

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7803-2022 (O&M)
Date of Decision: 19.04.2022

BHOLA NATH

..... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naveen Kaushik, Advocate
for the petitioner.

LISA GILL, J.

Petitioner, who was appointed on the post of Driver on D.C. Rate on contractual basis through an outsourcing agency, has filed this writ petition seeking a direction to the respondents to not replace him by another contractual employee. There is a further prayer for directing the respondents to adjust the services of the petitioner on the post of Driver, which are lying vacant in any other department in district Nuh.

Learned counsel for the petitioner submits that petitioner was appointed as a Driver after following due process and he was appointed on 03.07.2014, his appointment letter being attached as Annexure P-1. It is submitted that petitioner rendered service to the utmost satisfaction of his superiors. Government of Haryana, it is stated, has decided that Mewat Model Schools, which were affiliated with the CBSC Board, would now be affiliated with the Haryana Board of School Education. Thus, Drivers working in Mewat Model Schools were transferred to the Education Department, Haryana. Petitioner, it is submitted, cannot be replaced by other contractual employee. Learned counsel for the petitioner has further

argued that many posts of Driver are lying vacant in various departments at District Nuh. It is, thus, prayed that the work and conduct of petitioner being satisfactory, he should be permitted to continue working on the post of Driver and not replaced by another set of contractual employee or the petitioner be adjusted in any other department on the same post. Therefore, present writ petition has been filed.

Heard learned counsel for the petitioner.

It is relevant to note at this stage that though not mentioned in the writ petition, petitioner has admittedly been appointed through an outsourcing agency namely “Savitri Placement Apna Bajar Gurugram” as is apparent from a perusal of Annexure P-1. Importantly, petitioner has not even impleaded the said outsourcing agency as party to this writ petition. When confronted with the same, learned counsel for the petitioner chose to argue that the official respondents are in fact the principal employers and are under a legal responsibility to protect the interest of petitioner.

The issue raised in this writ petition 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”.

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.”

In similar circumstances, this Court in CWP No.11911 of 2020 (**Joginder Singh v. State of Haryana and others**) rejected a similar claim. Similar was the fate of CWP No.19762 of 2018 titled **Vikash v. The State of Haryana and others**.

Accordingly this writ petition is dismissed being not maintainable. Needless to say, petitioner is at liberty to avail the remedy/remedies as may be available to him in accordance with law qua the service provider.

19.04.2022

Sunil

**(LISA GILL)
JUDGE**

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