

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16277-2017 (O&M)
Date of decision: 17.07.2023

Jitender Sharma	VS.	... Petitioner
UHBVNL & Ors.		... Respondents

CWP-19013-2018

Ram Kishan	VS.	... Petitioner
HSVP & Ors.		... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Suneel Ranga, Advocate (CWP-16277-2017)
Mr. Deepak Sonak, Advocate (CWP-19013-2018)
For the petitioner(s)

Mr. Deepak Balyan, Advocate for the respondents

Sandeep Moudgil, J.

- (1). By this order, this Court shall dispose of the above-cited two writ petitions which has been filed by the petitioner(s), which are interrelated to a common issue. For facts, CWP-16277-2017 is treated as the lead case.
- (2). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents to allow the petitioner to continue his services as Shift Attendant until regular appointments are made and not to replace the petitioner with contractual employee, in violation of the Supreme Court judgment in Hargurpratap Singh vs. State of Punjab & Ors. (2007) 13 SCC 292. He also seeks a direction to the respondents to release his salary for the period from 13.04.2017 till he allowed to continue his services.

(3). Learned counsel for the petitioner submitted that the respondent-Nigam engaged the services of the petitioner after following due procedure and was appointed as Shift Attendant initially through service provider w.e.f. 01.09.2013. However, his services were dispensed with on account of the fact that the one person died due to outbreak of fire due to short circuit pursuant to petitioner's supplying the electricity at 7.30 PM.

(4). It is contended that as per the request made by the sarpanches of various villages (Annexure P2), the electricity supply was re-scheduled from 7.00 PM to 7.00 AM as is evident from the message book (Annexure P3) and as such there is no mistake on the part of the petitioner which can be corroborated from the copy of DDR (Annexure P4) and also the letter dated 22.04.2017 (Annexure P5) of Sub Division Officer – respondent No.4 wherein it is clearly mentioned that upon verification, it has been found that it was on account of the letter written by the Sarpanches of the village that the supply of electricity was re-scheduled as there were chances of firebreak during day time of harvesting season.

(5). Notice of motion was issued on 26.07.2017 and the respondents were directed not to fill up the post manned by the petitioner by any contractual employee.

(6). Amended written statement on behalf of respondents No.1 to 5 has been filed wherein it has been specifically averred that the petitioner was engaged by manpower contractor/provider and was finally reporting to M/s Kathuria Manpower Security Service which had been maintaining attendance register and as such there is privity of contract between the petitioner and the

said manpower contractor/provider and the respondent-Nigam is not under any obligation.

(7). Mr. Deepak Balyan, Advocate further contended that the petitioner had been prima facie found to be violating the power supply schedule and as such he was replaced on account of his dereliction of duties. He referred to Annexure R5, a letter dated 14.04.2017 addressed by SDO, Chhajpur to Sirsa Bansivat informing him that the petitioner was found involved in violation of PRM due to which a fatal accident has occurred on 12.04.2017. He urged that the petitioner was employed by Sirsa Bansivat Coop. L&C Society Ltd. Sirsa and if he has any grievance out of his employment, the same is to be pursued with the said manpower contractor.

(8). Replication dated 23.04.2019 has been filed by the petitioner wherein the assertion made by the respondents has been refuted by stating that the petitioner is employed with the respondent-Nigam since 2013 and the alleged contract was awarded on 01.09.2015 (Annexure R1) i.e. much prior to the award of the contract to the alleged society. Reliance has been placed on *Ajay Hasia vs. Khalid Mujib (1981) 1 SCC 722*, and *Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. (1979) 3 SCC 489* and to contend that the test for determining whether an entity is an instrumentality or agency of the State and even if the petitioner was employed through some society, still he is an employee of the respondent-Nigam. Learned counsel also vehemently urged that the right of a contractual employee cannot be defeated merely by reference to an outsourcing policy and one contractual employee cannot be replaced by

another similar arrangement as has been held in **Shiv Kumar & Anr. Vs. State of Haryana & Anr. (2017) 1 SCT 197.**

(9). Heard learned counsel for the parties and gone through the record.

(10). Admittedly, no regular cadre of the post that was occupied by the petitioner was ever sanctioned by the competent authority. Therefore, the argument that petitioner could not be replaced by another set of contractual employees till the process of regular recruitments was carried out by the respondent-Nigam is wholly misplaced. Moreover, once a cadre itself is contractual etc., then there cannot be a bar on the competent authority from filling up the post by inviting fresh talent from the open market.

(11). The reliance placed by learned counsel for the petitioner upon the decision of the Supreme Court in **Hargurpratap Singh's** case (supra), is misconceived, as that case was with respect to the employees who had been engaged on *ad hoc* basis for an indefinite period against permanent vacant posts and in that context it was held one ad-hoc arrangement could not be replaced by another. Whereas, the present petitioner has been engaged through manpower service provider for a definite, fixed and limited period of time and, therefore, the present case is not that where one ad-hoc arrangement is being replaced by another ad-hoc arrangement.

(12). The Supreme Court, in the cases of **Yogesh Mahajan v. Prof. R. C. Deka Director All India, 2018 (3) SCC 218** and **Gridco Limited and another v. Sadananda Doloi and others, 2011(15) SCC 16**, has clearly held that it is a settled law that no contractual employee has a right to have his

contract renewed from time to time and can be discontinued after the contractual period is over.

(13). In *State of Uttar Pradesh and others v. Ex-Pilot Officer Arun Govil, 1989 (Supp.) 2 SCC 593* and *State of Orissa v. Chandra Sekhar Mishra, 2002 (10) SCC 583*, the Supreme Court has further held that a person appointed on contractual basis is entitled to continue as a contractual employee only till the period of his contract or for the period extended from time to time, and not beyond that, and that after the lapse of the contractual period, the employee has no right to continue as such and on his disengagement cannot be directed to be reinstated by this Court.

(14). The Supreme Court in *Union of India and others v. N. Murugesan and others 2022(2) SCC 25*, with reference to appointment on a very high post, has further held that in the cases of tenure appointment, the principle and doctrine of ‘*approbate and reprobate*’ would also apply, and a person, with his eyes open and full knowledge, having taken the advantage of obtaining a contractual appointment, cannot subsequently challenge its terms and conditions and seek status of a permanent employee.

(15). In the present case, the petitioner was an employee of outsourcing agency which was having a license under the contract to supply manpower and as such, there was no privity of contract between the petitioner and the employer. He was not even a contractual employee. The principle being canvassed before us applies only in case where there is a privity of contract between the employee and the employer. In the case in hand, the petitioner was an employee of the service provider. The benefit of the said principle is not liable to be extended to him.

(16). Be it noted that the case of Hargurpratap Singh related to a contractual employee not an outsourced employee. In any event, the respondents in their reply has stated the reasons as to why it did not want to continue with the services of the petitioner, even on outsourcing basis. In the light of the aforesaid development, this writ petition, as framed, no longer survives for consideration on merits.

(17). Further, this Court is of the opinion that no writ petition would lie against an outsourcing agency, being a private entity which is not an authority in terms of the Article 12 of the Constitution. Admittedly, the petitioner has no direct relationship with the respondent-Nigam.

(18). The writ petition is accordingly dismissed.

(19). However, this order shall not preclude the petitioner from taking recourse to appropriate remedies available to him in accordance with law before the competent forum, if he has any grievance with regard to the action of the outsourcing agency.

17.07.2023

V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No