

2023:PHHC:113151

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6854-2017

DATE OF DECISION:-28.08.2023

SURESH KUMAR & ORS.

...PETITIONERS

VS

STATE OF HARYANA & ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raman B. Garg, Advocate for the petitioners.

Mr. Sandeep S. Mann, Addl. A.G. Haryana.

Mr. Ashok Chaudhary, Advocate for respondent No.4.

SANDEEP MOUDGIL, J. ORAL

This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents not to replace the petitioners by the same set of contractual employees which is contrary to the judgment of this Hon'ble Court in the case of ***"Hargurpratap Singh Vs. State of Punjab"***, 2007(13) SCC 292 and in view of directions issued by this Court vide judgment dated 06.07.2010 (Annexure P-1).

Learned counsel for the petitioners has submitted that the petitioners have been appointed on the posts of Driver, Fireman etc. on daily wages by respondent No.4 under the orders of appointing authority i.e., Deputy Commissioner, Rewari-respondent No.3 and they are working on the said posts from 14.11.2005 till date. As the work and conduct of the petitioners were good, satisfactory and unblemished, they were issued appreciations letters from time to time. It is further

submitted that in the year 2007, the petitioners were being replaced by the respondents to engage temporary employees through private service contractors so that the petitioners cannot claim regularization of their services. It is contended that aggrieved by the said action of respondents, the petitioners have approached this Court by way of filing writ petition bearing No.CWP-11978-2007 for not to replace them by similar arrangements and this Court vide order dated 06.07.2010 had directed the respondents-authorities not to replace the petitioners by similar arrangements, except if their services are not needed on unsuitability and liberty was also granted to the respondents to make appointment on regular substantive basis by following the appropriate procedure under law. It is further contended that after passing of the said order, the respondents-authorities by issuing an order dated 01.03.2017 had integrated the services of all the Fire Officers/officials working in various Fire Stations under the Municipalities w.e.f. 01.04.2017 and the posts of Fireman and Driver have been consolidated into one post and named as Fire Operator w.e.f. 01.04.2017. It is also contended that vide letter dated 01.03.2017 (Annexure P-4) issued by respondent-Department, all the existing regular fireman are adjusted against the post of Fire Operator with same qualifications as possessed by petitioners and the petitioners are being dislodged from the services of respondent-Department though there is no deficiency in their work and conduct and thus, the said action of the respondents replacing the petitioners with another set of contractual employees is liable to be set aside. He has relied upon judgment passed in ***“Hargurpratap Singh Vs. State of***

Punjab”, 2007(13) SCC 292, wherein the similar controversy arise for consideration before the Hon’ble Supreme Court.

On the other hand, learned State Counsel has submitted that as per letter dated 01.03.2017, the services of Fire Operators have been taken on contract basis by the concerned Deputy Commissioner on the fixed pay w.e.f. 01.04.2017 according to qualification mentioned in the Haryana Fire (Group-C) Service Rules, 2016. It is further submitted that the present writ petition is liable to be dismissed as the letter dated 01.03.2017 already stands withdrawn.

On the other hand, learned counsel appearing on behalf of respondent No.4 has submitted that the present writ petition is not maintainable as the petitioners were appointed on contractual basis and the petitioners cannot claim for continuity in service as the same has also been held by the Hon’ble Supreme Court in case **M.C. Samrala Vs. Raj Kumar** reported as **2006(3) SCC 81** that the workman appointed for fixed period is not entitled to continue on the same post.

This Court has heard learned counsel for the parties and has perused the paper book.

In the present case, the petitioners were ordered to be replaced by the respondents to engage temporary employees through private service contractors so that the petitioners cannot claim regularization of their services. It is a settled principle of law that a temporary arrangement cannot be replaced by a similar temporary arrangement. The respondents are, however, at liberty to make appointment on regular substantive basis by making appropriate advertisement in consonance with Articles 14 and 16 of the Constitution

of India. However, the respondents cannot be permitted to replace the petitioners to substitute them by similar contractual temporary arrangements.

Keeping in view the abovesaid facts and circumstances, the present writ petition is disposed of with directions to the respondents-authorities that the petitioners be not replaced by similar set of temporary arrangements, except, if their services are not needed or till the expiry of the contract under which they are working whichever is earlier. However, the respondents are at liberty to make appointment on regular substantive basis by following the appropriate procedure under law. In that eventuality, the petitioners would make way for regularly appointed employees. However, they would be at liberty to apply for the posts subject to their qualification and eligibility.

(SANDEEP MOUDGIL)
JUDGE

28.08.2023
yogesh

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No