

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 24073 of 2021(O&M)

Date of Decision:06.04.2022

Ashok Kumar Gauba and another

.....Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Parveen Chauhan, Advocate
for the petitioners.

Mr. Harish Nain, AAG., Haryana.

LISA GILL, J(Oral).

This writ petition has been filed by the petitioners seeking quashing of order dated 16.11.2021, Annexure P-5, whereby services of the petitioners have been terminated on the ground that they completed 65 years of age.

It is stated in the writ petition that petitioner no.1 was appointed as Clerk in the office of Chief Secretary, Haryana on 30.09.1982 and promoted as Assistant in the year 1998 and thereafter Deputy Superintendent in the year 2012. Petitioner no.2, was appointed as Senior Scale Stenographer in the office of Principal Chief Conservator of Forest, Haryana, on 25.09.1979 and promoted as Deputy Superintendent in the year 1999 and Superintendent in the year 2005.

Both the petitioners retired on 31.01.2013 from their respective departments. It is stated that as sufficient posts of Assistant remained vacant in the Head Office of Directorate of Secondary Education, not being filled up through the process of regular appointment, it was decided by the respondent-authorities to appoint retired employees on contractual basis under Part-II of the Outsourcing Policy.

Petitioners, it is stated were called upon by the respondent-department for appointment under Part-II of the Outsourcing Policy, after due verification of their work and conduct and were appointed on 15.06.2017 against sanctioned vacant posts of Assistants. Petitioners continued to work on the said posts under Part-II of the Outsourcing Policy till June 2019, when they were stated to have been suddenly switched to Part-I of the Outsourcing Policy and their services engaged through a private outsourcing agency. It is stated that work and conduct of the petitioners remained satisfactory, however vide impugned order dated 16.11.2021, Annexure P-5, their services have been dispensed with.

Aggrieved therefrom, this writ petition has been filed by the petitioners.

Learned counsel for the petitioners vehemently argues that engagement of the petitioners is not an extension of services. Therefore, there is no question of dispensing with their services on attaining age of 65 years. Once the petitioners have been kept on contract from 01.07.2021 till 30.06.2022, there is no question of dispensing with their services on the ground that they have attained the age of 65 years and that too in the absence of deficiency in their work and conduct. Reliance has been placed by learned counsel for the petitioners on the Haryana Real Estate Regulatory Authority, Gurugram (Engagement of Staff on Contract Basis) Regulations, 2018, to submit that a person up to the age of 68 years can be engaged. Reference is made to Regulation 11 of the same. It is thus prayed that order dated 16.11.2021, Annexure P-5, be set aside and the petitioners be permitted to continue in service.

I have heard learned counsel for the petitioners and have gone through the file with his able assistance.

It is a matter of record that the petitioners, who retired from service were appointed on the post of Assistant on contractual basis initially under Part-II of the Outsourcing Policy. Admittedly, from June 2019 onwards, their services were engaged through a private outsourcing agency under Part-I of the Outsourcing Policy. Learned counsel for the petitioners does not deny that no objection as such was raised by the petitioners to this switch from Part-II of the Outsourcing Policy to Part-I, wherein petitioners services were now engaged through a private contractor. It is a settled position that a writ in such a situation would not be maintainable as there is no privity of contract between the petitioners and the respondents.

The controversy at hand is no longer *res integra*. Gainful reference can be made to a judgment of a coordinate Bench in **CWP-29655-2018** (Anmol Garg and another v. State of Punjab and others), which has been upheld in **LPA- 1910-2018** (Sharanbir Kaur v. State of Punjab and others). The First Division Bench of this Court in **LPA- 1910-2018** upheld the decision of the Single Bench while specifically observing as under:-

“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 in this regard can also be made gainfully to **CWP-19762- 2018**, (Vikash v. The State of Haryana and others). A Division Bench of this Court in **Nishan Singh and others v. State of Punjab and**

others, 2014 (11) RCR (Civil) 262 has clearly observed that a service provider is not an agency of the State. The service provider enters into an agreement with the State agency to provide the work force on certain terms and conditions. The candidates are selected by the service provider and supplied to the Government department. Thus, in this scenario it cannot be held that there is any privity of contract between the contractual employees and the State/department.

Present writ petition can be rejected on this sole ground itself. However, it is to be noted that though notice of motion was not issued and the matter stood adjourned to enable learned counsel for the petitioners to point out any rules, regulations or provisions which entitled the petitioners to continue in service on contractual basis beyond the age of 65 years, written statement was filed on behalf of respondents no.1 and 2 due to the fact that an advance copy of the writ petition was served upon the respondents. Therefore, brief reference to the facts is considered essential.

It is pointed out that as per Instructions dated 06.08.2018, petitioners cannot be permitted to continue even through the outsourcing agency. The facts were brought to the notice of the outsourcing agency due to which services of the petitioners were dispensed with. Example of one Tek Ram Duggal, which has been given by the petitioners has been succinctly explained inasmuch as he was given extension from 12.06.2018 to 11.06.2019, but his services were dispensed with vide order dated 04.10.2018 on the basis of instructions dated 06.08.2018, which were observed to be prospective in nature.

Learned counsel for the petitioners is unable to deny that notification dated 07.08.2018, Annexure P-6, issued by the Haryana Real Estate Regulatory Authority, Gurugram, is applicable to the employees of

the said authority and not to the present petitioners appointed with the Education Department. Despite opportunity, learned counsel for the petitioners has been unable to point out any law, rule or provision which vests the petitioners with any right to continue in service on contractual basis beyond the age of 65 years.

In this view of the matter, I do not find it appropriate or necessary to delve in the averments raised by learned counsel for the petitioners regarding action being allegedly taken by respondent No.3 on directions of the official respondents, to urge that present writ petition is maintainable.

Keeping in view the facts and circumstances of the matter as discussed in the foregoing paras, I do not find any ground for interference in this writ petition.

No other argument has been addressed.

Accordingly, this writ petition is dismissed with no order as to costs. It is clarified that present order shall not be any impediment to any claim which petitioners may have *qua* respondent no.3.

06.04.2022

s.khan

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

[LISA GILL]
Judge