

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

234 (03 cases)

CWP-25061-2022 (O&M)

Decided on : January 20, 2024

MANPREET KAUR

Versus

..... Petitioner

STATE OF PUNJAB AND OTHERS

..... Respondents

PARMINDER PAL KAUR

Versus

..... Petitioner

STATE OF PUNJAB AND OTHERS

..... Respondents

GURVINDER SINGH

Versus

..... Petitioner

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: None for the petitioner(s).

 Mr. T.P.S. Walia, AAG, Punjab.

 Mr. Sanjeev Sharma, Advocate
 for the respondent nos.2 and 3.

NAMIT KUMAR, J. (Oral)

1. This Judgement shall dispose of CWP Nos.25061, 26993 & 27336 of 2022 as common question of facts and law are involved therein. For the sake of convenience, facts are taken from CWP No. 25061 of 2022.

2. The petitioner, who is an outsourced employee, has approached this Court by way of filing the instant petition under Articles 226/227 of the Constitution of India seeking writ in the nature of *certiorari* impugning the order dated 29.09.2022 (Annexure P-3), whereby her services have been ordered to be no longer required and has been ordered to be relieved w.e.f. 27.10.2022 (AN), after giving one month notice by M/s. Jain Associates (Regd.), who is a service provider to the State Government.

3. On 14.11.2022, while issuing notice of motion, the operation of impugned order dated 29.09.2022 was stayed by a Co-ordinate Bench of this Court. The said order reads as under:-

xxx xxx xxx xxx

Counsel appearing on behalf of the petitioner would contend that the petitioner was appointed in the office of Marketing Committee, Samana and she joined her duty on 26.05.2021, however, without issuing any notice, she has been ordered to be relieved w.e.f. 27.10.2022 vide letter dated 29.09.2022 (Annexure P-3) despite instructions of the Government that the persons employed on contractual basis through outsource would continue in service till 31.03.2023.

Notice of motion for 02.05.2023.

Ms. Deepali Puri, Additional Advocate General, Punjab, who is present in the Court, accepts notice on behalf of respondents No.1 and 2.

Let notice be issued to respondent No.3 for the date fixed, on filing of PF etc.

The effect and operation of the impugned order shall remain stayed till the next date of hearing.

xxx xxx xxx xxx

4. Thereafter, on 19.12.2022, an application was preferred for vacation of *ex-parte* stay by the applicant-respondent nos.2 and 3 in which notice was

issued to the non-applicant/petitioner for 05.01.2023 and on the said date of hearing, proxy counsel had caused appearance on behalf of the non-applicant/petitioner and sought adjournment. Thereafter, the case came up for hearing on 25.01.2023 and on the said date, counsel for the non-applicant/petitioner did not cause appearance and the following order was passed by a Co-ordinate Bench of this Court :-

xxx xxx xxx xxx

“ Counsel for the petitioner relies upon Division Bench judgment rendered in LPA No.469 of 2013 titled as Nishan Singh & others vs. State of Punjab and others to submit that the petitioner being employee engaged through outsource agency cannot maintain the present writ petition.

Notice in the application was issued.

Counsel representing non-applicant/petitioner has opted not to remain present. He is granted one opportunity to respond to the same. On his failure to appear on the next date, the matter will be heard on merits.

Adjourned to 31.01.2023.

A copy of the order be served upon counsel for the non-applicant/petitioner.

xxx xxx xxx xxx

5. Even thereafter, learned arguing counsel for the petitioner did not cause appearance on 31.01.2023 and 20.02.2023 and sought adjournments through proxy counsel(s) on one pretext or the other and even on 10.05.2023 also, there was no representation on his behalf and, therefore, the Co-ordinate Bench of this Court in furtherance to the order dated 25.01.2023, vacated the interim order, vide order dated 10.05.2023. The said order dated 10.05.2023 reads as under:-

xxx xxx xxx xxx

“ None has appeared on behalf of the petitioner(s) even on second call.

Even as per the pleadings raised in the writ petition, the admitted case is that the petitioners were employed through outsourced agency. The

question w.r.t. the maintainability of these writ petitions by the outsourced employees against the Board i.e. principal employer be whom they have in fact no employer-employee relationship is no more res integra and has been answered by the Division Bench of this Court in LPA No.469 of 2013 titled as 'Nishan Singh and others vs. State of Punjab and others'.

In view of the above, interim orders dated 29.09.2022, 01.10.2022 and 06.10.2022 are ordered to be vacated. Adjourned to 18.12.2023.

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

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6. Even today also, no one is present on behalf of the petitioner despite second call, which outrightly shows that the petitioner is no more interested to pursue the present matter further, perhaps for the obvious reason that the interim stay, as granted earlier has been vacated, however, without going into this aspect as to whether the petitioner is deliberately evading/avoiding to cause his appearance or not, this petition is being decided in furtherance to the order dated 25.01.2023, vide which it was directed that in case of his failure to appear on the next date of hearing, the matter will be heard on merits and copy of said order was duly served upon learned counsel for the non-applicant/petitioner. Hence, this case is hereby proceeded on merits in his absence.

7. I have heard learned counsel for the respondents and gone through the records.

8. Firstly, the petitioner has chosen not to implead the Service Provider as party-respondent in the present petition, which is not only proper but necessary party.

9. It is the case of the petitioner that Respondent No.3 – The Secretary Market Committee Samana, District Patiala, has issued a letter dated 29.09.2022 (Annexure P-3) to the petitioner giving a notice that the work and conduct of the

petitioner is not satisfactory and her services have been ordered to be no longer required and she has been ordered to be relieved w.e.f. 27.10.2022 (AN). The said letter dated 29.09.2022 has been impugned in the present writ petition.

10. A bare perusal of the said letter dated 29.09.2022 (Annexure P-3) shows that the same has not been issued by the Secretary, Market Committee Samana, District Patiala, as has been stated in the petition by alleging that respondent no.3 - Secretary, Market Committee Samana, District Patiala is going to remove the petitioner from services, whereas the same has been issued by M/s. Jain Associates (Regd.), who is a service provider, however, the said service provider has not been arrayed as party in the present petition.

11. Be that as the case may be, the sole question, which arises for the determination of this Court in the present writ petition is 'whether writ petition is maintainable against the service provider/outsourcing agency'. The said question has been answered in various Judgements of this Court, wherein it has been held that the writ petition against the service provider/outsourcing agency is not maintainable.

12. It is a settled proposition of law that a writ against an Outsourcing Agency, which is a private entity, is not maintainable, since the outsourcing agency is not an instrumentality of the State and, therefore, any appointment offered by it, would not constitute a civil post.

Law in this regard is well settled in the Judgement dated 30.09.2013 passed by the Division Bench of this Court in LPA No.469 of 2013 titled as **'Nishan Singh and others versus State of Punjab and others', 2014 (11) RCR (Civil) 262**, wherein it has been held that a service provider is not an agency of the State to make the recruitment against the civil posts and therefore, the writ petition itself would not be maintainable.

To the same effect is the Judgement dated 11.12.2019 passed by a Co-ordinate Bench of this Court in CWP No.19762 of 2018 titled as 'Vikash Vs. The State of Haryana and others' wherein it has been held that no writ petition would lie against an outsourcing agency, being a private entity which is not an authority in terms of the Article 12 of the Constitution.

13. Since, the writ petition against the service provider is not maintainable, therefore, no case is made out in favour of the petitioner and the same is liable to be dismissed.

14. Dismissed with no orders as to costs, however, if the petitioner is having any other legal right against the service provider/outsourcing agency namely 'M/s Jain Associates (Regd.)', this order shall not preclude her from taking recourse to appropriate remedies available to him, in accordance with law.

January 20, 2024

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(NAMIT KUMAR)

JUDGE

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No