

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

CWP-22160-2017 (O&M)

Date of decision: March 22, 2022

Sunil Kumari and others

...Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Anil Rathee, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus or any other suitable writ, order or direction commanding the respondents to not show the petitioners as outsourced employees and also for taking action *qua* preparing alleged bogus documents for showing them employee of a security agency.

2. Petitioners No.1 to 4 are working as Lab Attendant whereas petitioner No.5 is working as a Library Restorer in the Government College, Hisar, District Hisar having completed more than 5 to 7 years of service without any break, except the breaks given by the respondents from time to time. Learned counsel submits that initially, in the month of September 2009, respondent No.3 invited applications for various posts on contract basis for a period of 6 months or till the regularly selected persons are appointed whichever is earlier, including the posts of Laboratory Attendant and Library Attendant. He submits that from time to time, their appointments were further extended.

3. Learned counsel argues that in view of the administrative decision dated 03.06.2016 (Annexure P-12) being eligible, case of the petitioners should have been considered for regularization on the post of Lab Attendant/ Library

Restorer. Even the persons appointed subsequent to the petitioners have been regularized on the same posts by respondent No.2. Whereas, petitioners were shown to be appointed on outsource basis through one M/s Sai Ram Security and Placement Services which is nothing but a fraud committed by the respondents just to deny minimum of the pay scale and benefit of regularization policy *ibid* (Annexure P-12). He submits that petitioners apprehend that the respondents are going to terminate their services.

4. I have heard learned counsel for the parties and perused the record.

5. Concededly, petitioners continue to work on their respective posts and their fear, without commenting on the merits thereof, seems to be three fold; (a) that they are being shown as outsourced through a private agency, (b) that their services would be dispensed with on the ground that they are since employees of a private contractor and (c) their case would not be considered for regularization. As regards the argument that an alleged fraud has been committed by the respondents in collusion with each other to show the petitioners on the pay roll of the contractor, it is not for this Court to decide the same in writ jurisdiction. Fraud cannot be established and/or decided by way of affidavits in the extraordinary writ jurisdiction and the petitioners are at liberty to seek appropriate alternative remedy *qua* the same as may be available in law and if so advised. Such disputed facts needs to be thrashed out by way of adducing evidence and cannot be decided in the writ jurisdiction. As regards other allegation that their case would not be considered for regularization, the same may be looked into by the competent authority in accordance with the applicable policy and appropriate orders be passed either way in accordance with law as expeditiously as possible. Needless to say that competent authority

would determine first the eligibility of the petitioners for staking their claim on regularization of their services.

6. Writ petition is thus disposed of with the expectation from the respondents that the services of the petitioners shall not be dispensed with unless the regular appointees are contemplated to be recruited in accordance with law. Needless to say, petitioners shall also be allowed to compete for any such recruitment, if so contemplated. Since the petitioners have made out grievance in the petition that their salaries are invariably being paid after inordinate delay, the said grievance be also looked into by the competent authority and salaries be paid to them on or before 10th of every subsequent month so that unnecessary harassment is avoided to seek legal remedies *qua* the same.

7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 22, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No