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

**CWP-14935-2019 (O&M)**  
**Date of Decision:13.12.2024**

(I)  
**Nar Singh**

**....Petitioner(s)**

Versus

**State of Haryana and others**

**.....Respondent(s)**

**COCP-3150-2019 (O&M)**

(II)  
**Nar Singh**

**....Petitioner(s)**

Versus

**Sumedha Kataria, IAS, Commissioner, Municipal Corporation, Panchkula**

**.....Respondent(s)**

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Lajpat Sharma, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Mr. Piyush Bansal, Advocate, for respondents No.3 and 4.

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**JASGURPREET SINGH PURI, J. (Oral)**

**CWP-14935-2019**

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for setting aside the impugned action of respondent No.6 vide which the petitioner



has not been allowed to continue to work on the post of Fire Operator at Sub Fire Station Alipur, Barwala, District Panchkula and the petitioner has been forced to join Fire Station Office, Panchkula on the post of Fireman without passing any written order in this regard, with a further prayer to direct the respondents to pay difference of salary to the petitioner for the post of Fire Operator w.e.f. 08.08.2018 till 03.05.2019 alongwith interest @ 18% per annum, as the petitioner has been posted and has worked on the post of Fire Operator but he has been paid the salary of Fireman.

2. Learned counsel appearing on behalf of the petitioner while giving brief facts of the case submitted that the petitioner was appointed by the respondent-Corporation as a Fireman on contractual basis and he was continuously serving the respondent-Corporation without any obstruction but later on when the respondent-Corporation vide Annexure P-2 posted the petitioner as Fire Operator and made him to do the duties for the post of Fire Operator, he requested the respondent-Corporation to give him the pay scale of the aforesaid Fire Operator due to which the relations between the petitioner and the respondent-Corporation turned sour and because of that reason, he was terminated from the services even as a contractual employee by the respondent-Corporation. He submitted that when the petitioner filed the present writ petition and notice of motion was issued on 29.05.2019, it was also directed that in the meantime, respondent No.3 will consider adjusting the petitioner as Fireman at an appropriate place. He submitted that the respondent-Corporation did not comply with the aforesaid order and consequent upon the same, he filed a contempt petition before this Court bearing COCP No.3150 of 2019 which is



also fixed alongwith the present petition for hearing. He submitted that the respondents have deliberately not complied with the aforesaid order dated 29.05.2024 passed in this case.

3. Learned counsel for the petitioner further submitted that when the respondents filed reply to the present petition, they have taken up an objection to the extent that the petitioner was never an employee of the respondent-Corporation but he had worked with different outsourcing agencies regarding which reference has been given in para No.1 of the written statement filed by the respondent-Corporation. While referring to the aforesaid written statement, he submitted that it has been so stated in para No.1 that the petitioner was engaged in the year 2014 through outsourcing agency namely, Sampark Service in terms of the service agreement which was executed on 02.09.2014 for discharging the work of a Fireman purely as a stop gap arrangement and submitted that the aforesaid averment made in the written statement is contrary to the certificate which was issued by the Sampark Services which has been attached with the written statement itself by the respondents themselves vide Annexure R-3/1 wherein it was certified by the aforesaid Sampark Services that the petitioner has worked as a Fireman through their firm from 01.01.2014 which means that either the aforesaid certificate issued by the Sampark Services was wrong or the averment made by the respondents in the reply was wrong because as per the aforesaid certificate, the petitioner worked from 01.01.2014 and as per the reply filed by the respondents, the agreement came into force on 02.09.2014 and, therefore, it cannot be said that the petitioner was not an employee of the respondent-Corporation.



4. Learned counsel again referred to Annexure P-2 to contend that if the petitioner was not an employee of the respondent-Corporation, then there was no need for the Commissioner of the Municipal Corporation, Panchkula to have issued an order wherein the petitioner was termed as a Fire Operator and was posted in the Fire Station Sector-5, Panchkula from where he was transferred and posted at Fire Station Barwala with immediate effect which would mean that the petitioner was an employee of the respondent-Corporation and therefore, the plea which has been taken by the respondent-Corporation that the petitioner was an employee of an outsourcing agency is not tenable and is against the record. He submitted that the petitioner has been wrongly terminated and therefore, a direction may be issued to the respondent-Corporation to reinstate the petitioner as a Fireman or Fire Operator and to pay him the salary for the period during which he was wrongly kept out of service.

5. On the other hand, learned counsel appearing on behalf of the respondent-Corporation submitted that the petitioner has not come to the Court with clean hands and, therefore, he does not deserve any relief from this Court. While referring to the reply which has been filed by the respondent-Corporation especially preliminary objections taken, he specifically submitted that the petitioner was never an employee of the respondent-Corporation. While referring to the aforesaid reply, he further submitted that the petitioner was engaged by an outsourcing agency in the year 2014 for discharging the work of a Fireman purely as a stop gap arrangement by the aforesaid agency namely, Sampark Service in terms of Outsourcing Policy Part-I and he was allotted ESI No.1713220524. He referred to the certificate which was issued by the



aforesaid Sampark Service as Annexure R-3/1. With regard to the discrepancy so pointed out by the learned counsel for the petitioner, he submitted that as per the aforesaid stand taken by the petitioner that the agreement of service with the aforesaid Sampark Service was w.e.f. 02.09.2014 would not mean that the petitioner did not earlier work for the aforesaid agency and even otherwise also, if an averment is made in a reply which is an inadvertent mistake, then that would not mean that it would confer any entitlement upon the petitioner that he has worked with the respondent-Corporation. While referring to para No.1 of the preliminary objections taken in the written statement, he further submitted that the aforesaid agency namely, Sampark Service continued to provide services to the respondent-Corporation till 2015 and thereafter, M/s. Oscar Fire and Security Services outsourcing agency was engaged by the respondent-Corporation till 2019 and during the petitioner's aforesaid engagement as Fireman, the petitioner was transferred from Fire Station, Sector-5, Panchkula to Fire Station, Barwala vide order dated 08.08.2018 of the Municipal Corporation, Panchkula due to shortage of staff for work of Fireman and Fireman Driver.

6. Learned counsel for the respondent-Corporation submitted that there is no appointment letter which was issued by the respondent-Corporation to the petitioner nor it has been placed on record by the petitioner in the present case. Furthermore, there is no order of termination etc. issued by the respondent-Corporation to the petitioner. He submitted that in the absence of any order of appointment or any order of termination issued by the respondent-Corporation, the petitioner cannot just by referring to Annexure P-2 make an



inference that the petitioner was an employee of the respondent-Corporation. He submitted that since the department of fire extinguishing conduct emergency services many times in contingencies, orders are passed by the competent authority for the purpose of transferring the employees even on contractual basis. In this regard, he again referred to para No.1 of the preliminary objections wherein it has been so stated that in an emergency situation on 03.05.2019, the petitioner drove the fire extinguisher vehicle and reached at the site near Barwala where the wheat crops were on fire and at that time the leading Fireman namely, Surender Singh and Fireman Iqbal Singh were also accompanying and after coming back from the place of occurrence, the aforesaid leading Fireman namely, Surender Singh entered into the Rojnamcha that the petitioner was not a competent driver and due to the negligence of the petitioner, the fire extinguisher vehicle narrowly escaped from setting on fire and thereafter, the services of the petitioner were discontinued by the outsourcing agency. He further submitted that mere fact that the Commissioner of the Municipal Corporation, Panchkula has passed an order while transferring the services of the petitioner would not mean that the petitioner was appointed by the Municipal Corporation and he was terminated by the Municipal Corporation since he was never an employee nor he was ever paid the salary by the Municipal Corporation but he was paid the salary by the respective outsourcing agencies at different point of time.

7. Learned counsel further referred to a Co-ordinate 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 to contend that no writ would lie against an outsourcing agency because there is no privity of contract. He also submitted that even otherwise also the outsourcing agency through which the petitioner was working is not even a party in the present case and otherwise also the present petition is liable to be dismissed on the ground of non-joinder of necessary parties and therefore, prayed for the dismissal of the present petition.

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

9. It is a case where the issue involved is as to whether the petitioner was an employee of the respondent-Corporation whose services have been discontinued from service or not. As per the facts so stated by the learned counsel for the petitioner, the petitioner was an employee of the respondent-Corporation and in this regard, he has laid much emphasis on Annexure P-2 whereby an order of transfer was passed by the Commissioner, Municipal Corporation, Panchkula. However, there is nothing on the record to suggest that the petitioner was an employee of the respondent-Corporation except for the aforesaid document Annexure P-2 which is only an order of transfer. There is neither any order of appointment nor any order of termination passed by any authority including that of Municipal Corporation on record. There is no document or any other material to substantiate the argument raised by the learned counsel for the petitioner that he was an employee of the Municipal Corporation pertaining to his salary or any deduction of GPF or CPF or any other document to substantiate his argument. On the other hand, it is a categorical stand of the respondent-Corporation that the petitioner was never



an employee of the respondent-Corporation but he served through the outsourcing agency.

10. 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 an 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.”*

11. In the present case, the outsourcing agency is not a party. Even if the outsourcing agency was a party in the present case, the writ petition against an outsourcing agency would not be maintainable because of lack of privity of contract in view of the aforesaid judgment of this Court in ***Anmol Garg's case (supra)***. Furthermore as to whether the petitioner was an employee of the respondent-Corporation or an outsourcing agency especially in the absence of any document to prove the same, the same would be only a disputed question of fact.



So far as the document Annexure P-2 relied upon by the learned counsel for the petitioner is concerned, this Court cannot infer from the aforesaid document which is only an order of transfer that the petitioner was appointed by the respondent-Corporation or his services have been terminated by the respondent-Corporation.

12.            So far as non-compliance of the order passed by this Court while issuing notice of motion on 29.05.2019 wherein a direction was issued that in the meantime, respondent No.3 will consider adjusting the petitioner as Fireman at the appropriate place is concerned, learned counsel for the respondent-Corporation has referred to para No.4 of the preliminary objections filed by the respondent-Corporation wherein it has been so stated that in compliance of the aforesaid order, the respondent-Corporation had issued an order Annexure R-3/5 wherein it has been so ordered that the petitioner has been appointed for the post of Fire Operator in the office of Municipal Corporation, Panchkula under the Haryana Government Policy Part-1 w.e.f. 06.01.2020 but despite the aforesaid order being passed and conveyed to the petitioner, the petitioner did not even report to the aforesaid office and he has not joined till date. He submitted that in view of the above, it cannot be said that the respondent-Corporation has violated any of the order passed by this Court and rather the petitioner has voluntarily not joined the duties despite being appointed under the Outsourcing Policy but he had been insisting on joining the duties with the Municipal Corporation.

13.            In view of the aforesaid facts and circumstances, this Court is of the view that the present petition is not only not maintainable but is also devoid of any merit.

14.            Consequently, the present petition is dismissed.



COCP-3150-2019

In view of the aforesaid order passed in the writ petition No. 14935-2019 and in view of para No.4 of the preliminary objections filed by the respondent-Corporation wherein it has been so stated that the aforesaid order dated 29.05.2019 has been complied with by passing an order Annexure R-3/5 but the petitioner did not join the duties, it cannot be held that there is any wilful or deliberate disobedience.

In view of the above, the present contempt petition is also dismissed and consequently, the contemnor is discharged.

13.12.2024  
*rakesh*

(JASGURPREET SINGH PURI)  
JUDGE

|                    |        |
|--------------------|--------|
| Whether speaking   | Yes/No |
| Whether reportable | Yes/No |