

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

CWP-25954-2022 (O&M)

Date of decision: November 16, 2022

Rampal

.....Petitioners

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.S. Shekhawat, Advocate for the petitioner.

Mr. Pankaj Middha, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing order dated 21.10.2022 (Annexure P-7) issued by respondent No.3-Civil Surgeon, Jind, whereby, petitioner has been restrained from working and marking his presence. The order also allegedly replaces the petitioner with another contractual employee through Haryana Kaushal Rozgar Nigam.

2. First, succinct factual background, as pleaded in the petition. Petitioner was appointed on contract basis under outsourcing policy on the post of Class-IV at Sub Centre (Intal Kalan) w.e.f. 15.03.2021 by respondent No.3-Civil Surgeon, Jind through private contractor-Radha Krishna Co. Op. L/C Society Limited. He continued upto 30.06.2021 with said society. Civil Surgeon, Jind, asked another man-power supplier/ contract MJ Solanki to supply man-power vide letter dated 15.05.2021. Thereafter, salary and EPF was paid by MJ Solanki. Civil Surgeon, Jind asked the Director General,

Health Services, Haryana vide his letter dated 21.09.2022 for creation of Class-IV post on HKRNL portal so that data of all the Class-IV workers could be uploaded on the said portal. No reply was received and therefore, data could not be uploaded on the portal of the said Nigam. Director General, Health Services, Haryana vide letter dated 11.10.2022 (Annexure P-6) directed all the Civil Surgeons to disburse salary for the month of July-2022 to September-2022 to those workers whose data was not uploaded till 30.09.2022. Petitioner has not been paid salary for three months till today. Civil Surgeon, Jind wrote letter to all the Subordinate Hospitals/ CHC/ PHC/ Polyclinics/ Sub Health Centres in the District and instructed them not to take work or allow those workers to mark presence whose data has not been uploaded on the portal of said Nigam.

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

4. Concededly, services of the petitioner herein were hired on contractual basis through an outsourced private-contractor who, though is not made a party, but 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. Prayer of the petitioner is that being a contractual employee, he is entitled to continue on contract as long as there is requirement of job and that his services cannot be dispensed with merely to accommodate another contractual substitute. Reliance is placed on Apex Court judgment in

**Hargurpartap Singh versus State of Punjab and others reported as (2007)
13 SCC 292.**

At this juncture, it is worthwhile to mention that the proposition laid down in **Hargurpartap Singh's case (supra)** is applicable *qua* contractual employees and not an ousourced 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 views have 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.

5. 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.

6. In the premise, writ petition is held to be not maintainable and is disposed of with liberty to the petitioner to seek alternative remedy, as may be available under law, if so advised.

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

**(ARUN MONGA)
JUDGE**

November 16, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No