services etc. The above services/activities are only illustrative and not exhaustive. The departments can apply this policy for outsourcing other kind of services on the basis of their need and span of

services/activities. Modalities for engagement of persons, their categories and entitlement of wages etc. is duly provides for therein.

Part-II of the Policy deals with the engagement of persons on contract basis where regular post exists. The same envisages engagement of candidates on purely contract basis on emergent basis involving public interest where sanctioned vacant posts of Group-C & D category exists. Method of engagement is also provided in the Policy while clarifying that the persons so engaged shall have no right to claim regularization or any other such benefit available to a regularly selected candidate. Employment under Part-II of the Policy is not made through a service provider.

Petitioner seeks to rely on pendency of certain writ petitions filed by persons who were employed under Part-II of the Outsourcing Policy, who were subsequently sought to be engaged under Part-I of the Outsourcing Policy by the respondent-State. Prima-facie finding such action to be exploitative, notice of motion was issued in the said cases with directions to maintain status quo or for adjustment of candidates where a vacancy may be existing. However, such reliance is clearly misplaced and uncalled for in the given factual matrix.

I do not find any ground whatsoever to interfere in the present writ petition at the instance of petitioner who has earlier availed benefit under the Outsourcing Policy Part-I and now seeks to challenge the said Policy to be inherently exploitative, arbitrary and discriminatory. Furthermore, prayer of petitioner that respondents be directed to continue petitioner's services as Mali under Outsourcing Policy Part-II, is clearly misconceived as he was never appointed as such under the Outsourcing

Policy Part-II. Petitioner was admittedly appointed under the Outsourcing Policy Part-I, through an outsourcing agency. Thus, there is no privity of contract between petitioner and the official respondents.

This issue is no longer *res integra* and is squarely covered by a 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.**

Reference by learned counsel for the petitioner to the circulars dated 02.02.2019 and 06.11.2020, is of no avail in the given facts and circumstances.

No other argument has been addressed.

Finding no merit, this writ petition is dismissed.

15.11.2021

Sunil

(Lisa Gill)
Judge

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