

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(108+208)

CM-18574-CWP-2022 in/and
CWP No. 19508 of 2018
Date of Decision : 24.11.2022

Naveen Bhati and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kamal Sharma, Advocate and
Mr. Raja Sharma, Advocate for the petitioners.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-18574-CWP-2022

Present application has been filed for placing on record
replication to the written statement filed on behalf of respondent No. 3.

Application is allowed and replication to the written statement
filed on behalf of respondent No. 3 is taken on record.

CWP-19508-2018

In the present petition, the grievance of the petitioners is that
they were working on Class-IV post but without any valid justification or
there being a reason that the work of the post does not exist, the services of
the petitioners were terminated by the respondents, which is totally arbitrary

and illegal. The prayer of the petitioners is that they should be allowed to

continue in service till the work of the post on which they were performing duties exist or till the regular incumbent joins.

After notice of motion, the respondents have filed the reply, wherein, they have stated that the petitioners were initially appointed through an outsourcing agency and they were the employees of the said agency and, therefore, petitioners cannot raise any grievance with regard to termination of their services after the contract of the outsourcing agency expired. Learned counsel for the respondents concedes a fact that after the contract of the outsourcing agency had expired, the petitioners were allowed to continue on a DC rate by the Principal concerned and at the time when the services of the petitioners were terminated, they were not working under any outsourcing agency but were working under the respondent-State keeping in view the order passed by the Principal concerned.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, at the time of the termination of their services, petitioners were working under the respondent-department and not through an outsourcing agency, the termination of the services of the petitioners on the ground that the contract of the outsourcing agency had already expired, cannot be treated as a valid ground. Further, nothing has come on record that there does not exist the workload, for which the petitioners were appointed or were continued in service at the time when contract of the outsourcing agency came to an end. Once, the workload exists and the petitioners were working under the department only and were being paid as per the DC rates, the petitioners have a right to continue till a regular

selected candidate joins or till the work exists, whichever is earlier keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 8745 of 2003 titled as *Hargurpratap Singh Vs. State of Punjab and others*, decided on 07.11.2003.

Hence, the termination of the services of the petitioners was bad in law as, the respondents are employing other employees on the same terms and conditions. Though, the petitioners are being allowed to continue in service but the same will be with the clear condition that they will be allowed to continue till the work exists and the assessment of the existence of work will depend upon the opinion of the department, who will ascertain the said aspect in accordance with law. Further, in case the posts are required to be filled on regular basis, the services of the petitioners can be dispensed with on joining of the regular incumbent.

Not only this, in case any of the petitioner misbehaves or misconduct, himself/herself during the employment and the employer is of the view that continuing of such employee in service is harmful to the institution, the employer will be at liberty to take appropriate decision under such circumstances. As by an interim order, the petitioners were allowed to continue and they are continuing in service, the petitioners will continue in service keeping in view the conditions imposed in this order mentioned here-in-above.

Writ petition is allowed in above terms.

November 24, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No