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Neutral Citation No. 2023:PHHC:100538

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-2475-2020
DECIDED ON: 5th JULY, 2023

SURAJ KUMAR SAHU AND OTHERS

PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Pardeep Solath, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Ms. Nikita Goel, Advocate
for respondent No.2.

Mr. Ashish Yadav, Advocate
for respondent No.3.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ of *Certiorari* for quashing of the impugned order 20.12.2019 (Annexure P-3), vide which the services of the petitioners have been terminated.
2. The factual matrix leading to the filing of instant writ petition unfolds from inviting applications to make recruitment on the post of Data Entry Operator (DEO) through its contractor during the year 2007-2009.

3. Since the petitioners possess academic qualification upto 10+2 and some of them are even graduates apart from having certificate of diploma in Computer, being fully eligible, applied for the said post and finally got the appointment as well.

4. Since the date of joining the petitioners continued to work and even after July, 2014 through respondent No.2-HARTRON, who adopted outsourcing of the work for the Electronic Billing Centre at various district headquarters in the Southern Haryana and accordingly, services of the petitioners stand shifted to respondent No.2-HARTRON instead of being under direct employment of respondent No.3-DHBVN.

5. Now, aggrieved against the termination of their services w.e.f. 31.12.2019, as communicated to them vide impugned order dated 20.12.2019 (Annexure P-3), approached this Court after having repeatedly representing before the respondent authorities for continuation of their services but no heed was paid.

6. Mr. Pardeep Solath, learned counsel for the petitioners has contended that respondent No.2-HARTRON with the sole motive getting rid of the petitioners and all such other employees, who are taken by it from outsourcing agencies, asked them to appear in a test with certain conditions deliberately and purposely, which was almost difficult to be qualified for them.

7. Mr. Solath has further developed the petitioners' case urging that an employee once appointed after following due procedure cannot be asked to appear in a test or interview for the purpose of renewal of the contractual employment, which shows that the sole device was introduced

to remove them from service and above all there was no proposal for making regular appointments against the posts on which the petitioners were working, as the same are still lying vacant. The case of the petitioners' has also been argued on the ground of discrimination submitting that the employees who were directly engaged by respondent No.2-HARTRON have not been asked to appear in such test, which is against the principle of fair play and justice as well as such action of the respondents is alleged to be in violation of Article 16 of the Constitution, which provides for right to equal opportunity in the case of appointments.

8. Reliance has been placed upon a judgment rendered by this Court in the case of "Shiv Kesh and others vs. State of Haryana & others", CWP-13555-2013, decided on 02.07.2013 wherein, disengaged contractual Canal Patwaris challenged the order of disengagement which was set aside with a direction to re-engage them in terms of outsourcing policy floated by the Government of Haryana and directed to allow them to continue in service till such time, the regular appointment is made. The said petition was allowed with costs of Rs.10,000/- imposed upon the Government for having unnecessarily forced the petitioners to approach this Court.

9. On the other hand, Ms. Nikita Goel, learned Counsel appearing for respondent No.2-HARTRON stated that vide impugned order dated 20.12.2019 (Annexure P-3), the contract period of the petitioners, which is not being extended beyond 31.12.2019 since they have failed to clear the test despite providing them multiple chances (5 in total), it is only thereafter a decision was taken to replace them with 14

persons from HARTRON/HIL panel. Ms. Goel, on facts also submits that the petitioners have already been relieved on 31.12.2019 and the persons from HARTRON/HIL panel have joined in the Month of January, 2020 in fact, much before the filing of present petition and accordingly, she prays for dismissal of the present petition on this ground alone.

10. On the question of discrimination with the petitioners, if compared with the employees who were already on the direct empanelment of HARTRON, Ms. Goel, argues that respondent No.3-DHBVN entrusted the task of generating energy bills of Faridabad and Narnaul circles to outsourcing agencies namely M/s Shivalik Inks, Panchkula whereas, the task of generating bills for the circles of Hissar, Sirsa and Bhiwani was assigned to M/s Weexcel, Chandigarh. She would argue that later on, the said project of generating energy bills was taken over by respondent No.2-HARTRON in the month of June 2014 and February 2016 from the agencies named above respectively since, respondent No.3-DHBVN was not satisfied with the work/service provided by these service providers/agencies. She further asserts that 50 Data Entry Operators, who were fulfilling the requisite qualification and experience, were taken in service by respondent No.2-HARTRON and its deployment division had been entrusted the task of conducting examination of computer professionals, who asked the petitioners and like others who were earlier working with the service providers under out sourcing scheme for the examination conducted by it, which is one of the condition for employment with respondent No.2-HARTRON, whereas the petitioners have participated in the exam and five chances were granted to clear such test.

They have been disengaged and are not being allowed to continue as DEO having failed to clear the test. It is, therefore, asserted that the contract period of the petitioners was not extended beyond 31.12.2019 on that account and their services with respondent No.2-HARTRON were continued subject to a specific condition of clearing the test.

11. A separate written statement has been filed by respondent No.3-DHBVN, Hissar and stand taken therein, has been reiterated by Mr. Ashish Yadav, Advocate and in fact brushed aside its responsibility stating that there is no contract of the petitioners with DHBVN, Hissar, who were actually the employee of private firm namely M/s Shivalik Inks, Panchkula and M/s Weexcel, Chandigarh with whom a contract was entered into by respondent No.3-DHBVN. Mr. Yadav, also sought dismissal of the present writ petition qua respondent No.3-DHBVN, Hissar submitting that the petitioners have not direct engagement with it and, therefore, has been arrayed as respondent to the *lis* un-warrantedly.

12. Heard learned counsel for the respective parties.

13. On a consideration of submissions and scrutiny of records it is abundantly clear that the question can be formulated for adjudication in the instant petition would be whether the petitioners having been engaged after following due procedure of law can be disengaged on allegedly not fulfilling a condition fastened upon their service later in time and on that account can they be replaced by another set of contractual/temporary employees.

14. Admittedly the case before this Court is that petitioners were recruited to the post of Data Entry Operator during the year 2007-09

having eligibility criteria of 10+2 examination wherein most of them are rather graduate along with certificate of diploma in computer. It was only after July, 2014 whereas respondent No.2-HARTRON stepped into adopting outsourcing of the work for electronic billing centers in the various district headquarters within the State of Haryana and its HARTRON who introduced a pre-requisite condition for the petitioners to appear in a test and pass the same. On account of being unsuccessful in the said test the petitioners have been disengaged by respondent No.2-HARTRON though were engaged by respondent No.3-DHBVN who were fulfilling minimum required qualification prevalent at that time of recruitment.

15. The reliance on the judgment in Shiv Kesh's case (supra) is well placed squarely covering the proposition for adjudication in the instant case in absolutely identical facts and circumstances wherein disengagement of contractual employees was set aside and direction was issued to re-engage them in terms of outsourcing policy by Government of Haryana and to continue them as such till the regular appointment is made against those posts.

16. The response on behalf of respondent No.3 in particular to counter the discrimination meted out to the petitioners is also not tenable as merely for an internal arrangement made by respondent No.3-DHBVN i.e. outsourcing the generation of bills for the circles of Hisar, Sirsa and Bhiwani which was subsequently taken over by respondent No.2-HARTRON in June, 2014 and February, 2016 would not give a right to change the terms and conditions of employment qua the petitioner

particularly in view of the fact that after order of disengagement from the services of the petitioners, respondent No.2-HARTRON has engaged 50 Data Entry Operators on contractual basis that is against the well settled proposition of law to the effect that a temporary/contractual employees cannot be replaced by another set of temporary/contractual employees.

17. Accordingly the case in hand in the light of facts and circumstances as discussed hereinabove is squarely covered by the ratio laid down in Shiv Kesh's case (supra). Hence the order dated 20.12.2019 (Annexure P-3) is hereby quashed and the petitioners are directed to be taken into service forthwith with effect from the date they were disengaged. They shall also be entitled to the arrears of wages however will not be entitled to any interest on the said arrears considering the fact that they have actually not worked during that period. It is further made clear that the respondent will be liable to pay the arrears only in the eventuality that the petitioners were not gainfully employed somewhere else from the date of their disengagement till they joined back in service.

18. The present petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

5th JULY, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No