

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

**CWP No. 2053 of 2020
Date of decision: 20.05.2022**

Kamal Kant Mehta

..... Petitioner.

Versus

State of Punjab and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Kartik Gupta, Advocate, for the petitioner.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner is seeking a direction to the respondents to quash the impugned order dated 25.11.2019 (Annexure P5) whereby his services have been terminated.

Learned counsel for the petitioner contends that the services of the petitioner have been terminated on the ground that he was absent from duty without intimation. The petitioner was involved in a case punishable under Section 138 of the Negotiable Instruments Act, 1881, and after his appeal had been dismissed, he was taken into custody and, therefore, he could not come for duty. He has preferred a revision petition against the order of the Appellate Court dismissing his appeal which is pending adjudication before this Court. He also submits that the petitioner has been discriminated against, as another employee, who was the Conductor of a bus and against whom an FIR under the NDPS Act had been registered, had been reinstated in service although his case was pending adjudication in Court. He has referred to the order dated 22.05.2019 (Annexure P8).

Heard. A perusal of the order dated 27.01.2020 passed by a Coordinate Bench of this Court indicates that the counsel for the petitioner had sought time to place on record a copy of the appointment letter whereby the petitioner was engaged as a Driver under the PUNBUS on contractual basis. In response to a query of this Court as to the appointment letter of the petitioner, learned counsel for the petitioner has furnished a copy of the appointment letter which indicates that the petitioner had been appointed through an outsourcing agency.

It is settled law that no writ petition would lie against an outsourcing agency, insofar as it is not an authority in terms of Article 12 of the Constitution of India. Reference can be made to the judgment of a Division Bench of this Court in the case of Nishan Singh and others versus State of Punjab and others, 2014(11) RCR (Civil) 262, wherein it has been held that the service provider who has selected the candidates for work in the government department, is not an agency of the State. The appellants therein were neither selected under any service rules applicable to regular employees of the State of Punjab nor did they apply under any advertisement for their appointment as contractual or regular employees of the state. It was further held that the acceptance of the claim of the appellants therein for continuation of services would amount to a back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution of India.

In the case of Anmol Garg and another versus State of Punjab and others, bearing CWP No. 29655 of 2018, decided on 28.11.2018, a Coordinate Bench of this Court dismissed the writ petition preferred by an

employee engaged through an outsourcing agency which was upheld by a Division Bench in LPA No. 1910 of 2018, decided on 10.12.2018 and the operative part thereof is reproduced hereunder:-

“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.”

Reference can also be made to the orders of the Coordinate Benches of this Court in the cases of 'Vikas versus The State of Haryana and others' bearing CWP No.19762 of 2018, decided on 11.12.2019, 'Kailash Chand and others versus Urban Local Bodies Department, Haryana and others', bearing CWP No.21345 of 2021, decided on 18.01.2022 and 'Naresh Kumar and others versus Haryana State Warehousing Corporation and others', bearing CWP No.17454 of 2020, decided on 02.12.2020, wherein similar petitions of outsourcing employees were also dismissed.

In view of the above, I do not find any merit in this petition, especially when the petitioner was employed through an outsourcing agency and was also being paid salary through the outsourcing agency.

Consequently, the petition stands dismissed.

However, this order shall not preclude the petitioner from seeking recourse to alternative remedy available to him under the law.

(ANUPINDER SINGH GREWAL)
JUDGE

20.05.2022
Ramesh

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