

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1002-2020

Date of Decision: 05.04.2022

AMIT KUMAR AND OTHERS

..... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. B.S. Rathee, Advocate
for the petitioners.

Mr. Harish Nain, AAG, Haryana.

LISA GILL, J.

This writ petition has been filed by the petitioners seeking a direction to the respondent-authorities to allow the petitioners to continue on the post of Maintenance Supervisor in Aarohi Model School, till regular appointments are made, as the posts and the work load is stated to be existing and for issuance of further directions to the respondents to pay the pending salary and EPF amount to the petitioners along with 12% interest.

Learned counsel for the petitioner submits that petitioners were appointed on the post of Civil Engineer (Supervisor)/Maintenance Supervisors on contract basis on DC rates in the year 2018. Petitioners, who were engaged through M/s. Devmamledar Svaya Rojgar, Sevasahakari Santha Maryadit, Nasik-respondent no.3, worked till 22nd July, 2019. Learned counsel further submits that the said outsourcing company did not release payment to the Class IV employees and Maintenance Supervisors in time and Director Secondary Education, Haryana issued letter dated

05.12.2018 to release the salary of Class IV employees, but till date some of the petitioners have not been paid the balance salary for the month of June 2019 upto 22nd July 2019. Learned counsel further submits that the said outsourcing company vide letter dated 22.07.2019 requested the Director Secondary Education, Haryana to extend their contract from 23rd July, 2019 till 22nd July, 2020 but till date no action has been taken, neither their salary and EPF amount released, despite the work and conduct of the petitioners being to the satisfaction of the authorities. Learned counsel further submits that in this respect petitioners represented before the Department but to no avail.

Heard.

It is pertinent to mention here that on 27.03.2020, learned counsel for the petitioners had confined the scope of the instant petition to release of salary for the months of June and July, 2019 and for EPF amount for the entire years of 2018 and 2019. Learned counsel for the State was directed to seek instructions on this limited issue.

It is the categoric stand of the State that salary for the months of June and July, 2019 and EPF amount has been reimbursed to the contractor. This is so detailed in the written statement dated 28.08.2020, filed on behalf of respondents no.1 and 2.

Apart from the fact that this writ petition has been filed in January, 2020, after the petitioner's services were dispensed with admittedly on 22.07.2019, learned counsel for the petitioners is unable to deny that petitioners were appointed through a service provider as per Outsourcing Policy of the State (Part I). There is indeed no privity of contract between petitioners and respondents, therefore, I do not find any merit in the

arguments raised by learned counsel for the petitioners for the reason that the controversy in hand stands conclusively settled and the issue is no longer *res integra* being 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”.

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.”

Keeping in view the definitive decision of the Division Bench of this Court, it is apparent that there is no privity of contract between the petitioners and the official respondents, therefore, I do not find any ground to interfere in this writ petition.

Accordingly this writ petition is dismissed. Needless to say, petitioners are at liberty to avail the remedy/remedies as may be available to them in accordance with law for recovery of the salary/EPF amount from the service provider in view of the stand of the official respondents in their written statement as well as in respect to any other relief qua the service provider/contractor in accordance with law.

05.04.2022

Sunil

**(LISA GILL)
JUDGE**

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