**CWP-20719-2015 and other connected case****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****204****CWP-20719-2015 (O&M)****JASPREET SINGH**

..... Petitioner

VERSUS**STATE OF PUNJAB & ORS**

..... Respondents

CWP-26382-2015**Date of decision : 05.12.2024****NEHA MALHOTRA**

..... Petitioner

VERSUS**STATE OF PUNJAB & ORS**

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. M. S. Dhami, Advocate
for the petitioner in CWP-20719-2015.

None for the petitioner in CWP-26382-2015.

Mr. Satnam Preet Singh Chauhan, DAG, Punjab.

Mr. Abhishek Singla, Advocate for
Mr. Vikas Chatrath, Advocate
for respondent No.4 in CWP-20719-2015.

Mr. Inayat Khullar, Advocate
for respondent No.4 in CWP-26382-2015.

*********Harsimran Singh Sethi, J. (Oral)**

In the present petitions, the grievance being raised by the petitioner(s) is that they were working as Lab Assistant on contractual basis on 26.09.2012 (Annexure P-1) and continued working till 31.08.2015 and the posts on which they were working were again advertised on 27.07.2015

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on the same terms and conditions which is arbitrary and illegal, as, the contractual employees cannot be replaced by another set of contractual employees.

Learned counsel for the petitioner(s) submits that keeping in view the interim order granted, the petitioners are working for the last 09 years, which shows that they were working on the posts and the only intention of the respondent was to replace the petitioners with another set of contractual employees which cannot be done.

Learned counsel for the respondent-State submits that the posts were again advertised, but as of now the petitioners are continuing in view of the interim order passed by the co-ordinate Bench.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, the petitioners were already selected and working on the post in question, the said post could not have been filled up again on the same terms and conditions, as per the settled principle of law, laid down by Hon'ble the Supreme Court of India in **Civil Appeal No.2979 of 1992 titled 'State of Haryana vs. Piare singh' decided on 12.08.1992** wherein it has been stated that the contractual employees cannot be replaced by another set of contractual employees on the same terms and conditions. The relevant paragraph reads as under:-

“25. Before parting with the case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in Government Service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc



or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of regularly selected candidate can not be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirement of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observation herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for

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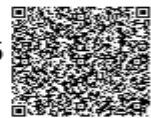
the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell say two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the order of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to work charged as well as casual labour.

We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of ad hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein. ”

In the present case, the petitioners were sought to be replaced by another set of contractual employees which is not permissible and therefore, the advertisement which was issued by the respondents to replace the petitioners with another set of contractual employees, is contrary to the settled principle of law and thus cannot be sustained and the said advertisement is accordingly set aside.

As the petitioners are already working keeping in view interim order granted by this Court for the last 09 years, they will be allowed to continue in service till the work on the post and this subject to the satisfactory work and conduct of petitioners and they will not be replaced



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another set of employees on the same terms and conditions.

At this stage, learned counsel appearing on behalf of the private respondents submits that once the post was advertised and the selection was done and the private respondents have been selected, they should be allowed to join.

It may be noticed that once, the advertisement in pursuance to which the private respondents are seeking appointment, is set aside, no benefit of the selection can be allowed in the favor of the private respondents. Once, as per the settled principle of law, the employees who are working on contract basis are working, they cannot be replaced by another set of the employees on the same terms and conditions.

The arguments of the private counsel that the private respondents who have been selected in pursuance to different selection should be allowed to continue, will be contrary to the settled principle of law and therefore, no benefit of any appointment, in pursuance to the advertisement, which has been set aside, can be allowed in favour of the private respondents.

The present petitions are disposed of in the above terms.

Pending applications, if any, also stand disposed of accordingly.

A photocopy of this order be placed on the connected case file numbered above.

(HARSIMRAN SINGH SETHI)
JUDGE

05.12.2024
Rimpal

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No