

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

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CWP-18845-2018 (O&M)
Date of decision: 09.04.2024

Kamaljit Kaur and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Devansh Gupta, Advocate for
Mr. Rahul Arora, Advocate for the petitioners.

Mr. Swapan Shorey, DAG, Punjab.

AMAN CHAUDHARY. J (Oral)

1. The prayer in the present petition is for directing the respondents not to substitute the petitioners against other contractual employees/ temporary arrangements for the same purpose for which they have been engaged.
2. Learned counsel submits that the petitioners, though nominated against the designations of Data Entry Operator/Computer Operator have been performing the duties as a clerk/steno, owing to those posts lying vacant. However, despite their work and conduct being satisfactory, they are still sought to be replaced, that too by the same set of employees, in clear violation of the precedent set by Hon'ble the Supreme Court in **Hargurpratap Singh vs. State of Punjab**, (2007) 13 SCC 292.
3. On the contrary, learned State Counsel contends that while petitioner No.1 is still working, petitioner No.2 left the job of his own volition and hence there arises no cause of action on his behalf.
4. 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 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.”

5. Relying on **Hargurpartap Singh** (supra) and **Rattan Lal vs. State of Haryana**, (1985) 4 SCC 43, Hon’ble the Supreme Court in **Manish Gupta vs. Jan Bhagidari Samiti**, (2022) 15 SCC 540 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...”

6. The facts and circumstances of the case when viewed in light of the law as enunciated, petitioner No.1 is entitled to continue on the post till such time it is filled by way of a regular process of recruitment, *albeit* contingent on her work and conduct remaining satisfactory. Since petitioner No.2 is stated to have left the job, his cause of action does not survive.

7. The present petition stands disposed of, accordingly.

(AMAN CHAUDHARY)
JUDGE

09.04.2024

Hemant

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