

CWP-2137-2019 (O&M)

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

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CWP-2137-2019 (O&M)

Date of decision: 31.07.2024

Rajesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

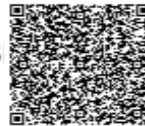
CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jatin Verma, Advocate for
Mr. S.K. Verma, Advocate for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

AMAN CHAUDHARY. J (Oral)

1. The present petition has been filed for quashing the order dated 08.11.2018, Annexure P-7, whereby the services of the petitioner have been terminated, with a further prayer directing the respondents to allow him to continue till regular employee joins.
2. Learned counsel submits that the petitioner, engaged as sweeper through employment exchange, on contract basis, w.e.f. 26.08.2009, was initially terminated on 17.03.2011 and by way of an industrial award, was ordered to be reinstated with consequential benefits, but without back wages, vide order 13.09.2013, Annexure P-1. Due to pending adjudications filed by similarly situated sweepers and dhobis, the respondent did not reinstate him until 09.05.2018, after the intervention of the Civil Court, Bhiwani, however, he was terminated for the second time vide order dated 08.11.2018, Annexure P-7, in



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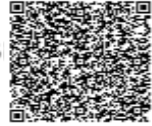
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clear violation of the judgment by Hon'ble the Supreme Court in **Hargurpratap Singh vs. State of Punjab**¹.

3. On the contrary, learned State counsel contends that according to modified Outsourcing Policy 2006, the vacant posts, similar to those of the petitioner, are to be filled through Haryana Kaushal Rozgar Nigam.

4. In compliance with the interim order dated 20.03.2019, passed by this Court, the petitioner has since been reinstated at DC rates.

5. The issue involved in the present case is no longer *res integra*, having been decided on 11.04.2005 in **Rajwinder Kaur and others vs. State of Punjab etc**, CWP-7882-2004, wherein this Court had observed that, "The first issue involved in this case is whether or not the petitioner should be allowed to continue as Lecturers (Guest Faculty) on part time basis. Keeping in mind the order by the Supreme Court Hargurpratap Singh's case (fully extracted above), consider it just and appropriate to allow the respondents to dispense with the services of the petitioners in case their services are no longer required. It will, however, not be opened to the respondents to substitute petitioners with others for the same purpose for which the petitioners have/had been engaged. As a matter of clarification, it may be stated that the nomenclature of the substitutes would be irrelevant in other words engagement of employees as a matter of temporary arrangement (ad hoc, stop-gap, current-duty, part-time, contractual, temporary etc) so as to replace the petitioners would not be permissible. In case the respondents desired to take work, in the same fashion as it is/was being taken from the petitioners, it would be imperative for the respondents to allow the petitioners to continue in their present assignments; or to re induct them in case their services have already been dispensed with. This direction will, however, be



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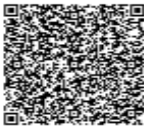
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subject to one over-riding condition, namely, that it would be opened to the respondents to hold a regular process of selection by inviting applications from all eligible candidates i.e. by following the same procedure which the Education Department, Punjab, follows while making appointments against the posts of Lecturers in Government colleges. And in case such a process of selection is held, it would be opened to the respondents to make appointments there from based on the merit of candidate who had participated in the said process of selection. The instant arrangement has the approval of the rival parties.”

6. Hon’ble the Supreme Court in **Manish Gupta vs. Jan Bhagidari Samiti**², while relying on the judicial pronouncements of **Hargurpartap Singh** (supra) and **Rattan Lal vs. State of Haryana**³, observed and held that, “A perusal of the advertisement dated 24-6-2016 issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the appeal paperbook and the advertisement dated 2-7-2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the appeal paperbook, would show that the appointments were to be made after the candidates had gone through due selection procedure. Though Shri Nataraj, learned ASG has strenuously urged that the appointments of the appellants were as guest lecturers and not as ad hoc employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on ad hoc basis. It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed...”

² (2022) 15 SCC 540.

³ (1985) 4 SCC 43.



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7. The facts and circumstances of the case, when viewed in light of the law as enunciated, the petitioner is entitled to continue on the post till such time, it is filled by way of a regular process of recruitment, *albeit* contingent on his work and conduct remaining satisfactory.
8. The present petition stands disposed of, accordingly.

(AMAN CHAUDHARY)
JUDGE

31.07.2024
Hemant

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No