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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2613-2020

Date of decision: 23.08.2024

SATISH KUMAR

...Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. G. S. Gopera, Advocate for the petitioner.

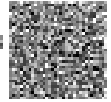
Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Divyansh Shukla, Advocate for
Mr. Hitesh Pandit, Advocate for respondents No.2 and 3.

JASGURPREET SINGH PURI, J. (Oral)

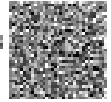
1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 11.10.2019 (Annexure P-15) passed by respondent No.4 in back date with *mala fide* intentions, terminating the services of the petitioner with a further prayer to direct the respondents to release the salary of the petitioner from 11.10.2019 onwards in view of his continuous attendance till 21.01.2020 and also to allow the petitioner to continue working as Shift Attendant and not to replace him with another contractual employee.

2. Learned counsel for the petitioner submitted that the grievance of the petitioner is that he was working with the respondent-Nigam on DC rates on



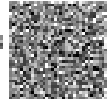
contractual basis from the year 2010 and had been continuing with the respondent-Nigam till 23.01.2020 when he was suddenly asked not to perform his work but no order was passed by the respondent-Nigam in this regard. He further submitted that in fact by way of *mala fide* intention, the respondent-Nigam has rather issued impugned order dated 11.10.2019 (Annexure P-15) by writing to one Outsourcing Agency, namely, Shri Jee Manpower Contractors Private Limited, Faridabad that the petitioner is not interested in the Nigam work and disobeys the orders of the Incharge and therefore, he be removed from service. He further submitted that the aforesaid impugned order has been issued by putting a back date because the same has been issued in the year 2020 but has shown to be issued on 11.10.2019. He also submitted that the petitioner was not working with the aforesaid Shri Jee Manpower Contractors Private Limited, Faridabad but he was working on DC rates and directly under the respondent-Nigam and without passing any order, the services of the petitioner have been discontinued after 23.01.2020 and therefore, direction be issued to the respondent-Nigam to put the petitioner back on duty and no other contractual employee should replace the petitioner in this regard.

3. On the other hand, learned counsel appearing on behalf of respondent No.2 and 3-Nigam has brought the original record of the despatch register of the aforesaid impugned order dated 11.10.2019 (Annexure P-15) and submitted that the aforesaid order Annexure P-15 was not a back date order but it was issued on the same date i.e. on 11.10.2019 to the aforesaid Outsourcing Agency, namely, Shri Jee Manpower Contractors Private Limited, Faridabad because the petitioner was working under the aforesaid Outsourcing Agency



and not under the respondent-Nigam. He further submitted that even otherwise also, the present writ petition filed by the petitioner is not maintainable in view of the fact that earlier he had filed a civil suit seeking permanent and mandatory injunction against the respondent-Nigam and one of the other Outsourcing Agency and the aforesaid civil suit was dismissed by the learned Civil Court, Kaithal on 29.07.2016. He further submitted that thereafter, the petitioner filed an appeal but the same was withdrawn by him and he has now filed the present writ petition which is not even maintainable. While referring to the aforesaid judgment of the learned Civil Court, Kaithal, he submitted that a specific stand was taken by the respondent-Nigam before the learned Civil Judge, Kaithal that earlier in the year 2010 the petitioner was working under the respondent-Nigam but he has worked there only from 25.01.2012 to 07.08.2013 and all the payments have already been made to him in this regard and thereafter, he started working under the Outsourcing Agency and therefore, there was no privity of contract between the petitioner and the respondent-Nigam after the year 2013, whereas there is returning of finding by the learned Civil Court, Kaithal in this regard as well and therefore, all the pleas taken by the petitioner in the present writ petition are not only non-maintainable but also unsustainable.

4. Learned counsel appearing on behalf of respondents No.2 and 3 also submitted that there is no privity of contract between the petitioner and the respondent-Nigam and therefore, no such direction can be issued with regard to either reinstatement or joining of the petitioner or for grant of any salary because the petitioner has never worked under the respondent-Nigam after the



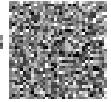
year 2013. He referred to a Coordinate Bench judgments of this Court in *Karan Singh versus State of Haryana and others, CWP-1481-2022*, decided on 12.05.2022 and *Anmol Garg and another versus State of Punjab and others, CWP-29655-2018*, decided on 28.11.2018, which was upheld in LPA as well in this regard.

5. I have heard the learned counsels for the parties.

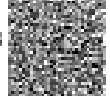
6. The original record which has been brought in the Court today, which is an original despatch register has been perused by this Court. A perusal of despatch register pertaining to Memo No.1717 dated 11.10.2019 would show that an entry has been made qua the aforesaid memo number on the aforesaid date that a letter is issued to Shri Jee Manpower Contractors Private Limited, Faridabad. From the perusal of the aforesaid despatch register, no discrepancy can be found that it has been issued on any back date.

7. So far as the plea of the petitioner that he continued to work with the respondent-Nigam till 23.01.2020 is concerned, there is nothing on the record to show that he worked upto the aforesaid date and rather on the other hand, a perusal of the aforesaid judgment of the learned Civil Court, Kaithal would show that this question as to whether the petitioner was working under the respondent-Nigam or not has been specifically dealt with and there is a specific returning of finding by the learned Civil Court, Kaithal in its judgment dated 29.07.2016 (Annexure P-10), which is reproduced as under:-

“Defendant no. 4 has alleged that plaintiff worked under the defendant no. 4 from 25.01.2012 to 07.08.2013 and all the payments have been made to the plaintiff for the period he remained under the defendants no. 1 to 4. Now, the



question before court is whether the defendants no. 1 to 3 can be restrained from terminating the services of plaintiff and replacing him with a freshly appointed daily wage employee and further restraining defendants from compelling plaintiff to work as an employee of contractor. There was a heavy onus upon the plaintiff to prove that in actuality he remained working as a daily wage employee of defendants on DC rates. There is no dispute between the parties that plaintiff was appointed as shift attendant on 24.05.2010 as a daily wager on DC rates however, defendants alleged that the plaintiff was engaged only with a period of six months whereas plaintiff alleged that he is working continuously under defendants till date. The defendants alleged that the plaintiff was working under the contractor namely M/s Poonam Corporation Society Ltd. Pabnawa. Plaintiff in order to prove that he is working as an employee under the defendants, he has examined himself as PW1 and also summoned record from defendants pertaining to his employment however, there is nothing on record which proves that there was a contract of services of daily wage employment with the plaintiff before the period of six months since the day of his employment. Further, except with the fact that there is expost facto of approval accorded for the extension of terms of engagement of plaintiff as per the DC rates and as per the out sourcing Nigam through labour contractor there is nothing on record which proves that the plaintiff's employment was extended under defendants no. 1 to 3. The defendants cannot be directed to retain the plaintiff or to provide him services under them except if there was a contract between the plaintiff and defendants for assured employment which was denied arbitrarily or wrongly. The plaintiff has totally failed to prove that he is working as the

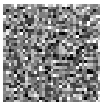


employee of defendants as daily wages and therefore, no direction regarding restraining defendants from terminating the services of plaintiff is warranted under law. Further, a direction regarding regularization of service is purely an executive function and no direction in this regard is made. The authorities relied upon by the plaintiff are not applicable in the peculiar facts and circumstances of the present case.

In view of above discussion issues no.1 and 2 are decided against plaintiff. As far as remaining issues are concerned. Same are decided against defendants as defendant failed to prove these issues.”

8. A perusal of the aforesaid judgment of the learned Civil Court, Kaithal would also show that the petitioner worked with the respondent-Nigam till the year 2013 and thereafter, he was working under the Outsourcing Agency. The plea of the petitioner that he has not been permitted by the respondent-Nigam to continue after 23.01.2020 stands unsubstantiated by any document. In this way, the petitioner was working under the Outsourcing Agency and there was no privity of contract between the petitioner and the respondent-Nigam. A Coordinate Bench of this Court in **Anmol Garg's case (supra)** has dealt with the aforesaid proposition of law and held that the writ petition would not be maintainable against the Outsourcing Agency. The aforesaid judgment was upheld by a Division Bench of this Court in *LPA-1910-2018* decided on 10.12.2018. The relevant portion of the aforesaid judgment passed by a Division Bench of this Court is reproduced as under:-

“Learned Single Judge finding that the appellant was an employee of outsourcing agency which was having a



license under the contract to supply manpower held there was no privity of contract between the appellant and the employer and she was not even a contractual employee. The principle being canvassed before us applies only in case there is a privity of contract between the employee and the employer. In the case in hand, the appellant was an employee of the service provider. The benefit of the said principle is not liable to be extended to her and, thus, we do not find any illegality committed by learned Single Judge in dismissing the writ petition.”

9. In view of the aforesaid totality of facts and circumstances of the present case, the present writ petition being devoid of any merit, is hereby dismissed.

10. The original record which has been brought to this Court today has been returned back to the learned counsel appearing on behalf of respondents No.2 and 3.

23.08.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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