

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.13133 of 2020 (O&M)

Reserved on: 22.03.2023

Pronounced on: 03.05.2023

Somdeep

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Anant Kataria, DAG, Haryana.

Mr. Aman Bahri, Advocate, for respondent No.3.

JAISHREE THAKUR.J

CM-9739-CWP-2020

Application is allowed, as prayed for.

Documents Annexures P-19 to P-23 are taken on record subject to all just exceptions.

CWP No.13133 of 2020

1. This is a petition that has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus restraining the respondents replacing the petitioner with the other set of contractual employee through outsourcing as he has been working with respondent No.3-Municipal Council, Kaithal since the year 2016 against a vacant sanctioned post and is well acquainted with the work of the Council and having no complaint against him.

2. As per the averments made in the petition, in the year 2016, the petitioner was appointed as Draftsman against a sanctioned vacant post, on the basis of qualifications/experience as prescribed in the Haryana Municipal Employees (Recruitment and Condition) Service Rules, 1998, to work in the office of respondent No.3-Municipal Council, Kaithal, through an outsourcing agency i.e. respondent No.4-M/s Bala Ji Security and Men Power Services. Till 2020, he was assigned various duties, which he did with utmost devotion and honesty. However, the petitioner has the apprehension that he is being replaced with some other contractual person. Hence, the present petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the services of the petitioner ought not to be dispensed with and replaced by another contractual employee till regular appointment is made against vacant sanctioned post. Reliance is placed on the judgment in ***Shiv Kumar and another Versus State of Haryana and another, 2017(1) S.C.T. 197***, wherein it has been held that one contractual employee cannot be replaced by another contractual employee.

4. *Per contra*, contention of the contesting respondent i.e. respondent No.3, under which the petitioner is working, is that the petitioner was appointed through an outsourcing agency to work in the office of respondent No.3. The petitioner was being paid the salary through the outsourcing agency i.e. respondent No.4 and not directly by respondent No.3. It is further submitted that as per outsourcing policy dated 06.04.2015 Annexure R-3/8, the petitioner could not have worked on a sanctioned post

through outsourcing agency. It was specially barred by clauses (iii) and (iv) of Part I of the policy. However, the petitioner worked illegally w.e.f. 2016 to 31.07.2020 in violation of said policy and he cannot be permitted to continue any further. The post of Draftsman, being a sanctioned post, cannot be filled up through an outsourcing agency but can be filled under Part-II of the Outsourcing Policy through Employment Exchange and advertisement in newspaper on contract basis not exceeding one year or till regular selection is made. The petitioner has no vested right on the said post.

5. Be that as it may, this Court is of the opinion that the instant 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-Council. To this effect, reliance is placed on the judgments of 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 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***.

6. 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 recruitment against the civil posts and therefore, the writ petition itself

would not be maintainable.

7. Though the petitioner relied upon the dictum laid down in judgment in *Shiv Kumar's case* (supra), however, in view of the authoritative pronouncement by a Division Bench of this Court in *Nishan Singh's case* (supra), this Court is bound by the same.

8. Consequently, the writ petition is dismissed being not maintainable.

9. Since the main case itself stands disposed of, CM-9741-CWP-2020 has rendered infructuous and is disposed of accordingly.

(JAISHREE THAKUR)
JUDGE

03.05.2023

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No