

106-C

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8911-2019 (O&M)
Date of decision: 23.01.2023

TANUJ

...Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Anant Kataria, DAG, Haryana.

Mr. Padamkant Dwivedi, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

CM-8475-CWP-2022

Prayer in this application is for placing on record short reply filed on behalf of respondent No.2.

The application is allowed. The short reply filed on behalf of respondent No.2 is taken on record.

CWP-8911-2019

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 petitioner with other contractual employees for the work on which the petitioner was working and further to

issue a writ in the nature of mandamus directing the respondents to allow the petitioner to continue in service as she has been serving in the Corporation since May, 2012 and to grant her the pay scale as is being given to the regular employees of the Corporation.

Learned counsel for the petitioner would contend that the petitioner herein was working with Haryana Agro Industries Corporation Limited as a Data Entry Operator-cum-Clerk. It is submitted that the petitioner worked to the utter satisfaction of respondent No.2 and there was no complaint against her. It is further submitted that since the services of the petitioner were satisfactory, her services ought not to be dispensed with and replaced by another contractual employee, till a person is regularly appointed against the sanctioned post.

While issuing notice of motion on 03.04.2019, this Court had directed that the petitioner shall not be relieved unless a regularly selected candidate is appointed or the work and conduct of the petitioner is not satisfactory.

Learned counsel for respondent No.2 would urge that the petitioner has not disclosed the fact that she was appointed through an outsourcing agency and was not working on the date, when the said interim order came to be passed on 03.04.2019 and, therefore, the present writ petition itself would not be maintainable. It is argued that it was incumbent on the petitioner to have disclosed this fact. However, since the petitioner was appointed through an outsourcing agency, the very writ petition is not maintainable. Moreover, the petitioner has not attended the office after obtaining the interim order, which fact is not disputed by learned counsel for

the petitioner as well.

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 petitioner 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 petitioner 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.

23.01.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No