

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

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CWP-23934-2023

Date of decision: 02.11.2023

NAVDEEP SINGH AND OTHERS

...Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rajeev Kawatra, Advocate
for the petitioners.

Mr. Arun Gupta, AAG, Punjab.

DEEPAK MANCHANDA, J.(ORAL)

1. By way of present writ petition, the petitioners have sought quashing of the order/WhatsApp message dated 05.11.2022 (Annexures P-7/A to P-7/H) issued/sent by respondent No.3 vide which the service of the petitioner have been terminated without affording any opportunity of hearing.

2. The facts emanated from the pleadings of the present case are that in pursuance to the recruitment notice dated 29.06.2015 (Annexure P-1) petitioners were selected as Data Entry Operators on contract basis where an agreement was executed between the petitioners and National Institute of Electronics and information Technology, Chandigarh. After selection, the posting orders were issued on 08.02.2013 and 15.07.2015 by the respondent No.2 and petitioners were allowed to work from the year 2013-2015 up to 05.11.2022 but their services were terminated vide message/orders (Annexures P-7/A to P-7/H) sent on WhatsApp by the proforma respondent No.3.

3. Learned counsel for the petitioners contends that the services of the petitioners have been terminated by respondent No.3 without affording any opportunity of hearing with the intention to replace them with other set of contractual employees without issuance of show cause notice, which is in violation of principles of natural justice and of Article 14, 16 and 21-A of the Constitution of India. Learned counsel for the petitioner further contends that action of terminating the services of the petitioners is in violation of the judgment of Apex Court titled as **"Hargurpratap Singh Vs. State of Punjab and others" 2007 (13) SCC 292**. He also contends that no fresh appointment letters were issued to the petitioners by respondent No.3 who had stepped into the shoes of respondent No.2-Member Secretary, Punjab State Transport Society who appointed the petitioners by conducting a proper test and interview for the National Institute of Electronics and Information Technology and even process of re-employment vide order dated 24.4.2023 (Annexure P-8) has also been completed where new Data Entry Operators have already been appointed.

4. I have heard the learned counsel for the petitioners and have perused the material available on record.

5. Learned counsel for the petitioner has raised the plea that petitioners were never issued any appointment letter or joining letter by respondent No.3 i.e. M/s S.S. Service Providers and petitioners were recruited and employed by respondent No.2 after following proper selection procedure through the National Institute of Electronics and Information Technology (NIELIT) and now proforma respondent No.3 has stepped into the shoes of respondent No.2. Hence, respondent No.3 cannot terminate the services of the petitioners vide Annexure P-7/A to P-7/H which is illegal. A bare perusal of agreement dated 14.07.2015 (Annexure P-3) reveals that

same was executed on 14.07.2015 between National Institute of Electronics and Information Technology, Chandigarh which is an autonomous Scientific Society of Department of Electronics and Information Technology, Ministry of Communications and Information Technology, Government of India and one Mr. Davinder Kumar S/o Sh. Prem Chand R/o Back Side Ranbir College, St. No.5, Sardar Colony, Sangrur, Punjab (hereinafter called the Contractor). The said agreement also reveals that the contractual employment as Data Entry Operators w.e.f. 15.07.2015 to 31.12.2015 was offered by the said Contractor on certain terms and conditions. Vide letter dated 03.10.2019 (Annexure P-5) sent by the respondent No.2 to Joint Secretary, Regional Transport Authorities, Punjab wherein it has also been mentioned that the employees appointed on contract basis in the office of Punjab State Transport Society were required to fill up the form and as per said letter respondent No.2 directed that the petitioner/employees appointed on contract basis their forms be sent to respondent No.3 i.e. M/s S.S. Service Providers, Patiala before 15.10.2019 along with copy of the same to respondent No.3 for information and necessary action. Annexure P-6 is the said proforma which has been mentioned in the letter dated 03.10.2019 (Annexure P-5) and was issued by respondent No.3-proforma respondent i.e. the out-sourcing agency.

6. Further, Annexures P-7/A to P-7/H termination orders/letters which were sent through WhatsApp to the petitioners after termination of services clearly depicts that petitioners were appointed through respondent No.3 and their services were withdrawn with immediate effect only on instructions of respondent No.2. The aforesaid documents falsify the plea taken by the learned counsel for the petitioners by saying the petitioners were never appointed by respondent No.3 but actually it is respondent No.3,

the outsourcing agency, who had wrongfully stepped into the shoes of respondent No.2, hence, plea raised by the petitioners is factually incorrect and misleading. Now the question arises as to whether the writ petition is maintainable against a private out-sourcing agency or not has already been decided by this Court in somewhat similar circumstances.

7. This question as to whether the writ petition is maintainable against a private outsourcing agency or not has already been decided by Co-ordinate bench in somewhat similar circumstances while deciding CWP No. 22534 of 2020 titled as Sarabjit Kaur versus State of Punjab and others on 25.01.2021 by placing reliance upon the judgment of the Co-ordinate Bench in CWP No.18619 of 2011 titled as Nishan Singh and others Vs. State of Punjab, which judgment was upheld in LPA No. 469 of 2013 titled as Nishan Singh and others Vs. State of Punjab, wherein, it has been held that the employees of an outsourcing agency cannot claim relief against the State as there is no master and servant relationship and writ petition against the outsourcing agency is not maintainable. The relevant paragraphs of the judgment in Sarabjit Kaur's case (supra) are as under:-

"The question of maintainability of the writ petition in respect of the claim of outsourced employees, qua the State or its instrumentality where they have been posted, is no longer res integra and the said question of law has been settled by this Court in a catena of judgments that there is no master and servant relationship between the State or its instrumentality and outsourced employees and writ petition by an outsourced employee against the State or its instrumentality is not maintainable."

8. It has been asserted by the petitioners that as a matter of fact, the petitioners are for all intents and purposes employees of the respondent-

department and respondent No.3 has been used as a camouflage to deny the petitioners of their right of regularization and others statutory benefits.

9. The second argument raised is that petitioners are being replaced by another set of employees on the same terms and conditions vide order dated 24.04.2023 (Annexure P-8) which is not permissible. A perusal of the impugned orders would show that certain employees including the petitioners have been sent back by respondent No.2 to the employer i.e. respondent No.3 due to non-requirement of their services. It is not a case of replacement of the petitioner to another set of employees on the same terms and conditions. Learned counsel for the petitioners has placed reliance upon the judgment passed by the Hon'ble Apex Court in case titled as ***"Hargurpratap Singh Vs. State of Punjab and others" 2007 (13) SCC 292*** so as to claim the relief, makes it clear that the contractual employees were being replaced by other set of employees which is not the fact in the present case as already noticed. The reliance being placed by learned counsel on the judgments are also misplaced and cannot be accepted especially when the question of maintainability of the writ petition and claim of out-source employees qua the State and replacement of its employees by the private contractor. The plea of the petitioners cannot be accepted as present petition does not succeed on the ground of maintainability which is the first ground to entertain the present petition. Once the present petition falls out on this score only then the plea of the petitioners for their replacement with another contractual employees has no weightage. Further to meet out the plea regarding replacement by the private contractor, the reference is also made to the decision of this Court passed in CWP-26616-2021, titled as ***Pawan Kumar Pundir Vs. State of Haryana and others***, decided on 12.04.2023, wherein it was observed that when the appointment is contractual and by

efflux of time, the appointment comes to an end, a contractual employee has no right to continue whatsoever on the post beyond stipulated period.

10. Further, in ***Satish Kumar and others Vs. State of Haryana and another, 2022 (2) PLR 106***, this issue was also dealt with and the relevant observations read as under:

*“11. Now the question arises as to whether on expiry of the contract period, the petitioners have got any vested right to continue in service, the answer cannot be in affirmative. The petitioners cannot go beyond the terms and conditions of the appointment letters. It is clearly mentioned in their appointment letters that they had been appointed for one year or till appointment of regular incumbents, whichever was earlier. Though their period stood extended but after expiry of period of last extension, they cannot insist to continue in service. The petitioners are relying upon judgment by the Apex Court i.e. **Hargurpratap Singh Versus State of Punjab and others, 2007(13) SCC 292** wherein while dealing with the case of ad hoc employees seeking minimum pay scale and continuance till regular incumbents joined, it was observed that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that should not be continued till regular incumbents are appointed. However, when the case of the petitioners is examined in light of this judgment, it comes out that the petitioners cannot insist for continuance in service by extension of their contracts. As already observed, they had been initially appointed for one year and on expiry of that term were granted extensions. On completion of last extension, they are taken to be relieved. As regards their plea that they are not being allowed to join, the stand taken by the respondent No.2 is that the corporation is in process of restructuring and even the requisition sent to Staff Selection Commission for filling up regular posts including*

those of Junior engineers has been withdrawn. Since there is no work available services of the petitioners are not required. As such the petitioners cannot claim that they be allowed to join and work when no such work is available. Without doing active work they cannot possibly claim wages for that period.

*12. In **Yogesh Mahajan vs. Prof. R.C. Deka, Director, All India Institute of Medical Sciences 2018 (2) Apex Court Judgments (SC) 56**, it was observed that since appointment of employee on contract basis is not made in accordance with any regular procedure by following necessary rules, no right accrues to such type of employee for regularisation of services and there is no statutory right of a contract employee for renewal of contract from time to time. In a judgment by a Division Bench of this Court – **Jyoti and others vs. The State of Haryana and others**, in LPA No. 40 of 2021 in CWP 121 of 2021, decided on 14.1.2021, following principles were laid down :-*

“ (i) principle of 'last come first go' is applicable to a case of retrenchment but not in the case where initial appointment of an employee is against public policy or the employer finds the work and conduct of an employee to be not satisfactory;
(ii) in case the work and conduct of an employee is not found to be satisfactory, then the services of such an employee, although being a senior, pales into insignificance and the services of such an employee can be terminated in accordance with the terms and conditions of such employee;
(iii) a contractual / temporary employee cannot claim any protection against termination so long as the action taken by the authority is not shown to be vitiated by the infirmities viz. Illegality, perversity, unreasonableness, unfairness or irrationality and so long as the action is not demonstrably defiant of logic;
(iv) renewal of contract cannot be sought by a temporary / contractual employee as a matter of right as its renewal of employment depends upon the perception of management as

to the usefulness of the employee and the need for an incumbent in the position held by such employee.”

13. Merely on account of petitioners working on contract basis for some time does not bestow upon them any right for extension of their contract period or their made regular employees. There cannot be any automatic extension of period. Rather, as observed Supra, there are several factors which are to be taken into consideration for that purpose, to say, availability of posts, an employee working on contract basis possessing necessary educational qualifications and expertise for that post, his work and conduct while working on contract basis, etc. Therefore, the petitioners cannot claim extension of contract period and then continuity in service as such, merely for the reason that they are working in the respondent for some time. The requirement of manpower varies from time to time. The respondent can certainly hire additional work-force having necessary qualification, experience and expertise, by way of outsourcing and petitioners cannot find any fault with such policy of the respondent – Corporation and seek that this circular be not acted upon.”

11. Further, in “**Lokesh Rana and another Vs. Union of India and others**” passed in LPA No.513-2022 on 04.07.2022, it has been observed as under:-

*“6. On the contrary, 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. In the cases of **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 the High Court.

7. *In the case of Union of India and others v. N.Murugesan and others 2022(2) SCC 25, the Supreme Court, though 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.*

Moreover, there is nothing on record to show that under which rule of law/policy or statutory provisions the contractual employee has a right to continuation on the contract basis once his services have already been terminated on account of expiry of contract in the year 2011, where no approval was accorded by the authority for his continuation in service after expiry of the contract as per the conditions, which were even otherwise accepted by him vide appointment letter and now the same cannot be claimed as a right on the plea that all other similarly situated employees got the benefit of continuation."

12. In the light of the above, petitioners cannot be granted any benefit in the present writ petition as none of the grounds pressed by the petitioners carry any weight.

13. From the above, it is clear that no writ petition would lie against an outsourcing agency, being a private entity as the same is not covered within the meaning of Article 12 of the Constitution of India. In the present case, the claim of the petitioners is against their employer, which is admittedly an outsourcing agency and is a private entity, therefore, the writ petition will not be maintainable. Further, the employer i.e. the outsourcing agency has been impleaded as a proforma party in the present writ petition. Once, the petitioners were appointed through outsourcing agency, respondent No.3, it is conceded position that that there is no master and servant relationship between the petitioners and respondent No.2, so no relief can be granted to the petitioners qua retention in service and the present writ petition is also not maintainable.

14. Keeping in view the above, once it is conceded position that that there is no master and servant relationship between the petitioners and respondent No.2, no relief can be granted to the petitioners qua retention in service and the present writ petition is also not maintainable as admittedly petitioners were appointed through respondent No.3 i.e. an outsourcing agency being a private entity.

15. The writ petition being devoid of merit stands dismissed.

16. All pending miscellaneous application(s), if any, also stands disposed of.

November 02, 2023
Nisha-II

(DEEPAK MANCHANDA)
JUDGE

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