

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-8612-2020 (O&M)
Date of Decision : 30.11.2023

RANJEET SINGH AND OTHERS

..... PETITIONERS

V/S

NATIONAL INSTITUTE OF TECHNOLOGY AND OTHERS

..... RESPONDENTS

2.

CWP-17953-2020

RAVI KUMAR & ORS

..... PETITIONERS

V/S

NATIONAL INSTITUTE OF TECHNOLOGY & ORS

..... RESPONDENTS

3.

CWP-12126-2014

KISHOR KUMAR & ORS

..... PETITIONERS

V/S

NATIONAL INSTITUTE OF TECHNOLOGY KURUKSHETRA & ANR

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:

Mr. Deepak Kundu, Advocate
for the petitioners in CWP-8612-2020.

Mr. I.S.Pabla, Advocate
for the petitioners in CWP-17953-2020.

Mr. Karamveer Singh Banyana, Advocate
for the petitioners in CWP-12126-2014.

Mr.A.S.Virk, Advocate
for respondents No.1 and 2.

Mr. Som Nath Saini, Advocate and
Mr.Amit Saini, Advocate
for respondent No.3 in CWP-8612-2020 and
CWP-17953-2020.

Mr. Arun Gosain, Sr.Panel Counsel
for respondent-UOI .

JAGMOHAN BANSAL, J. (Oral)1.

1. By this common order, CWP-8612-2020, CWP-17953-2020 and CWP-12126-2014 are disposed of as issue involved in all the petitions is common. For the sake of convenience, the facts are borrowed from CWP-8612-2020.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to respondents to continue to work the petitioners as Computer Operators and Professional Assistants (Library) till regular appointments are made.

3. The petitioners pursuant to advertisement No.15/2010, applied for the post of Computer Operators and Professional Assistants (Library). The petitioners appeared for typing test and thereafter interview. The petitioners came to be selected for the post of Computer Operator or Professional Assistant (Library). The petitioners were appointed on contract basis and period of contract was 3 months. The respondent vide advertisement No.4/2011, 24/2012 and 18/2013 invited applications and

appointed petitioners on contract basis. Every time, the petitioners had to appear for typing test as well as interview. The respondent in 2014 decided to dispense with practice of direct appointment of Computer Operators on contract basis and opted to engage manpower agency on contract basis. Few petitioners became employees of manpower agency and few petitioners in terms of stay order dated 30.06.2014 passed by this Court continued to work with respondent as contractual employee. The petitioners in CWP No.12126 of 2014 are continuing with respondent since 2014 and they have been on the roll of respondent. The petitioners in CWP No.17953 of 2020 and CWP No.8612 of 2020 became employees of manpower agency in 2014 which dispensed with service of the petitioners in 2020. They preferred writ petitions before this Court, however, as on day, they are not working with either manpower agency or respondent. It is apt to mention here that respondent is engaging manpower agency on annual basis, thus, manpower agency has been changed from time to time.

4. Learned counsels for the petitioners contend that in view of judgment of Hon'ble Supreme Court in '**Hargurpratap Singh Vs. State of Punjab and others'** 2007 (13) SCC 292 and various judgments passed by this Court, the petitioners are entitled to continuity of service. The petitioners have not been appointed against regular post, however, as per settled law they cannot be replaced by another set of contractual employees. The respondent every year is entering into an agreement with a manpower agency which further engages manpower including Computer Operators. The respondent is replacing contractual employees by another set of contractual employees by way of engaging manpower agency.

5. Per contra, learned counsel for the respondents submit that respondent has stopped appointing Computer Operators on contract basis and they are availing services of manpower agency. It is not only Computer Operators who are engaged through manpower agency whereas a number of Class III and IV employees are engaged through manpower agency. This practice is followed across the country. The petitioners in CWP No.17953 of 2020 and CWP No.8612 of 2020 are no more employees of the respondent and since 2014, they were working with manpower agency, thus, writ petition is not maintainable against the respondent. At the time of notice of motion in CWP No.8612 of 2020, the limited prayer was for back wages of 38 months, thus, the petitioners therein cannot seek continuity of service. The petitioners were appointed on contract basis and at no point of time regular post was available. In the absence of regular post, the petitioners cannot claim continuity of service on contract basis. It is prerogative of the respondent to avail service of contractual employees.

6. I have heard the arguments of learned counsel for the parties and perused the record.

CWP-8612-2020

7. The petitioners have made limited prayer of back wages of 38 months. The petitioners admittedly were working with respondent-Institute through a manpower agency. The petitioners have alternative remedy to approach the Labour Court qua their grievance of back wages as well as other benefits.

8. In view of availability of alternative remedy and considering the fact that at present, the petitioners are not working with respondent-

Institute, the petition is disposed of with liberty to the petitioners to avail alternative remedies as permissible by law.

CWP-17953-2020

9. The petitioners were directly engaged by Institute in 2007 and they continued to work till 2014. The Institute in 2014 engaged a manpower agency which in turn availed services of the petitioners. The petitioners from 2014 to 2020 worked as employees of manpower agency. In 2020, it was manpower agency which decided to terminate services of the petitioners. It is conceded position that since 2020, the petitioners are neither working with the Institute nor with the manpower agency. There was an interim order in favour of the petitioners still the manpower agency did not avail services of the petitioner. It is apt to notice that respondent-Institute has even terminated contract of the manpower agency. Thus, as on day, neither petitioners nor manpower agency are working with respondent-Institute.

10. The petitioners from 2014 onwards worked with manpower agency and by their own act and conduct, they accepted themselves as employees of manpower agency. The contract between petitioners and manpower agency was a contract between two private parties. The petitioners were not appointed by respondent-Institute against a sanctioned post and post 2014, it was manpower agency which engaged them. The petitioners have remedy to approach the Labour Court for the redressal of their grievances.

11. In the wake of aforesaid facts and circumstances, this Court, at this belated stage, does not find it appropriate to direct the respondent-

Institute to engage the petitioners. The petitioners are at liberty to avail remedies as permissible by law for the redressal of their grievances.

12. It is made clear that dismissal of this petition would not inhibit the respondent-Institute as well as manpower agency from considering the candidature of the petitioners while making fresh appointments on contract basis.

CWP-12126-2014

13. The petitioners except petitioners No.4 and 7 are admittedly working with respondent-Institute. It is undisputed that work is available and petitioners are working on contract basis. The petitioners are not claiming regularisation or pay scale at par with permanent or regular employees. The limited prayer of the petitioners is that they may be permitted to continue till appointment of regular employees.

14. In view of judgment of Hon'ble Supreme Court in **Hargurpratap Singh v. State of Punjab & others, 2007(13) SCC 292**, order dated 20.09.2017 passed by this Court in CWP No.2822 of 2016 titled as "Omveer and others vs. State of Haryana and others, order dated 07.01.2016 passed by this Court in CWP No.6358 of 2014 titled as "Ravinder Kumar and others vs. Dakshin Haryana Bijli Vitran Nigam and other" and a Full Bench judgment of Delhi High Court in **Narinder Singh Ahuja and others vs. The Secretary, Ministry of Health and Family, 2014 SCC Online Del 2243**, the respondents are directed to permit the petitioners to continue till they are replaced by regular employees or the Respondent-Institute finds misconduct on the part of the petitioners or the respondent concludes that in view of changed circumstances, there is no work which

can be assigned to the petitioners.

15. All the petitions stand disposed of in above terms.

30.11.2023
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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>