

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211-2

Decided on : 26.04.2024

CWP-21834-2021 (O&M)

VIKAS KUMAR

...PETITIONER

Versus

STATE OF HARYANA AND OTHERS

... RESPONDENTS

CWP-21805-2021 (O&M)

DEEPAK KADIAN

...PETITIONER

Versus

STATE OF HARYANA AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Sarthak Gupta, Advocate for the petitioners.

Ms. Vibha Tewari, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present bunch of petitions, the challenge is to the order passed by the respondents dated 06.09.2021 (Annexure P-7), vide which the petitioners are not allowed by the respondent-department to discharge the duties on the post of Computer operator despite having requisite qualification of typist .

Certain facts needs to be mentioned for correct appreciation of the issue in hand.

The petitioners were appointed and deputed to work on the post of computer operator with the respondent-department by respondent No. 5 and an agreement was entered into between the respondent-department and respondent No.5 i.e. the private security agency, to provide the workforce.

After the petitioners were deputed by respondent No. 5 in the office of respondent-department on the said post, the respondent-department in order to verify as to whether the petitioners are competent to discharge the duties on the post in question, asked them to undergo the typing test which the petitioners failed to clear. As the petitioners failed to clear the said typing test qua the post of computer operator, the petitioners were not allowed to discharge the duties in the respondent-department and the letter was written to respondent No. 5, who was the employer of the petitioners that the petitioners are unable to discharge the duties on the post in question and hence, they cannot be deputed to discharge the work of the respondent-department. The said letter by which the petitioners were sent back to the employer i.e. respondent No. 5 is under challenge.

Learned counsel for the respondents submits that there is no master and servant relationship between the petitioner and the respondent-department as, the petitioners are the employees of respondent No. 5 i.e. private security agency, who has selected the employees but has only deputed them with the respondent-department under the terms and conditions of the contract entered into between the respondent-department and respondent NO. 5 and as there is no master and servant relationship, and even the impugned letter is addressed to respondent No. 5 only, no grievance can be raised by the petitioners as no writ petition is maintainable against the private agency i.e. respondent No. 5, which is concededly the employer of the petitioners.

Learned counsel for the respondent further submits that the salary to petitioners is also being paid by respondent No. 5 and not by the respondent-department, which clearly shows that there is no master and servant relationship between the petitioners and respondent-department.

Learned counsel for the petitioners submits that once the petitioners have been deputed by respondent No. 5 and they were working in the department on the post in question and while working , they were under the administrative control of the respondent-department, the petitioners are to be treated as the employees of the respondent-department and not the employees of private agency i.e. respondent No. 5.

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

The petitioners are claiming that they are the employees of respondent-department instead of respondent No. 5. On being asked to provide any appointment letter issued in favour of the petitioners by the State, the learned counsel for the petitioners concedes the fact that there is no such appointment order issued in favour of the petitioner by the respondent-department.

On being asked as to how come, the petitioners were deputed with the respondent-department, learned counsel for the petitioner very fairly submits that it was on the asking of the private agency i.e. respondent No. 5, the petitioners came to be deputed with the respondents-department to discharge the duties on the post in question. Further, the learned counsel for the petitioner conceded the fact that the impugned letter is addressed to respondent no. 5 i.e. private security agency, who had deputed the petitioners with the respondent-department stating that the petitioners are not fit to discharge the duties on the post in question as they did not have the enough type speed to work on the post in question.

All these facts show that there is no master and servant relationship between the respondent-department and the petitioners

especially when it is also a conceded fact that no payment of salary is being made by the department to the petitioners and only the payment under the contract has been made by respondent-department to respondent NO. 5 out of which, the petitioners were being paid their salary by respondent No. 5. All these facts clearly shows that the petitioners were working on the post in question keeping in view the contract entered into between the respondent-department and the private agency i.e. respondent No. 5.

The learned counsel for the petitioners submits that the said contract is a sham and rather the petitioners should be treated as employee of the respondent- department.

It may be noticed that there is no challenge to the agreement under which the work of the department was outsourced to respondent No. 5. Respondent No. 5, in order to execute the performance of the responsibility under the contract, selected the petitioners and deputed his employees to the respondents-department and as the department did not accept those employees of respondent No. 5 to discharge the duties on the post in question being incompetent to do so, the petitioners have raised a finger towards respondent No. 5 and respondents-department alleging that contract between them is sham. In the absence of any challenge to the said agreement, no findings can be recorded as to whether the contract entered between respondent No. 5 and respondent-department is sham or not.

Further, this Court keeping in view the various judgements of the Division bench while passing order in **CWP-12274 of 2020 titled as Kumar Saurabh and others v. State of Haryana and others decided on 30.09.2020** has held that where the employees are from outsourcing agency, and they were never appointed by the department, no grievance regarding

service dispute can be raised in a writ petition as there is no master and servant relationship between the department and the employees hired through outsourcing agency as concededly the employees have been deputed in the department after being appointed by a private agency and against the private entity, no writ petition is maintainable.

Learned counsel for the petitioners has not been able to rebut the said proposition of law settled in **Kumar Saurabh' s case (Supra)**.

Learned counsel for the petitioner further submits that as per the judgement of the Co-ordinate Bench of this Court in **CWP-8019 of 2017, titled as Umed Singh v. State of Haryana and others, decided on 26.02.2019**, the employees have been given the benefits. It may be noticed that the said judgement, the only prayer was that upon the change of the private contractor, the employees be not changed and which prayer was accepted, which claim is entirely different as per **Umed Singh's case (Supra)**.

Nothing has come on record that the employees of private agency are to be treated the employees of the State. Hence, no benefit of the judgement of **Umed Singh' case (supra)** can be given to the petitioners in the facts and circumstance of the present case.

Further reliance is being placed upon the judgement passed by the Hon'ble Telangana High Court in **W. P No. 47675 of 2018, titled as G. Srinivasa Chary v. State of Telangana, decided on 07.08.2020** wherein, it has been held that where an employees are working under the contractor and are being paid by the department and are also working in the department, the outsourcing system is only a sham.

It may be noticed that as recorded herein before, the agreement

between the State and respondent No. 5 is not under challenge so as to record the findings that as to whether the outsourcing system is sham or not.

Keeping in view the above, as there is no master and servant relationship between the respondent-department and the petitioners, even the impugned order has not been addressed to the petitioners but it has been addressed to employer of the petitioners i.e. Respondent No. 5, no writ petition is maintainable as the petitioners are employees of the respondent No. 5, not the employees of respondent-department and **hence, the writ petitions stands dismissed.**

It is made clear that in case the petitioners have any claim with regard to continue in service qua the respondent No. 5, who is their employer they have liberty to avail the appropriate remedy for redressal of their grievances in accordance with law.

Pending civil miscellaneous application, if any, stands disposed of.

A photocopy of this order be placed on the files of connected cases.

(HARSIMRAN SINGH SETHI)
JUDGE

26.04.2024
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Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: ~~Yes~~/No