

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

CWP-4565-2023

Date of decision : 03.03.2023

Sukhjinder Singh and another

..... Petitioners

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajeev Kawatra, Advocate
for the petitioners.

PANKAJ JAIN, J. (Oral)

Petitioners herein are aggrieved of even orders dated 05.11.2022 (P-6 & P-7) passed by respondent No.3 i.e. M/s. SS Service Providers, whereby the services of the petitioners have been terminated and they are being replaced with another set of contractual employees.

2. Petitioners claimed to have been recruited by National Institute of Electronic and Information Technology (NIELIT) through proper procedure and posted with respondent No.2 i.e. Punjab State Transport Society-cum-State Transport Commissioner, Punjab who outsourced their recruitment to NIELIT. It has been claimed that later on the petitioners were moved to the roles of a private agency namely M/s. SS Service Providers. Now, it is an order passed by M/s. SS Service Providers which has been impugned in the present writ petition.

3. Counsel for the petitioners has emphatically argued that as per settled proposition of law as reiterated by Apex Court in '***Hargurpratap Singh vs. State of Punjab and others 2007(13) SCC 292***', the petitioners

being contractual employees cannot be replaced by another set of

contractual employees. They can be replaced only by a set of regular appointed employees and thus the impugned orders terminating the services of the petitioners are bad in law. Further reliance has been placed upon order passed in '**Jarmanjit Singh vs. State of Punjab and others CWP No.13752 of 2016' decided on 27.04.2017 and that passed in CWP No. 12805 of 2015** titled as '**Parmjit Singh & others vs. State of Punjab and others**', decided on 06.04.2016.

4. I have heard counsel for the petitioners and have gone through the records of the case.

5. Counsel for the petitioners does not deny the fact that respondent No.3 is a private agency. The orders impugned in the present writ petition have been passed by the said agency though on instructions of respondent No.2. On being asked as to how respondent No.3 is amenable to the writ jurisdiction of this Court, counsel for the petitioners submits that since the orders have been passed on instructions from respondent No.2 which is a State instrumentality, thus the present writ petition would be maintainable.

6. Further reliance has been placed upon para 10 of judgment rendered in CWP-13752-2016 *ibid* wherein Coordinate Bench held as under:-

“10. The Transport Department being a limb of the State of Punjab is amenable to the writ jurisdiction, being State under Article 12 of the Constitution of India and the State is expected to act in a fair manner, which is wholly lacking in the instant case. The show cause notice was issued on the recommendations of the District Transport Officer, Jalandhar, dated 29.04.2016, stating that the petitioner who had been put to duty at

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Driving Test Tract, Jalandhar, had refused to perform his duty and the very same authority recommended for a re-consideration of the matter by letter dated 17.06.2016. Therefore, this court is of the considered opinion that the impugned orders being devoid of any consideration suffer from the vice of arbitrariness and unreasonableness and deserve to be set aside.”

7. The primary question that arises in the present writ petition before venturing into the merits of the case is:

- (i) As to whether the present writ petition would be maintainable as the order impugned passed by private agency and;
- (ii) As to whether respondent No.3 can be treated as instrumentality of State merely for the reason that the same has acted on the instructions of respondent No.2.

8. The issue w.r.t. a body being instrumentality of State already stands laid down by Apex Court in the case of ***Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722*** and reiterated in the case of ***Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology, (2002) 5 SCC 111*** by the Constitutional Bench, wherein following 6 tests have been laid down:-

“(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.

(3) It may also be relevant factor ...whether the corporation enjoys monopoly status which is State conferred or State protected.

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(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

9. There is no plea in the present writ petition in aforesaid 6 tests and admittedly respondent No.3 being a private agency will thus would not fall within the ambit of Article 12 of the Constitution of India.

10. Resultantly, this Court finds that the present writ petition laying challenge to orders passed by private person would not be maintainable.

11. Consequently, the present writ petition is dismissed.

(PANKAJ JAIN)
JUDGE

03.03.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No