

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20714-2019 (O&M)

Decided on 14.11.2023

Rakesh Dhawan

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. R. Kartikeya, Advocate
for the petitioner in CWP-20714-2019.

Mr. R.S. Kundu, Advocate with Mr. Chirag Kundu, Advocate
and Mr. Anshul Chahal, Advocate
for the petitioner in CWP-7444-2020.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

Mr. Aman Bahri, Advocate
for respondents No.2 & 3 in CWP-7444-2022.

Mr. Hitesh Pandit, Advocate and
Mr. Divyansh Shukla, Advocate
for respondents No.2 & 3 in CWP-20714-2019.

Sandeep Moudgil, J.

This order shall dispose of CWP-20714-2019 & CWP-7444-2020 as identical issues are involved. For the purpose of order, CWP-20714-2019 is treated as the lead case.

The petitioner has filed the instant writ petition under Article 226 of the Constitution seeking a writ in the nature of certiorari for quashing the impugned order dated 02.07.2019 (Annexure P-17) whereby sanction for extension of the petitioner's service has been declined without considering the recommendation(s) dated 08.03.2019 (Annexure P-13); 05.04.2019 (Annexure P-14) and service record of the petitioner. A further direction is sought for directing the respondents to grant sanction for further extension to

the petitioner, in light of the recommendations made by Regional Officer-Respondent No. 3.

Learned counsel for the petitioner contended that the petitioner has been discriminated and his claim for according sanction qua continuation of his services, has wrongly been declined. He urged that the petitioner has almost twelve years of service to his credit and the action of the respondents in not granting further sanction is only to make some ground for declining the case of the petitioner for regularisation.

Mr. R. Kartikeya, Advocate for the petitioner further averred that the petitioner is still serving the Regional Office at Bahadurgarh thus it has become indispensable for the Regional Office to relieve the petitioner and that apart, one month notice period was to expire on 02.08.2019 and at that time, no other computer operator was available as was evident from the letter sent by the Regional Office recommending further extension to the petitioner.

Written statement has been filed by respondents No.2 & 3 – Haryana Pollution Control Board, Bahadurgarh Region wherein it has been averred that the petitioner was engaged initially as Steno-typist and thereafter Computer Operator through respondent No.4-HARTRON work-station, Rohtak which is not an authorized source/service provider but only a franchise to impart computer education and as such the engagement of the petitioner is in violation of the outsourcing policy more-so when the respondents No.2&3 have no contract/agreement with respondent No.4-HARTRON. Learned counsel countered the averments of the petitioner and submitted that there is no violation of Article 14 of the Constitution and the

respondent-Board has no knowledge about any such case highlighted by the petitioner in his pleadings.

Reply has also been filed by respondent No.4-HARTRON wherein it has been submitted that the State of Haryana had framed a policy dated 29.12.2018 for engagement of computer professionals on job work basis through respondent No.4-HARTRON Informatics Ltd. (HIL) which is a State government undertaking and as such, respondent No.4 is authorized to deploy IT professional from empanelled list of departments/boards etc.

Counsel for the respondent No.4-HARTRON further placed reliance on letter dated 17.03.2010 (Annexure R1) wherein it has been specifically mentioned that respondent No.4 would be involved at the time of selection and the professionals shall be on the rolls of the concerned department/Board and after deployment of IT professional, the respondent No.4 has no concern therewith. He further submitted that the petitioner was hired from HARTRON workstation and respondent No.4-HARTRON had not sponsored the name of the petitioner.

Heard learned counsel for the parties and gone through the record.

A perusal of the impugned order dated 02.07.2019 (Annexure P17) declining sanction to the petitioner's service would suggest that the only reason assigned is the outsourcing policy dated 16.02.2009 and 17.03.2010 in terms whereof, the outsourcing would be undertaken through a recognised outsourcing agency i.e. HARTRON. The petitioner was engaged considering his educational qualification as well as the eligibility under the said policies. As regards the issue of recruitment through a recognised outsourcing agency,

the agency through which the petitioner has been recommended, is covered under the aforementioned policies which provides that HARTRON has approved workstations for carrying out the scheme and objective for which the HARTRON has been created and as such, the workstation (franchise) is an approved source of recruitment as per the aforementioned policies.

Secondly, it is the case of the petitioner that he is being discriminated inasmuch as another employees namely, Deepak, Harkesh (at Ballabhgarh), Bhim Sen (at Panchkula), Satish Kuamr (at Panchkula) are also from the same source and have been allowed to continue in service and even got the benefit of regularization in service. It is well settled that the services of temporary/contractual employee cannot be replaced by another temporary employee. That being so, the petitioner cannot be singled out and terminated in an illegal manner. It is undeniable that the respondents are availing the services of the petitioner since 24.03.2007 when the name of the petitioner was sponsored.

Even otherwise, the petitioner was already working and that only extension/sanction was required and not the fresh appointment. In fact that extension is of that period of services rendered by the petitioner. Suffice it to say that after the appointment, the petitioner was employee of the respondent-Board as per the instructions of the Government of Haryana dated 17.03.2010, clause (iii) thereof, reads as under:-

iii). Hartron would be involved only at the time of initial screening and selection of a candidate and charge a fee equal to one month's remuneration. Thereafter, the concerned professional shall be on the rolls of the concerned Department/organization. The concerned Department/

Organisation shall ensure that his monthly contract amount/ remuneration/ job work fee is paid in the same manner as the salary of regular employees. The contract amount would be paid out of the 'Object Head" viz. Professional Services, for which a provision will be got made in the budget of the Department. Further, the concerned Department/ organization will also be responsible for deposit of CPF/ESI etc. as applicable, in respect of the concerned resource. Every Department/ Organisation requisitioning the services will follow the instructions bearing No. Admn/307/2006/1SIT/6272 dated 29.12.2008 issued by this Department in this behalf.””

That the impugned orders are also violative of principle of “first come last go” as the junior to the petitioner-Surinder Sharma i.e. one Yogender who was appointed in 2017 and one Seema who is appointed in 2019 are still working and the petitioner (in CWP-7444-2020) who has been serving with the respondent No.3 since last 16 years has been served with notice of termination and now has been relieved.

The course adopted by the respondents to displace one ad hoc/contractual arrangement by another such arrangement is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the respondent-Board concerned rather than to appoint persons afresh through same mode. This becomes even more crucial in view of the fact that the identical set of outsourced employees have either been allowed to continue or their services have been regularized and as such, the petitioner cannot, in uncertain terms, be denied such benefits only on a whimsical ground that his appointment/engagement was not through HARTRON but by its franchise. Such a reason for termination of the

services of the petitioner is patently illegal and clearly falls within the *ratio* of the judgment of the Supreme Court in **State of Haryana Vs. Piara Singh and Others (1992) 3 SCR 826** wherein it has been emphatically held that since one contractual employee cannot be replaced by other contractual employee, such action will show gross arbitrariness on the part of the respondent-employer.

Accordingly, the present writ petition is allowed; the impugned order dated 02.07.2019 is set aside and the respondents are directed to allow the petitioner(s) to continue in service and grant necessary sanction from time to time. Needless to say that they will be paid salary in the same manner as they used to get prior to passing of the impugned order/show cause notice and if the same has been withheld, the respondents are directed to disburse the dues of the petitioner(s) along with interest @ 9% p.a. within a period of 15 days from the date of certified copy of this order.

Ordered accordingly.

14.11.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No