

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

**CM-13910-CWP-2022 in/and
CWP No.10016 of 2018 (O&M)
Date of decision :14.02.2023**

Sukhwinder Singh & ors.

..... Petitioners

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. K.S.Dadwal, Advocate
for the petitioners.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

Mr. B.S.Patwalia, Advocate
for respondents No.4 & 5.

PANKAJ JAIN, J. (ORAL)

CM-13910-CWP-2022

This is an application for pre-ponement.

The main case has already been listed today. The application seeking pre-ponement has been rendered infructuous and the same is disposed off as such.

CWP No.10016 of 2018

Present writ petition has been filed seeking writ in the nature of mandamus directing the respondents to consider the case of the petitioners for absorption/regularization for the post of Drivers against which the petitioners claimed to be working.

The petitioners claimed to be working with respondent No.4-Verka Milk Plant but admit in para No.2 that the source of their recruitment is an outsourcing agency and not the respondent. Apart from that the outsourcing agency so pleaded in para No.2 has not been impleaded as respondent. The primary issue before venturing into the merits of the case would be as to whether there exists any employer-employee relationship between the parties to the present *lis* or not. Petitioners in their writ petition are evasive in claiming their source of recruitment in the following terms :-

“2. That the petitioners were either appointed by the respondent no. 4 or were taken through Out Sourcing Agency have sought the regularization/absorption of their service in view of the provisions of the Punjab Adhoc, Contractual, Daily Wage, Temporary, Work Charged and outsourced Employees' Welfare Act 2016 (Hereinafter referred to as Act of 2016).

8. That from the perusal of (Annexure P-3), it is crystal clear that the petitioners are covered under the same. The salaries of the petitioners are being sent to their accounts continuously and their services are being extended from time to time continuously without giving any extension letters.”

Respondents No.4 & 5 have responded to the same in the following terms :-

“2. That contents of the corresponding para of the writ petition are admitted to the extent that the Petitioners are all those persons who have been appointed through out sourcing agency and have no relation with the Respondents directly. It is also submitted that none of the Petitioners have been appointed by the Answering Respondent directly. It is further submitted that the claim of the Petitioners for regularisation as per the 2016 Act cannot be sustained in view of the fact that the State of Punjab has already since decided not to implement the said act and also in view of the settled position of law that outsourcing employees have no right for regularisation as they have not relation with the employer.

8. That contents of the corresponding para of the writ petition are false and hence denied and in reply to the same it is submitted that the Respondents deny on the want of knowledge about the payment of salary to the Petitioner in their account as the same between the outsourcing agency and the Petitioners. It is submitted that the Respondents have no role to play with regard to the same.”

Faced with this situation, learned counsel for the petitioners submits that there are instances wherein the contractual workers employed through contractor have been treated to be the workers of principal employer. Reliance is being placed upon ***G.M.ONGC, Shilchar Vs. ONGC Contractual Workers Union (2008) 12 SCC 275, R.K.Panda Vs. Steel Authority of India, (1994) 5 SCC 304 and Nihal Singh & ors. Vs. State of Punjab, (2013) 14 SCC 65.***

Per contra learned counsel for respondents No.4 & 5 refers to pleadings raised in para 12 of the writ petition and submits that when para No.2 is read along with para No.12 of the writ petition, it is evident that there is a tacit admission on part of the petitioners with respect to their employment through outsource agency and thus they have no locus to maintain the present writ petition.

I have heard learned counsel for the parties and have gone through the records of the case.

While issuing notice of motion this Court vide order dated 12.11.2018 observed as under :-

“The restricted claim urged is for protection of the services of the petitioners till the posts are filled up on regular basis as per the rules, namely, The Co-operative Milk Producers Union Employees Service (Non-Common Cadre) Rules, 1996 (in short “The Rules, 1996”), since the posts are alleged to be covered under “The Rules, 1996” and the petitioners claim to be fulfilling the laid down prescribed qualifications.

Notice of motion for 13.03.2019.

In the meanwhile, the services of the petitioners shall not be terminated without seeking approval from this Court.”

Learned counsel for the petitioners has not been able to make out a case to maintain the writ petition as from the record, he is unable to point out that the petitioners were not appointed through outsourcing agency. In the light of admission made in the pleadings raised in the writ petition itself, *the question is as to whether law laid down by the Apex Court in **G.M.ONGC, Shilchar and R.K.Panda 's case supra** can be read to the benefit of the petitioner or not?* In **G.M.ONGC, Shilchar's case supra** the matter prior to coming before the Constitutional Courts was thrashed before the Labour Tribunal where the parties have raised their pleadings and led evidence. Specific case raised by the petitioners in such labour dispute was that the employees though termed as contractual were in fact employees of the principal employer and the Labour Court had answered such reference at the behest of the Labour Union after considering the pleadings and evidence on record. Likewise in the case of **R.K.Panda 's case supra** the workman pleaded that he having been employed in a work of perennial nature ought not to have been treated as contractual employee as the same would be in the teeth of provisions of Contract Labour (Regulation and Abolition) Act, 1970 (for short “1970 Act”). It was in these circumstances that the Apex Court held that keeping in view the fact that the objective of the Contract Labour Act itself recognized that the workers working in the job of perennial nature ought to be absorbed, the petitioner therein were entitled for such relief.

The present case when gazed from the prism of the aforesaid settled law the pleadings of the petitioners themselves raised in the writ petition disentitle them for such relief. The petitioners have nowhere claimed protection of the provisions of the 1970 Act. Apart from that, there is no such averment that the petitioners have approached any Tribunal or Labour Court wherein their right of being employees of principal employer has been adjudicated.

Resultantly, this Court finds that in view of the admission made in the writ petition itself, there is no relationship of employer-employee between the petitioners and respondents No.4 & 5. Therefore, no relief as claimed in the present writ petition can be entertained. So far as the issue with respect to ***Sabha Shanker Dube Vs. Divisional Forest Officer & ors. (2019) 12 SCC 297 and State of Punjab & ors. Vs. Jagjit Singh & ors., (2017) 1 SCC 148*** is concerned, this Court has already held that there is no employer-employee relationship between the parties and thus no such relief can be granted against respondent No.5.

Petition stands dismissed.

Since this Court has purely gone on the basis of pleadings raised by the parties, the observations made hereinabove will not come in the way of the petitioners in case they opt to raise industrial dispute or opt to avail any alternate remedy with an intent to establish their relationship with the respondents.

(PANKAJ JAIN)
JUDGE

14.02.2023

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No