

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

227

CWP-14820-2018
Date of decision : 27.02.2024

Rajeveer Singh and othersPetitioners

V/S

State of Punjab and othersRespondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: None for the petitioners.

Mr. Parminder Singh, Advocate for respondents No.1 & 2.

Mr. Chanderdeep Singh, Advocate for respondent No.3.

NAMIT KUMAR, J. (ORAL)

1. No one has put in appearance on behalf of the petitioners on the last two dates of hearing i.e. on 26.07.2023 and 29.11.2023 and even today also the position is the same.

2. The petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to consider re-appointment of the petitioners on the post of unskilled workers against the vacant post or to adjust them on some other post in Punjab State Power Corporation Limited.

3. Brief facts of the case, as narrated by the petitioners in the present petition, are that the petitioners were appointed as unskilled workers in Bathinda zone on 01.01.2017 as hired through respondent No.3–Punjab Ex-Servicemen Corporation. After completion of

contractual period on 30.06.2017, services of all employees in all the circles except Bathinda Zone were extended, despite the fact that there were vacancies available in the Bathinda Zone. Aggrieved by, the petitioners approached this Court by way of filing of two separate writ petitions i.e. CWP No.26036 of 2017 and CWP No.26040 of 2017 seeking mandamus to the respondent(s) therein to not substitute the services of the petitioners so as to be replaced by another set of unskilled workers for the same purpose. The abovesaid writ petitions were disposed of vide orders dated 15.11.2017 with liberty to the petitioners to approach the Court afresh in the eventuality of the respondents authorities initiating steps to engage other employees on contractual basis and to discharge the duties and responsibilities for which the present petitioners had been so engaged. The precise grievance of the petitioners is that similarly placed employees of the Thermal Plant, Bathinda, have been taken back into service by adjusting them in Punjab State Power Corporation Limited on similar posts to one held by the petitioners.

4. On issuance of notice of motion, written statement on behalf of respondents No.1 and 2 has been filed, wherein it has been stated as under :-

“That the present writ petition is liable to be dismissed as the petitioners have not explained full facts of the case in the present writ petition. As per Annexure P-1, dated 16.11.2016 an agenda was placed before Chief Engineer/HRD Patiala for hiring of 500 Class-IV Workers on contract through Punjab Ex-Servicemen Corporation (PESCO) for six months against vacant posts of Regular T-Mate for P&M Organization of PSPCL and the same was

*approved by Board of Director en 17.11.2016. On the basis of above mentioned agenda, work Order No.2 dated 14.12.2016 was issued to PESCO (as per agreement executed between PSPCL & PESCO) by Deputy Chief Engineer/P&M Bathinda to deploy 150 number contractual workers for six months i.e. 01.01.2017 to 30.06.2017 as allocated to P&M Circle Bathinda. In the above said work order the period of contract was specifically mentioned as Six Months. A copy of the work order is attached herewith as **Annexure R-1**. As per general terms and conditions of agreement executed between PSPCL and PESCO dated 12.5.2016, the personnel provided by PESCO against the out sourced work and activities of drivers, unskilled and skilled workers are PESCO employees for all intents and purpose and for all times to come. Term no.1 of general terms and conditions of above said agreement is reproduced herein below :-*

"General Terms and Conditions

1. The personnel provided by PESCO against the outsourced work and activities of drivers, unskilled and skilled workers are PESCO employees for all intents and purposes and for all times to come. They will not claim anything i.e. regularisation of services increase in pay etc. from PSPCL. PSPCL is only responsible to perform its part as per the agreement executed with PESCO, PESCO will provide non-Ex-Servicemen only if Ex-servicemen for these categories are not available. It is the duty of PESCO to certify that personnel provided by them are good moral character and they have no criminal record and no departmental as well as judicial proceedings were initiated against them earlier."

The petitioners had joined on 01.01.2017 as unskilled contractual workers and they were relieved on 30.06.2017 after completion of contract period on 30.06.2017. It is further submitted that they were not allowed to continued of job on completion of contract on 30.6.2017 as per directions from office of Deputy Chief Engineer/P&M Bathinda. It is clarified that no person was recruited as Class-IV Workers on contract basis against the post of Regular T-Mate under P&M Organization after the date of

relieving of the petitioners. It is further submitted here that contractual workers of Guru Nanak Dev Thermal Plant Bathinda were adjusted in PSPCL against the post of Regular T-mate as per Punjab Government Notification No.1/108/2017-1, Cabinet/5456 dated 20.12.2017, Reference of which was made in letter Memo No.01/15/2017 BB (RC)/ 832 dated 21.12.2017, addressed to CMD. A copy of the letter dated 21.12.2017 is attached herewith as Annexure R-2. A perusal of Annexure R-2 shows that after closing of Guru Nanak Dev Thermal Plant Bathinda by Punjab Government, the workers on regular roll be adjusted in PSPCL and the services of contractual workers be not dispensed with and surplus contractor workers be adjusted near their present posting stations/home towns in PSPCL, PSTCL, IPP (Independent Power Plant), GVK, TSPL, (Talwandi Sabo Power Ltd.), NPL (Nabha Power Ltd.). These contractual workers had worked against various posts i.e. skilled, unskilled, semi-skilled and highly skilled for a period of more than 5 years. The above said contractual workers had not worked for a period of six months as stated in the present writ petition.”

5. Learned counsel for the respondents Nos.1 and 2 while referring to the reply filed by the department as reproduced above has vehemently opposed the prayer made in the petition and submits that the present petition is not maintainable and deserves to be dismissed on merits.

6. I have heard learned counsel appearing for the respondents and perused the record.

7. Since the petitioners were appointed on contract basis by respondents No.1 and 2 from 01.01.2017 to 30.06.2017, through outsource agency i.e. respondent No.3, therefore, the present writ is not maintainable. It is settled law that no writ petition would lie against an outsourcing agency, as it is not an authority in terms of Article 12 of the

Constitution of India. Reference can be made to the judgment of a

Division Bench of this Court in the case of ***Nishan Singh and others Vs. State of Punjab and others : 2014 (11) RCR (Civil) 262***, wherein it has been held that the service provider, who has selected the candidates for work in the government department, is not an agency of the State. The appellants therein were neither selected under any service rules applicable to regular employees of the State of Punjab nor did they apply under any advertisement for their appointment as contractual or regular employees of the state. It was further held that the acceptance of the claim of the appellants therein for continuation of services would amount to a back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution of India.

8. In the case of ***Anmol Garg and another Vs. State of Punjab and others, bearing CWP No. 29655 of 2018, decided on 28.11.2018***, a Coordinate Bench of this Court dismissed the writ petition preferred by an employee engaged through outsourcing agency which was upheld by a Division Bench in ***LPA No. 1910 of 2018, decided on 10.12.2018*** and the operative part thereof is reproduced hereunder:-

“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. Reference can also be made to the orders of the Coordinate Benches of this Court passed in the cases of '*Vikas versus The State of Haryana and others*' bearing CWP No.19762 of 2018, decided on 11.12.2019, '*Kailash Chand and others versus Urban Local Bodies Department, Haryana and others*', bearing CWP No.21345 of 2021, decided on 18.01.2022 and '*Naresh Kumar and others versus Haryana State Warehousing Corporation and others*', bearing CWP No.17454 of 2020, decided on 02.12.2020, wherein similar petitions of outsourcing employees were also dismissed.

10. Even otherwise, the petitioners have no legal right to continue in service, once they were appointed on contract basis only for the period of six months and it is the stand of the respondents that no person has been recruited as class-IV workers on contract basis against the post held by the petitioners.

11. In view of the above, I do not find any merit in this petition, especially when the petitioners were employed on contractual basis.

12. Consequently, the present writ petition is dismissed.

27.02.2024

kothiyal

(NAMIT KUMAR)
JUDGE

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