

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

**CWP No. 22072 of 2022
Date of decision: 27.09.2022**

Shiv Kumar

..... Petitioner.

Versus

State of Haryana and others

.... Respondents.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. R.S. Sangwan, Advocate, for the petitioner.

Mr. Anant Kataria, DAG, Haryana, for the respondents.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner is seeking a direction to the respondents to allow him to continue in service and not to replace him by a fresh contractual employee.

Learned counsel for the petitioner submits that the petitioner has been working as a contractual employee with the respondents for over 12 years and he cannot be replaced by a fresh contractual employee.

Heard.

The petitioner is stated to be working as a contractual employee, who was engaged through a outsourcing agency. He has not been issued any appointment letter by any of the department of the State Government. It is settled law that no writ petition would lie against an outsourcing agency, as it is not an authority in terms of Article 12 of the Constitution of India. Reference can be made to the judgment of a Division Bench of this Court in the case of Nishan Singh and others versus State of Punjab and others, 2014 (11) RCR (Civil) 262, wherein it has been held that the service provider who

has selected the candidates for work in the government department, is not an agency of the State. The appellants therein were neither selected under any service rules applicable to regular employees of the State of Punjab nor did they apply under any advertisement for their appointment as contractual or regular employees of the State. It was further held that the acceptance of the claim of the appellants therein for continuation of services would amount to a back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution of India.

In the case of Anmol Garg and another versus State of Punjab and others, bearing CWP No. 29655 of 2018, decided on 28.11.2018, a Coordinate Bench of this Court dismissed the writ petition preferred by an employee engaged through outsourcing agency which was upheld by a Division Bench in LPA No. 1910 of 2018, decided on 10.12.2018 and the operative part thereof is reproduced hereunder:-

“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.”

Reference can also be made to the orders of the Coordinate Benches of this Court in the cases of 'Vikas versus The State of Haryana and others' bearing CWP No.19762 of 2018, decided on 11.12.2019, 'Kailash Chand and others versus Urban Local Bodies Department, Haryana and others', bearing CWP No.21345 of 2021, decided on 18.01.2022 and 'Naresh Kumar and others versus Haryana State Warehousing Corporation and others', bearing CWP No.17454 of 2020, decided on 02.12.2020, wherein similar petitions of outsourcing employees were also dismissed.

In view of the above, I do not find any merit in this petition, especially when the petitioner was employed through outsourcing agency and was also being paid salary through the outsourcing agency.

Consequently, the petition stands dismissed.

However, the petitioner would be at liberty to seek recourse to alternative remedy available to him under the law.

(ANUPINDER SINGH GREWAL)
JUDGE

27.09.2022
Ramesh

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