

106-A

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-38103-2018 (O&M)
Date of decision: 23.01.2023

CHANCHAL RANI

...Petitioner

VERSUS

STATE OF HARYANA AND ORS.

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arvind Seth, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. Anil Chawla, Advocate
for respondents No.2 and 3.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of prohibition restraining the respondents not to replace the petitioner with other contractual employees for the work on which the petitioner is working and further to issue a writ in the nature of mandamus directing the respondents to allow the petitioner to continue in service as she has been serving in the Corporation since June, 2013 and to grant her the pay scale as is being given to the regular employees of the Corporation.

Learned counsel for the petitioner would contend that the petitioner herein is still working with Haryana Agro Industries Corporation

Limited as a Data Entry Operator-cum-Clerk and is required to attend to the office work apart from working with various arbitrators. It is submitted that the petitioner has been working to the utter satisfaction of respondent No.3 and as on date, there is no complaint against her. It is further submitted that since the services of the petitioner are satisfactory, her services ought not to be dispensed with and replaced by another contractual employee, till a person is regularly appointed against the sanctioned post.

Pursuant to notice of motion having been issued, reply has been filed on behalf of respondents No.2 and 3 and an application has been filed for vacation of interim order dated 21.12.2018, whereby this Court had directed that the petitioner shall not be relieved unless a regularly selected candidate is appointed or the work and conduct of the petitioner is not satisfactory.

Learned counsel for respondents No.2 and 3 would urge that the petitioner has not disclosed the fact that she was appointed through an outsourcing agency and was not working on the date, when the said interim order came to be passed on 21.12.2018 and, therefore, the present writ petition itself would not be maintainable. It is argued that it was incumbent on the petitioner to have disclosed this fact. However, since the petitioner was appointed through an outsourcing agency, the very writ petition is not maintainable. Moreover, ever since the Haryana Kaushal Rojgar Nigam Limited and the policy dated 30.06.2022 has come into existence, the petitioner now stands registered on the said portal and, therefore, on this ground too, the writ petition is not maintainable.

I have heard learned counsel for the parties and have also perused the pleadings of the case.

I am of the opinion that the very writ petition itself is not maintainable considering the fact that the petitioner herein came to be appointed through outsourcing agency and not by the respondent-Corporation. There are several judgments rendered by this Court in *Nishan Singh and others versus State of Punjab and others, 2014 (11) RCR (Civil) 262; Sharanbir Kaur versus State of Punjab and others, LPA No.1910 of 2018,* decided on 10.12.2018; *Vikash versus The State of Haryana and others, CWP No.19762 of 2018,* decided on 11.12.2019; *Yamin and others versus State of Haryana and others, CWP No.1822 of 2019,* decided on 19.08.2020 and *Balbeer Singh and others versus Haryana State Warehousing Corporation and others, CWP No.17478 of 2020,* decided on 07.12.2020, holding the said fact.

This Court would draw strength from the judgment rendered by the Division Bench of this Court in Nishan Singh's case (supra), wherein it has been clearly held that the service provider is not an agency of the State to make recruitments against the civil posts and, therefore, the writ petition itself would not be maintainable.

Learned counsel for the petitioner would rely upon a judgment rendered by this Court in *CWP No.17441 of 2013*, titled as *Shiv Kumar and another versus State of Haryana and another*, decided on *03.08.2016*, however, in view of the authoritative pronouncement by a Division Bench in Nishan Singh's case (supra), this Court is bound by the same.

Consequently, the instant writ petition is disposed of as not maintainable. However, since the petitioner is now registered on the portal and continuing to work with respondent No.3, her services, if required to be

dispensed with, would be under the said policy dated 30.06.2022.

The miscellaneous application CM-19996-CWP-2022 has rendered infructuous with the final disposal of the matter and is disposed of accordingly.

23.01.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No