

106-B

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5563-2019

Date of decision: 23.01.2023

ANKIT AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arvind Seth, Advocate
for the petitioners.

Mr. Anant Kataria, DAG, Haryana.

Mr. Anil Chawla, Advocate
for respondents No.3 and 4.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of prohibition restraining the respondents not to replace the petitioners with other contractual employees for the work on which the petitioners are working and further to issue a writ in the nature of mandamus directing the respondents to allow the petitioners to grant them the pay scale as is being given to the regular employees of the Corporation.

Learned counsel for the petitioners would contend that the petitioners No.1 and 2 herein are still working with Haryana Agro Industries Corporation Limited as Supervisor and Peon respectively. It is submitted that the petitioners have been working to the utter satisfaction of respondent No.4 and as on date, there is no complaint against them. It is further

submitted that since the services of the petitioners are satisfactory, their services ought not to be dispensed with and replaced by another contractual employees, till a person is regularly appointed against the sanctioned posts.

While issuing notice of motion on 01.03.2019, this Court had directed that the petitioners shall continue to work and they can only be replaced by regularly selected candidates, subject to the condition that their work and conduct is found satisfactory.

Learned counsel for respondents No.3 and 4 would urge that the petitioners have not disclosed the fact that they were appointed through an outsourcing agency and were not working on the date, when the said interim order came to be passed on 01.03.2019 and, therefore, the present writ petition itself would not be maintainable. It is argued that it was incumbent on the petitioners to have disclosed this fact. However, since the petitioners were appointed through an outsourcing agency, the very writ petition is not maintainable. Moreover, ever since the Haryana Kaushal Rojgar Nigam Limited and the policy dated 30.06.2022 have come into existence, the petitioners now stand registered on the said portal and, therefore, on this ground too, the writ petition is not maintainable.

I have heard learned counsel for the parties and have also perused the pleadings of the case.

I am of the opinion that the very writ petition itself is not maintainable considering the fact that the petitioners herein came to be appointed through outsourcing agency and not by the respondent-Corporation. There are several judgments rendered by this Court in **Nishan Singh and others versus State of Punjab and others, 2014 (11) RCR (Civil) 262;**

Sharanbir Kaur versus State of Punjab and others, LPA No.1910 of 2018, decided on 10.12.2018; *Vikash versus The State of Haryana and others, CWP No.19762 of 2018,* decided on 11.12.2019; *Yamin and others versus State of Haryana and others, CWP No.1822 of 2019,* decided on 19.08.2020 and *Balbeer Singh and others versus Haryana State Warehousing Corporation and others, CWP No.17478 of 2020,* decided on 07.12.2020, holding the said fact.

This Court would draw strength from the judgment rendered by the Division Bench of this Court in Nishan Singh's case (supra), wherein it has been clearly held that the service provider is not an agency of the State to make recruitments against the civil posts and, therefore, the writ petition itself would not be maintainable.

Learned counsel for the petitioners would rely upon a judgment rendered by this Court in *CWP No.17441 of 2013*, titled as *Shiv Kumar and another versus State of Haryana and another*, decided on *03.08.2016*, however, in view of the authoritative pronouncement by a Division Bench in Nishan Singh's case (supra), this Court is bound by the same.

Consequently, the instant writ petition is disposed of as not maintainable. However, since the petitioners are now registered on the portal and continuing to work with respondent No.4, their services, if required to be dispensed with, would be under the said policy dated 30.06.2022.

23.01.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No