

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26750-2021 (O&M)
DECIDED ON: 25.07.2023

SANDEEP DAHIYA

... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present:- Mr. Sandeep Sharma, Advocate
for the petitioner(s).

Mr. Dhananjay Mittal, Advocate
for respondents No.2 and 3.

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SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Articles 226/227 of the Constitution of India has been invoked for issuance of a writ in the nature of Certiorari for quashing of impugned order dated 01.01.2018 (Annexure P-10), vide which the Chief Administrator, HSVP-respondent No.2 has directed the Administrator, HSVP – respondent No.3, to engage the petitioner through outsourcing agency, which is contrary to the Policy dated 01.09.2006 (Annexure P-21) and for setting-aside the impugned order dated 08.10.2021 (Annexure P-15) passed by respondent No.3 without affording any opportunity of hearing to the petitioner.

2. Brief facts of the case of petitioner are that the petitioner was working as Assistant District Attorney on contract basis since 04.11.2010 in

the office of Administrator, Haryana Shehari Vikas Pradhikaran, HUDA-respondent No.3, without any break in the service from 04.11.2010 to 08.10.2021, honestly and defending the respondents in the District and Sessions Court, Gurugram. He was getting extension regularly from the office of respondents and the petitioner was directly engaged by the office of respondent after getting the approval from the competent authority. The post of Assistant District Attorney falls in the Group-B category. The Government of Haryana issued regularization policy on 16.06.2014 to regularize the service of Group-B employees, who was in service for not less than 3 years prior to issuance of the regularization policy. The petitioner submitted an application for regularization of his service vide (Annexure P-4). Respondent No.3 recommended to respondent No.2 to regularize the service of petitioner vide Annexure P-5 dated 20.10.2017; and the petitioner was getting regular extension till 31.12.2017 directly from the office of the respondents. It is the further case of the petitioner that respondent No.2 directed respondent NO.3 to engage the petitioner through outsourcing agency vide order dated 01.01.2018 (Annexure P-10) contrary to the outsourcing policy. These policies are attached as Annexures P-21 to P-24. It was in the knowledge of respondent No.2 that petitioner's claim for regularization of service was for contractual employee only. Respondent No.2 never intimated to the petitioner to change the terms and conditions of his service and he never gave his consent to change his contract through outsourcing agency.

3. While issuing notice of motion on 10.02.2022 following order was passed by this Court:-

“Learned counsel for the petitioner has submitted that the petitioner was working as Assistant District Attorney on contractual basis. His services had been extended till 31.12.2021 but he had been terminated on 06.10.2021, which is two months prior to the expiry of the extension. He also contends that the respondents are filling the post through outsourcing agency which would not be permissible.”

4. Upon notice, respondents put in appearance and Mr. Hitesh Kumar Meena, Administrator, HSVP, Gurugram filed reply on behalf of respondents No.2 and 3. The counsel for respondents No.2 and 3 resisted the instant petition and submits that the present petition deserves to be dismissed out-rightly because the petitioner has been engaged on outsourcing basis through a company namely M/s Star Manpower Network, which has not been made party. It is further submitted that the petitioner was not appointed on regular basis instead he was engaged on outsourcing basis by the Director, Urban Estate Department, Panchkula. The petitioner submitted joining report on 08.11.2010 against vacant post of ADA and the petitioner also signed agreement dated 06.12.2010, which was executed between the petitioner and HSVP, Sector 14, Gurugram. The petitioner was removed from service because he was no longer required as is clear from the communication dated 08.10.2021 (Annexure P-15) and prayed for dismissal of the present writ petition.

4. No other argument has been raised by either of the parties.

5. Before adverting to the facts of the case, it would be relevant to reproduce the relevant portion of the policy dated 01.09.2006 (Annexure P-21), which reads thus:-

“I am directed to say that the matter regarding framing of a new outsourcing policy has been drawing the attention of the Govt. for past sometime. After careful consideration of the matter, Govt. has decided to framed a policy to engage/outsource services/activities for Government Departments.”

It is clarified that persons so engaged shall not have any legal right claiming regularization of their services etc. in the departments where they have been engaged.”

6. From the afore-said policy, it is abundantly clear that the appointment of the petitioner to the post of Assistant Director Attorney was on outsourcing basis. As far as the contention of learned counsel for the petitioner with regard to the fact that while passing the impugned order dated 08.10.2021 (Annexure P-15), no opportunity of hearing has been given to him is concerned, the issue for grant of extension in case of outsources employee was taken by HSVP(HQ) and as per the directions dated 08.10.2021 received from the Chief Administrator, HSVP, Panchkula wherein, it is specifically mentioned that the services of the petitioner are no longer required.

7. The above said order was duly informed by the then Administrator, HSVP, Gurugram to M/s Star Manpower Network, manpower providing company, which clearly indicates reveals that the services of the petitioner were not required anymore after 08.10.2021. Hence, the services of the petitioner being on outsource basis have rightly been reckoned by the competent authority.

8. It is also on perusal of record revealed that the petitioner was neither appointed on ad-hoc basis nor on contract basis but was engaged on the basis of outsource policy through a registered private firm namely 'M/s

Star Manpower Network' and the contract of the said firm was extended upto 30.09.2019.

9. Accordingly, there is no relationship of employer/employee between them and he cannot claim any benefit from the answering respondents for the services rendered by him. As per the conditions of agreement (Annexure R-3), which was entered into between the service providers and the respondents, the persons deployed with the respondents are directly under the control and supervision of the service providers and no appointment letter is directly issued to the petitioner.

10. On the recommendation of respondent No.4, the then Administrator, HSVP, Gurugram referred the case of the petitioner for approval of extension from 01.01.2018 to 31.12.2018 to the Chief Administrator, HSVP, Panchkula vide order dated 08.12.2017 (Annexure P-9) and in reference to the above-said order dated 08.12.2017, the Chief Administrator, HSVP, Panchkula vide order dated 01.01.2018 (Annexure P-10) directed the Administrator to follow the guidelines/instructions of Chief Secretary to Govt. of Haryana, that were issued from time to time to engage the persons on outsourcing basis. Pursuant to the above-said directions dated 01.01.2018 (Annexure P-10), the services of the petitioner were extended.

11. 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 HSVP, as he was engaged through an outsourcing agency. In this regard, reliance can be placed upon

the judgment of this Court rendered in the case of **“Vikash vs. The State of Haryana and others”**, CWP-19762-2018, decided on 11.12.2019.

12. In view of the discussions made hereinabove, this Court does not find any merit in the present petition. As such the same is dismissed being devoid of any merit and with no order as to costs.

13. All the pending civil misc. applications shall also stands disposed off.

25.07.2023
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(SANDEEP MOUDGIL)
JUDGE

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