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2023:PHHC:095700

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10237-2023
DECIDED ON: 27.07.2023

RAKESH AND OTHERS

.....PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sawan Chaudhary, Advocate
for the petitioners.

SANDEEP MOUDGIL, J (ORAL)

This Civil Writ Petition has been preferred under Articles 226/227 of the Constitution of India for issuance of writ in the nature of *certiorari* for setting aside the impugned order dated 18.08.2021 (Annexure P-9), whereby the claim of the petitioners has been rejected on the ground that they never worked with the Municipal Committee, Safidon, who actually worked through a contractor, namely, M/s K.L. Madan, with effect from July 2017 to July 2018, which was the term awarded to the aforesaid contractor under the outsourcing policy of the State.

Learned counsel for the petitioners states that the vide letter dated 11.06.2019 (Annexure P-3), the information was sought by the Director, Urban Local Bodies, Haryana regarding taking back the employees working in outsourcing contracting practice drawn from various municipalities of the State.

A bare perusal of the letter (Annexure P-3) shows that it is only an information which was sought and as such, the same does not vest any right to the petitioners for continuation of job or for taking him into the services of Municipal

Committee, Safidon by any stretch of imagination. Further the Municipal Committee also did not accept the re-joining of the employees who were working under various contractors, as is evident from the perusal of another communication dated 10.04.2020 (Annexure P-5).

This Court is also not oblivious of the fact that the letter relied by the petitioners is of no help for the simple reason that the information sought from the Municipal Committee, Safidon does not pertain to the manpower supplied by the contractor, namely M/s K.L Madan under a contract, which came to an end on July 2018 and they were relieved from their duties. Moreover, such employees were not on the rolls of the Municipality working directly either on DC rates or by any other mode.

In the light of the above, as has been settled by this Court in the judgment of ***Nishan Singh and Ors. vs. State of Punjab and Others passed in CWP-18916-2011 on 28.02.2013*** wherein it has been held:-

“That apart, in the absence of a notification by the Central Government, prohibiting the employment of contract labour, persons so employed would remain the employees of the contractor and not of the department, i.e. the principal employer. Relevant para-16 of the judgment in the case of Gian Singh and others Versus Senior Regional Manager, Food Corporation of India, Punjab Region, Chandigarh, 1991 (1) PLR 1 reads as follows :-

16. Now let us examine the contentions of the learned counsel for the appellants that if there is violation of the provisions of the Act, to the effect that the principal employer does not get registration as required under Section 7 of the Act and or the contractor does not get the licence under Section 12 of the Act, the persons so appointed by the principal employer through the contractor would be deemed to be the direct employees of the principal employer. We see no such inference deducible from the violation of the provisions of the Act. Section 9 of the Act prohibits the employment through the contractor in case of non-registration. But if a principal employer does employ persons

through the contractor in spite of non-registration, the only penal provisions are Sections 23 and 24 of the Act i.e the principal employer can be proceeded against under these sections but the Act nowhere provides that such employees employed through the contractor would become the employees of the principal employer. If such was the interpretation then the Supreme Court in cases of Food Corporation of India Workers' Union's and B.H.E.L. Workers' Association (supra), would have straightaway granted the relief and would have held that the employees employed through the contract labour had become the employees of the principal employer and were entitled to all the benefits which were available to the regular employees, but as seen above the Supreme Court never granted such a prayer. Moreover, it would be seen from the title of the Act that it is to provide for the abolition of the contract labour and for providing certain facilities to such contract labour. As far as the abolition is concerned, as to whether in a particular establishment such contract labour should be abolished or not, the power has been given to the appropriate Government under Section 10 of the Act."

The reasons recorded in the impugned order dated 18.08.2021 (Annexure P-9), whereby a speaking order has been passed in compliance of the direction given by this Court vide order dated 17.11.2020 passed in CWP-19512-2020 titled as ***Rakesh & Ors. vs. State of Haryana & Ors.***, which has been duly considered and well reasoned, as has been recorded in para 4 & 6 to that impugned order, which reads as under:-

4. At the very outset, it is relevant to mention that in compliance of letter bearing no. 8721/Local dated 07.07.2017 issued by Deputy Commissioner Jind Municipal Committee Safidon issued work order bearing no. MCS/120 dated 07.07.2017 to M/s K.L. Madan Karnal for a a period of one year for door to door collection of waste from every household and commercial unit, industrial units and lining of garbage in the Municipal Limit of Safidon with segregation and dumping of waste garbage @ Rs.4,44,444/- per month and agreement dated 19.07.2017 was entered into between Municipal Committee Safidon and M/s K.L.

Madan Karnal which was effective from 08.07.2017 to 07.07.2018. The aforesaid work started on 08.07.2017 and M/s K.L. Madan Karnal left the work on 07.07.2018 on completion of contract. The manpower engaged by the aforesaid M/s K.L. Madan Karnal left the work on the same day i.e. on 07.07.2018 and one of the personnel working under M/s K.L. Madan Karnal did any work thereafter and has not even attended any duties of Municipal Committee Safidon as there was no reason to do any further work.

6. That the petitioners were engaged by M/s K.L. Madan and they were being paid remuneration by M/s K.L. Madan, so, there arises no question of payment of any amount i.e., salary/arrears of salary by Municipal Committee Safidon to the petitioners. Thus, no amount is due against Municipal Committee Safidon of the petitioners.”

In light of the above well reasoned order and supported by the judgment of Nishan Singh's (supra), this petition being devoid of merits dismissed.

(SANDEEP MOUDGIL)
JUDGE

27.07.2023

Meenu

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