

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

CWP-7341-2016 (O&M)

Date of decision: December 05, 2022

Balkar Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Ramesh Hooda, Advocate for respondents No.4 and 5.

Mr. Namit Gautam, Advocate for respondent No.7.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to quash letter/order dated 13.07.2015 (Annexure P-2), whereby services of the petitioner as an Accountant Assistant-cum-Data Entry Operator were dispensed with. Further a writ in the nature of Mandamus has been sought seeking directions to respondents No.1 to 5 to take back the petitioner in service with continuity of service along with all consequential benefits.

2. First, succinct factual background, as pleaded in the petition. Petitioner was engaged as a Data Entry Operator on contract basis by respondent No.6-Shiva Security Service, Amin, District Kurukshetra for performing duties in the office of respondent No.4-Additional Deputy Commissioner-cum-Chief Executive Officer, D.R.D.A., Kurukshetra w.e.f. 14.09.2013. Petitioner was essentially an employee of respondent No.6 for all

intents and purposes and respondents No.4 or 5 had no power or jurisdiction to dispense with the services of the petitioner. Petitioner was not liked by some officers in the office of respondent No.4 as some of them were involved in some very serious cases of embezzlement of Govt. money. Vigilance enquiry was held against respondent No.7-the then Assistant Project Officer, D.R.D.A. Kurukshetra, and it was decided to get a criminal case registered against said respondent under Sections 409, 420, 120B of the Indian Penal Code, 1860 and Section 13(1) of the Prevention of Corruption Act, 1988. However, no action was taken by any of the respondents.

2.1 In another case, some irregularities in the discharge of duties had come to the notice of respondent No.8-Assistant Project Officer and statement of petitioner was recorded in preliminary enquiry as held.

2.2 Respondent No.4 dispensed with the services of the petitioner vide letter dated 13.07.2015 (Annexure P-2). Petitioner had also served a legal notice dated 20.10.2015 (Annexure P-3), pursuant to which, respondent No.4 had requested respondent No.5 to direct respondent No.3 to furnish necessary reply to the said legal notice, but no action has been taken. Hence, the present petition.

3. I have heard rival contentions of learned counsel for the parties and gone through the record.

4. Concededly, petitioner joined the office of respondent No.4-Additional Deputy Commissioner-cum-Chief Executive Officer, DRDA, Kurukshetra on the post of Data Entry Operator. No formal appointment letter was issued by respondent No.4, however, he was allowed to join on the basis of documents sent by respondent No.6-Shiva Security Service. Therefore,

appointment was made on contract basis at D.C. rates in MPLAD Scheme. Said post neither was on regular nor on temporary basis.

4.1 Perusal of the written statement dated 30.05.2017 filed on behalf of respondents No.1 to 5 reveals, that one complaint was received stating that one Luxmi Devi was not entitled for the grant under Priyadarshni Awaas Yojna and one enquiry was also pending in this regard. Chief Executive Officer, DRDA, Kurukshetra had directed not to release third installment of grant till the completion of said enquiry. It is borne out from the return that inspite of specific orders, petitioner made an entry of the third installment to be released in favour of said Luxmi Devi.

4.2 Enquiry Officer was appointed to see the conduct of respondent No.8-Manjeet Kaur, Assistant Project Officer, respondent No.7-Neeraj Kumar, Assistant Project Officer, including the petitioner. Petitioner pleaded that he was pressurized by respondent No.7 to make an entry in the Computer regarding release of third installment in favour of said Luxmi Devi. A finding in this regard was recorded by the enquiry officer that, no pressure was put by respondent No.7, rather, it was a negligent act on the part of the petitioner who did not seek permission from one Raj Kumar Ghera, A.P.O. before making the said entry. He also failed to inform respondent No.8-Manjit Kaur in this regard, despite well knowing that an enquiry is already pending in the case of Luxmi Devi.

4.3 In the enquiry, it was also stated that noting for releasing the aforesaid installment was given to the petitioner on 18.12.2014 and he made the entry in the computer on the same date itself, while the said noting was finalized by the officers on 24.12.2014. Petitioner was consequently found guilty of misconduct in releasing the installment to ineligible beneficiaries under the

Priyadarshni Awaas Yojna, and a decision was taken to terminate the contract of the petitioner.

4.4 With regard to allegations of the petitioner that no action was taken by the respondent-Department against respondents No.7 and 8, it is stated in the return that respondent No.8-Manjeet Kaur was a regular employee of DRDA, Kurukshetra, hence, charge-sheet has been issued against her and the proceedings of punishment are pending. Similarly, a regular enquiry was conducted by the Vigilance Department, in which respondent No.7-Neeraj Kumar was found involved in making payment of Rs.4,71,750/- against the admissible payment of Rs.3,77,400/-. Thus, the allegations of the petitioner are wrong that no action has been taken against aforesaid respondents.

5. Furthermore, concededly, services of the petitioner herein were hired on contractual basis through an outsourced private-contractor, who is also made a party as respondent No.6 and the relief sought by the petitioner is effectively against the private contractor. Official respondents have been arrayed herein stating that the petitioner, though outsourced they are still amenable to writ jurisdiction as his services were being utilized in their office which is a State functionary.

5.1 It is worthwhile to mention that the proposition laid down in Apex Court judgment in **Hargurpartap Singh versus State of Punjab and others** reported as **(2007) 13 SCC 292** is applicable *qua* contractual employees and not an outsourced employee of a private contractor. In the case at hand, the petitioner, being employee of a private contractor, the present writ petition is not maintainable before this Court as the outsourcing agency is not an authority in terms of Article 12 of the Constitution. In fact, similar view has already been taken by my learned Brother Harsimran Singh Sethi, J., in judgment dated

20.05.2021 rendered in CWP-9996-2021 titled ***Mukesh Kumari and others Versus State of Haryana and others***. Reference may be had to the same and it is not being reproduced here for the sake of brevity.

6. Learned State counsel informs that against the view taken by my learned Brother, intra-court appeal filed vide LPA-546-2021 has also been dismissed.

7. In the premise, writ petition is held to be not maintainable and is disposed of.

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

(ARUN MONGA)
JUDGE

December 05, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No