

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

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LPA No.4957 of 2018 (O&M)

Rajiv Kumar and others

... Appellants

Versus

State of Punjab and others

... Respondents

(2)

LPA No.7731 of 2018 (O&M)

Sudarshan Kumar and others

... Appellants

Versus

State of Punjab and others

... Respondents

(3)

LPA No.31 of 2019 (O&M)

Ajay Kumar and others

... Appellants

Versus

State of Punjab and others

... Respondents

Decided on : 28.03.2022

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Sunny Singla, Advocate for the appellants
in LPA Nos.4957 & 7731 of 2018.

Mr. Anshul Jain, Advocate for the appellants
in LPA No.31 of 2019.

Mr. SPS Tinna, Addl. AG, Punjab.

Mr. D.K. Singhal, Advocate
for the respondent-M.C. Nangal.

G.S. Sandhawalia, J. (Oral)

Present letters patent appeals i.e. **LPA-4957, 7731 of 2018 & 31 of 2019** are directed against the order of the learned Single Judge dated 10.12.2018 passed in CWP No.13348 of 2018 'Rajiv Kumar and others Vs. State of Punjab and others' in a bunch of cases. In principle the learned Single Judge has rejected the case of the writ petitioners for permitting them to continue in service and for further release of the salary which was stated to be withheld by the respondent-Council. Prayer for regularization in service has also been similarly declined.

The reasoning which weighed with the learned Single Judge while dismissing the writ petitions was that the writ petitioners as such were working as contractual employees under an outsourced manpower agency till the year 2016-2017 and only in 2017-2018 they were offered contractual employment under the respondent-Corporation (sic. Council) {Annexure P-3}. The details of the societies with whom they were working was taken into consideration and it was noticed that they were directly engaged for the year 2017 and the approval was sought from the Director Local Government of the resolution dated 26.12.2016, which was not approved. Reliance was placed upon the letter dated 21.05.2018 (Annexure R-3/2B) of the respondent No.3-Council and documents Annexures R-3/10 to R-3/18, whereby tenders were invited from manpower agents and that the contractors had supplied a list of

employees who had been engaged for discharging various duties, whereby the names of the appellants were included (Annexures R-3/23 to R-3/25). A finding was also recorded that the writ petitioners were in the knowledge of the developments of all times that they were being paid their salaries by the manpower contractor himself and there was an admission in the writ petition which has not been denied during the course of arguments. It was also noticed that a stand had been taken by the respondent that they were not employees of the respondent-Council and they were employees of the manpower agents who had not been impleaded in the present case and specific objections had been raised regarding this aspect. Therefore, benefit of relief of regularization had not to be granted. The removal as such was stated to be by the contractors and, therefore, in the absence of the binding contract between the writ petitioners and the Municipal Council, the writ petitions were dismissed.

A perusal of the paper-book would go on to show that the claim of the writ petitioners was that they had served for 6 to 15 years to the entire satisfaction and, therefore, regularization as such was prayed for. It was pleaded in paragraph No.2 of the writ petition that they were appointed through outsourcing and as they were working with due devotion and honesty, had been allowed to work continuously.

The writ petition had been opposed by filing written

statement that tender notice as such had been issued calling response from Cooperative Societies regarding maintenance of parks and cutting of shrubs in different areas of city and maintenance of tubewell machinery (Annexure R-3/3) in the year 2012 and that contractors had been engaged to attend the process and monthly bills had been paid. In the reply also list of 20 such contractors had been mentioned through whom work orders as such were being done and manpower had been provided, which was only for a period of one year as per the resolution. The contractual employment had been offered, subject to the approval of the resolution which had not been granted, which fact had also been noticed by the learned Single Judge. A specific plea as such had been taken the writ petitioners were neither the employees of the respondent-Council nor they were paid by the said respondent and they were only paid by manpower agencies. Paragraph No.15 of the preliminary objections also can be referred to, whereby the absence of manpower contractors as a party to the litigation as such was raised.

The writ petitioners have also chosen to file a replication to controvert the allegations made in the written statement. In response to para No.15 of the written statement, the factum of impleading the manpower contractors was denied, which reads as under:-

“15. That the contents of para No.15 are wrong and denied there is no need to implead the manpower contractors as party as the petitioners are contractual

employees of the respondent authorities.”

Nothing had been placed on record in support of the said stand in the replication that the writ petitioners had been employed by the Municipal Council directly, as notice was attached of the year 2012 to show that they were employees as such of the Manpower Agency. The denial as such was made that the writ petitioners were not aware of the non-approval of the resolution and they were going daily to the Council for work, but no work was allotted to them after 12.05.2018.

Reference can also be made to Annexure R-3/23 issued by the Makrana Khuard Cooperative Society Ltd. wherein there was also a reference of E-tender Notice dated 16.09.2016 by the Municipal Council, Nangal, wherein estimate for maintenance and upkeep of Municipal Parks, Open areas and Green belts was sought and the work which was allotted on 16.12.2016 to the said Society. The said document shows that the staff/labour had been supplied to the Municipal Council from 01.12.2017 to 28.02.2018 and had been withdrawn on the expiry of the extended terms of the contract. Similarly reference can be made to the document (Annexure R-3/22), whereby payments have been made to M/s Kamal Electrical by the Municipal Council, Nangal in pursuance of the work order dated 16.12.2016 for the period of 01.01.2017 to 28.02.2018.

A perusal of the work order dated 16.12.2016 (Annexure R-3/11) would go on to show that the same tender had

been given for Rs.42,84,000/- and had been approved by the competent authority and an agreement was to be executed. All these factors would go on to show that work was being done through a contractor as such and the learned Single Judge was well justified by noting that the agencies had not been impleaded and the appellants had taken a chance by not impleading them. It is settled principle that when the disputed questions are raised, it is not for the writ Court to go into the same. The right and remedies of the petitioners are elsewhere on account of completing the certain set of period with the manpower agency with the Council and the writ petition was also not maintainable on the said account.

Merely on account of the fact that they had worked for one year and approval had been sought from the Local Bodies, the same would not given them a right to the appellants to seek the benefit of regularization as they were never employees of the Municipal Council. Therefore, the learned Single Judge was well justified in dismissing the writ petitions. Nothing has been placed on record to show that the writ petitioners were paid any amount directly to show that there was a contract of employment inter se the parties, either in the form of deposit of salaries in their account or by receipt of cash.

Reliance placed upon the judgment of the Apex Court passed in '**Secretary, Haryana State Electricity Board Vs. Suresh'** **1999 (2) PLR 722**, would go on to show that the Apex Court was

dealing upon the dispute arising out of the judgment of the Labour Court, which had come to the conclusion that the certain set of workmen had worked for 240 days in a year and were liable to be reinstated, which had been upheld by the learned Single Judge and the Division Bench and in such circumstances the SLP had been dismissed. Rather the said judgment supports the reasoning given by this Court that it is not for the writ Court to go into the disputed issues.

In the absence of these pleadings and material, this Court is of the firm opinion that the findings recorded by the learned Single Judge do not suffer from any infirmity, which would warrant interference in a letters patent appeal. Keeping in view the absence of the contractor also no directions can be issued by this Court for payment of salary which have been claimed.

The appeals are accordingly dismissed. All interim orders stand vacated. All pending civil miscellaneous applications also stand disposed off.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 28, 2022
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No