

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

**LPA-229-2020 (O&M)
Decided on: 21.12.2022**

Haryana Seeds Development Corporation, PanchkulaAppellant(s)

Versus

Ankush Mehla & anotherRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH**

Present:- Mr.D.S.Nalwa, Advocate, for the appellant.

None for the respondents.

G.S. Sandhawalia, J. (Oral) :-

CM-619-LPA-2020

Application for condonation of delay of 96 days in refiling the present appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of Clerk of the counsel. Delay of 96 days in refiling the appeal is hereby condoned.

CM stands disposed of.

CM-620-LPA-2020

Application for condonation of delay of 83 days in filing the present appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of the official and in view of the fact that despite service having been effected on 12.07.2022, no reply has been filed and neither there was no appearance on behalf of the respondents on the said date or today. Delay of 83 days in filing the appeal is hereby condoned.

CM stands disposed of.

LPA-229-2020 (O&M)

The present Letters Patent Appeal arises out of the order passed by the learned Single Judge in CWP-11611-2018 titled *Ankush Mehla Vs. Haryana Seeds Development Corporation & another*, decided on 30.04.2019. The learned Single Judge had applied the judgment of the Apex Court passed in **Hargurpratap Singh Vs. State of Punjab & others, 2007 (13) SCC 292** and directed that the writ petitioner could not be replaced by another set of contractual employee and can be replaced only on joining of a regularly selected candidate.

The argument raised by counsel for the Corporation is that it was the pleaded case of the writ petitioner that he was working through the Labour Contractor w.e.f. 07.03.2016 and it is thus submitted that he was never the employee of the Corporation and the principle in Hargurpratap Singh (supra) could not have been incorporated to protect the employee of the contractor.

A perusal of the writ petition would also go on to show that the appointment of the writ petitioner was as a Salesman and as per the experience certificate issued by the Labour Contractor, he had worked on monthly basis at DC rate for Rs.10,440/- per month from 07.03.2016 to 03.02.2017 and from 15.02.2017 till 21.03.2017 when certificate had been issued. It is thus apparent that the writ petitioner was never an employee of the Corporation. By virtue of the order of the learned Single Judge the Corporation had been asked to continue with the employee of the Labour Contractor till the joining of the regularly selected candidate. A perusal of the writ petition would also go on to show that a Walk-in-interview was invited as per the State Government Outsourcing policy dated 06.04.2015

for various posts including 45 posts of Salesman in March, 2017. As per the representation filed, he was relieved on 01.02.2018 and some other person had been arranged to join on DC rates.

The stand of the Corporation in the written statement was that the employer-contractor, Hawa Singh had not been impleaded though service of the writ petitioner was alleged to have been terminated by the said person and that he was not the employee of the Corporation and the writ petition was not maintainable. Specific plea was taken that the writ petitioner was never appointed by the Corporation and nothing was brought on record to show that the appointment is by the Corporation. Rather it was the case of the writ petitioner himself that he was the employee of the Labour Contractor.

In such circumstances, the directions passed by the learned Single Judge to apply the judgment in Hargurpratap Singh (supra) is not justified. The said case pertained to persons who had been employed on ad-hoc basis in several colleges in the State of Punjab who were allowed to be continued in service on minimum of the pay-scale till regular appointments were made. Keeping in view the policy of the State itself, the order passed by this Court was upheld on account of the fact that one ad-hoc arrangement could not be replaced by another ad-hoc arrangement and it was not useful for the colleges to appoint persons afresh. In such circumstances, directions had been issued and protection was granted that they would continue in service on the minimum of the pay-scale.

Thus, we are of the considered opinion that by virtue of the impugned order, the Corporation has been foisted with a person who was not its employee. The impugned order was also stayed on 18.02.2020 and

apparently on account of the fact that the service of the employee had already been dispensed with on 01.02.2018, he has not put in appearance to contest the present appeal. In such circumstances, the order dated 30.04.2019, passed by the learned Single Judge is not sustainable and the same is accordingly set aside.

The present appeal is allowed in the above-stated terms.

(G.S. SANDHAWALIA)
JUDGE

21.12.2022
sailesh

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes