

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

110 (05 cases)

CWP-267-2024

Decided on : January 19, 2024

JOGA SINGH

Versus

STATE OF PUNJAB AND OTHERS

..... Petitioner

..... Respondents

CWP-309-2024

AMANDEEP SINGH

Versus

STATE OF PUNJAB AND ORS

..... Petitioner

..... Respondents

CWP-310-2024

MANI KUMAR

Versus

STATE OF PUNJAB AND OTHERS

..... Petitioner

..... Respondents

CWP-313-2024

SURINDER PAL SHARMA

Versus

STATE OF PUNJAB AND OTHERS

..... Petitioner

..... Respondents

CWP-319-2024

GURTEJ SINGH

Versus

STATE OF PUNJAB AND OTHERS

..... Petitioner

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Karan Sachdeva, Advocate
for the petitioner (s).

NAMIT KUMAR, J. (Oral)

1. This Judgement shall dispose of CWP Nos.267,309,310, 313 & 319 of 2024 as common question of facts and law are involved therein. For the sake of convenience, facts are taken from CWP No.267 of 2024.

2. The petitioner has approached this Court by way of filing the instant petition under Article 226/227 of the Constitution of India seeking writ in the nature of *Certiorari* for quashing the order dated 30.11.2023 (Annexure P-2) passed by respondent no.5 – Ziqitza Health Care Centre Limited (for short here-in-after referred to as 'Health Centre') whereby the services of the petitioner have been terminated.

3. The brief facts leading to the filing of the present petition, as have been pleaded in the writ petition, are that the petitioner was engaged as Driver by Respondent No.5 – Health Centre in view of agreement dated 30.10.2010 entered between the Respondent No.1 - Department of Health and Family Welfare, Government of Punjab and Respondent No.5 – Health Centre, whereby it was proposed to outsource the services of Drivers and Emergency Medical Technicians for operation and management of emergency response services in the State of Punjab. The said agreement was initially for a period of five years.

4. It is further averred that since there was a threat of termination of services by the contractor, therefore, the petitioner along with other similarly situated persons filed CWP No.1687 of 2018 titled as '**Gurjaswinder Singh and others versus State of Punjab and others**' and other connected petitions and vide order dated 29.01.2018 the termination of services of the petitioner(s) was stayed, which was modified later on vide order dated 25.05.2023, which are pending before this Court. The above said orders dated 29.01.2018 and 25.05.2023 are reproduced as under:-

5. Thereafter, services of the petitioner have been terminated by Respondent No.5, vide termination letter dated 30.11.2023 (Annexure P-2), which has been impugned in the present writ petition.

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

7. The question, which arises for the determination of this Court in the present writ petition is whether the writ petition is maintainable against the service provider – Respondent No.5. The said question has been answered in various Judgements of this Court and the Hon'ble Supreme Court, wherein it has been held that the writ petition against the service provider is not maintainable.

8. In the Judgement dated 30.09.2013 passed in LPA No.469 of 2013 titled as '**Nishan Singh and others versus State of Punjab and others**' and other connected matters, wherein the similarly situated employees, who were engaged by an outsourced agency, claimed regularization of their services, and their claim was negated/rejected by learned Single Judge vide common Judgement dated 28.02.2013, the Division Bench of this Court by upholding the said Judgement of learned Single Judge held that '**a service provider is not an agency of the State to make the recruitment against the civil posts. The selection made by the service provider, if taken as appointment made by the State, will have serious repercussions and violates the rights of thousands of more meritorious candidates who might not have applied for engagement by a Service Provider but would definitely be keen to seek 'public employment' under the State. The acceptance of claim of the appellants shall thus amount to back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution**'. The relevant portion of said Judgement reads as under:-

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“ 15. Reverting to the facts of the present case, the question for determination is whether the policy decisions of the Government dated 18.03.2011 and 17.01.2012 cover the case of the appellants for regularization? The learned Single Judge after elaborate discussion of the law on the point has rightly reached the conclusion that 'the above policy do not apply to the appellants claim and, therefore, right of regularization pressed by the petitioners (the appellants) cannot be accepted'. Learned counsel for the appellants could not advance any meaningful arguments to impress us to reach a different conclusion. The submissions that the appellants are employees engaged by the respondent Departments and the service provider has been used as a camouflage to deny the appellants their status as Government employees or consequent at regularization under the Government Policy and other statutory benefit has no substance or legal basis. Learned Single Judge has expansively dealt with the facts and law on this point and we find no cogent or convincing reason to take a contrary view.

16. The State has taken a policy decision for regularization of services of the contractual employees who were appointed after fulfilling eligibility criteria as per 'proper procedure'. In the case of appellants neither they were selected under the Service Rules applicable to the regular employees of the Punjab State nor there was any advertisement issued by the State under which they applied for their engagement as regular or contractual employee of the State. It was the service provider who entered into an agreement with the State agency to provide work force on certain terms and conditions. The service provider selected the candidates and supplied the same to the Government Department. A service provider is not an agency of the State to make the recruitment against the civil posts. The selection made by the service provider, if taken as appointment made by the State, will have serious repercussions and violates the rights of thousands of more meritorious candidates who might not

have applied for engagement by a Service Provider but would definitely be keen to seek 'public employment' under the State. The acceptance of claim of the appellants shall thus amount to back door entry to public employment in total disregard to the mandate of Articles 14 and 16 of the Constitution.

17. The arguments of learned counsel for the appellants that the Deputy Commissioner of some district or the Chief Secretary recommended their absorption on regular basis too has not impressed us. No provision of any service Rules exhibiting the competence of a Deputy Commissioner or the Chief Secretary to make such recommendations has been cited before us. Such recommendations will rather amount to encouraging pick and choose policy for regular government jobs by depriving hundreds and thousands of eligible candidates in total contrast of the observations made by the Apex Court in Secretary 'State of Karnataka v. Uma Devi and others 2006 (2) SCT 462'.

18. In the light of above discussion, we find no factual or legal infirmity in the judgment of learned Single Judge.

19. The appeals have no merit and are consequently dismissed.

	SD/-	SD/-
30.09.2013	(SURYA KANT)	(SURINDER GUPTA)
	JUDGE	JUDGE
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The SLP preferred against the abovesaid Judgement was dismissed by the Hon'ble Supreme Court vide order dated 21.02.2014 passed in Special Leave to Appeal (Civil) No.769 of 2013 titled as 'Nishan Singh and others versus State of Punjab and others'.

9. To the same effect is the Judgement dated 06.07.2021 passed in LPA No.509 of 2021 titled as 'Mohit versus State of Punjab and others', wherein the judgement dated 08.03.2021 passed by learned Single Judge was challenged before the Division Bench of this Court by the appellant, who was working as

'Data Entry Operator' on contractual basis thorough a service provider under the outsourcing policy of the State and it was held by learned Single Judge that the writ petition against the service provider is not maintainable. The said Judgment of learned Single Judge was upheld by the Division Bench of this Court vide Judgement dated 06.07.2021 passed in the aforesaid LPA No.509 of 2021. The relevant portion from the aforesaid Judgement is as under:-

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“ In this case the appellant failed to produce his appointment letter, if any, issued by Haryana Government or any of its department. The appellant was also unable to establish that he was under the direct employment of respondents. During arguments, the counsel for the appellant admitted that the appellant and some other persons were engaged by the respondents as Data Entry Operators through service provider namely Laxmi Placement Services. So, undisputedly, the appellant was engaged by Deputy Excise and Taxation Commissioner through service provider. However, the said private outsourcing agency was not impleaded as a party to the writ petition by the appellant.

In wake of the above, we are of the view that the learned Single Judge rightly observed that there was no relationship of master-servant between the respondents and the petitioner (appellant herein). *The similar view was taken by learned Single Judge of this Court in CWP-19762-2018 titled as Vikash vs. The State of Haryana and Others, decided on 11.12.2019, wherein it was held that the petitioner therein has no direct relationship with the Municipal Corporation, Gurugram where he was working as an outsourced employee.*

*The judgment passed by the Hon'ble Supreme Court in **Hargurpratap Singh's case (supra)** is relating to contractual employees directly engaged by the Government College Authorities and is not related to outsourced employees. So the same is of no assistance to the appellant. Moreover, the appellant cannot take any*

benefit of the interim order dated 27.8.2020 passed by learned Single Judge in CWP-7091-2020 titled as Amit Kumar Singla vs. State of Haryana and Others, the reason being the said interim order was passed on the basis of dictum of the Hon’ble Supreme Court in Hargurpratap Singh’s case (supra). The facts of the cited case are distinguishable from that of the case in hand, as has been already discussed above. Consequently, the present appeal is hereby dismissed being devoid of merits.

	SD/-		SD/-
06.07.2021	(RAJAN GUPTA)		(KARAMJIT SINGH)
	JUDGE		JUDGE ”
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10. To the same effect is the Judgement dated 23.11.2023 passed in LPA No.661 of 2021 titled as 'Karan Singh versus State of Haryana and others' and the relevant portion of said Judgement reads as under:-

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“ Learned Single Judge has declined the issuance of a writ of mandamus, whereby, prayer was also made by the petitioner-appellant to allow him to continue in service on the post manned by him in the office of respondent No.5-the service provider. Learned Single Judge has also referred to the fact that the petitioner-appellant was appointed as Data Entry Operator on contract basis through an outsource contractor/service provider on 08.09.2020 to work in the office of respondent No.4 i.e. Women and Child Development Project Officer, Siwan, Kaithal. After working for 2 days, his services were discontinued by respondents No.4 and 5, which is apparent from the pleadings as such in the writ petition also.

*Perusal of the appointment letter dated 08.09.2020 (Annexure P-1) would also go on to show that service provider had referred the name of petitioner to respondent No.4. It is apparent that appointment of the petitioner was made by the service provider. **In***

the considered opinion of this Court, the writ petition is not maintainable against the service provider. Reliance can also be placed upon the judgment dated 06.07.2021 in LPA No.509 of 2021 (Mohit vs.State of Haryana and others), wherein, in similar circumstances, the view taken by learned Single Judge in CWP No.19762 of 2018 (Vikash vs. The State of Haryana and others) decided on 11.12.2019 was approved. The reasoning was that there was no direct relationship of petitioner with the Municipal Corporation, Gurugram and therefore, prayer to rejoin on the post of Data Entry Operator on contractual basis, had been declined.

If the appellant has any legal right against the service provider, it is open for him to seek remedies, in accordance with law.

The writ petition, as such, is not maintainable against the service provider and the State is not the employer. Accordingly, there is no merit in the present appeal. The same is dismissed in limine with the aforesaid liberty.

	SD/-	SD/-
November 23, 2021	(G. S. SANDHAWALIA)	(VIKAS SURI)
	JUDGE	JUDGE ”
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11. Apart from the above, again a Co-ordinate Bench of this Court had an occasion to consider the similar question of law while deciding CWP No.19762 of 2018 titled as 'Vikash Vs. The State of Haryana and others', on 11.12.2019, whereby, it has been held that the writ petition is not maintainable against the outsourcing agency being a private entity. The relevant portion of the said Judgement is as under: -

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“ The grievance of the petitioner in this case was with regard to the order dated 09.05.2018 (Annexure P-3), whereby the Municipal Corporation, Gurugram, informed the outsourcing agency, the fifth respondent herein, that it had decided that the services of the petitioner were no longer required.

By order dated 18.08.2018 passed in this writ petition, this

Court directed the Municipal Corporation, Gurugram, to consider the case of the petitioner keeping in view the judgment of the Supreme Court in Hargurpratap Singh Vs. State of Punjab (2007) 13 SCC 292. Be it noted that the case of Hargurpratap Singh related to a contractual employee and not an outsourced employee. In any event pursuant to the above order, the Municipal Corporation, Gurugram, passed order dated 27.11.2018, stating the reasons as to why it did not want to continue with the services of the petitioner, even on outsourcing basis. In the light of the aforesaid development, this writ petition, as framed, no longer survives for consideration on merits. Further, this Court is of the opinion 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. Admittedly, the petitioner has no direct relationship with the Municipal Corporation, Gurugram. The writ petition is accordingly dismissed. ”

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12. The same issue came up for consideration before a Co-ordinate Bench of this Court in CWP No.22534 of 2020 titled as 'Sarabjit Kaur versus State of Punjab and others' , which was decided on 25.01.2021, and while referring to the aforesaid Judgement dated 11.12.2019 passed in the case of Viskash case (Supra), it was held that that in the absence of relationship between State or its instrumentality, writ petition by outsourced employee against the State is not maintainable. The relevant portion of the said Judgement is as under:-

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“ From the above, it is clear that no writ petition would lie against an outsourcing agency, being a private entity as the same is not covered within the meaning of Article 12 of the Constitution of India. In the present case, the claim of the petitioners is against their employer, which is admittedly an outsourcing agency and is a

private entity, therefore, the writ petition will not be maintainable.

Further, the employer i.e. the outsourcing agency has not been impleaded as a party in the present writ petition. Once, the petitioners are the employees of the outsourcing agency and the outsourcing agency is not even a party, no relief can be granted to the petitioners in the absence of necessary parties.

With regard to the challenge of the petitioners to the appointments, which have been made in June/July, 2020, vide order dated 31.01.2020 (Annexure P-5), have been made by the outsourcing agency, which got contract after the expiry of the contract of the outsourcing agency, which appointed the petitioners. Neither the said outsourcing agency is a party in this petition nor the candidates, who have been posted with the respondent-Bank by the said outsourcing agency, namely, M/s Sona Enterprises, Panchkula, are the parties. That being so, the grievance of the petitioners in respect of subsequent appointments and that too by an outsourcing agency cannot be gone into by this Court in the absence of the necessary parties.

Keeping in view the above, the present writ petition is not maintainable as the relief sought is against a private agency, which is the employer of the petitioners and no writ can be issued against a private agency.

The present writ petition is accordingly dismissed as not maintainable.”

The above-said law is squarely applicable in the present case as admittedly the petitioner is an outsourced employee and is only posted in the Nagar Panchayat Bhagat Bhai, District Bathinda.

The claim with regard to replacement of the petitioner with another set of employee lies against the employer, which is admittedly a private entity and the relief claimed in the present writ petition, which is against a private entity, is not maintainable.

Keeping in view the above fact, the present writ petition is dismissed being not maintainable. ”

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13. To the same effect are the Judgements passed by Co-ordinate Bench of this Court i.e. Judgement dated 06.07.2021 passed in CWP No.11812 of 2021 in case titled as 'Karan Singh versus State of Haryana and others'; Judgment dated 19.08.2020 passed in CWP No.1822 of 2019 titled as 'Yamin and others versus State of Haryana and others' and Judgement dated 20.05.2021 passed in CWP No.9996 of 2020 in case titled as 'Mukesh Kumari and others versus State of Haryana and others'.

From the above Judgements, it is crystal clear that no writ petition would lie against an outsourcing agency, being a private entity as the same is not covered within the meaning of Article 12 of the Constitution of India. In the present case, the claim of the petitioners is against their employer, which is admittedly an outsourcing agency/service provider and is a private entity, therefore, the writ petition will not be maintainable.

14. Learned counsel for the petitioner in support of his claim has relied upon the Judgements passed by the Hon'ble Supreme Court in Civil Appeal No.11335-11359 of 1995 titled as 'Secretary, Haryana State Electricity Board versus Suresh', decided on 30.03.1999 and Civil Appeal No.1976 of 1998 titled as 'Binny Ltd. & another versus V. Sadasivan & others', decided on 08.08.2005.

15. I have perused the abovesaid two Judgements. The facts of both the Judgements, as referred to above, are not applicable to the facts of the present case since the same are totally on different footings.

In 'Secretary, Haryana State Electricity Board' case (*Supra*), the employees were found under direct administrative control of the Electricity Board and relationship between the Board and the employees was found to be established, therefore, directions under the writ jurisdiction were issued by the

High Court, which were upheld by the Apex Court and in the case of '*Binny Ltd.*' (*Supra*), the employees, who were management staff of private companies, have directly approached two different High Courts i.e. High Courts of Bombay and Madras, challenging their orders of termination and the Bomaby High Court held that *in the proceedings under Article 226, the respondents herein would not be entitled to get relief of reinstatement and backwages and the Court only granted declaratory relief to the effect that the termination order was illegal and the respondents had to work out an appropriate remedy before the appropriate forum* and the Full Bench of Bomaby High Court held that *by terminating the services of the appellant, the Company was not discharging any public function and, therefore, the action sought to be challenged by the appellant was not amenable to the jurisdiction of judicial review.*

Both the appeals were disposed of by the Hon'ble Apex Court by common Judgement, with the finding that *we are unable to perceive any public law element in the termination of employees in civil Appeal No.1976 of 1998 and the remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments, especially in view of the disputed questions involved as regards the status of the employees and other matters. So also, in Civil Appeal arising out of SLP (Civil) No.6016 of 2002, the writ petition has been rightly dismissed by the High Court* whereas in the present petition, the petitioner is an engaged employee through an outsourced agency- Respondent No.5, and there is no direct relationship between the employee and concerned instrumentality of the State Government, who have been arrayed as respondent nos.2 and 3 and moreover, the action of the service provider in terminating the services of the petitioner does not fall in the ambit of discharging 'public function' or involving 'public law element', therefore, the

above cited Judgements are of no assistance to the petitioner.

16. The Hon'ble Supreme Court in the Judgement dated 22.11.1991 titled as **'Dena Nath and others versus National Fertilizers Ltd. And others' 1992 AIR 457**, in para 22 of the said judgment, held as follows *(which has been approved by Five Judges Bench of the Hon'ble Supreme Court in **'Steel Authority of India Limited versus Union of India and others' (2006) 12 SCC 233 in para 96** thereof) :-*

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*“22. It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the government after considering the matter, as required to be considered under Section 10 of the Act. The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 (sic 7) and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act. **We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer.** We would not like to express any view on the decision of the Karnataka High Court or of the Gujarat High Court (supra) since these decisions are under challenge in this Court, but we would place on record that we do not agree with the aforequoted observations of the Madras High Court about the effect of non-registration of the principal employer or the non-licensing of the labour contractor nor with the view of Bombay High Court in the aforesaid case. We are of the view that the decisions of the Kerala High Court and Delhi High Court are correct and we approve the same.” In the light of the above, petitioners cannot be granted any benefit in the present writ petition as none of the grounds pressed into service by the petitioners carry any weight. The writ petitions being devoid of merit stands dismissed. ”*

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17. Describing the principles and guidelines, where a writ of mandamus can be issued against a private body/entity, Hon'ble the Supreme Court of India in the recent Judgement dated 22.08.2022 passed in *Civil Appeal No.5789 of 2022 (Arising out of SLP (Civil) No.1118 of 2022) titled as 'St. Mary's Education Society and another versus Rajender Prasad Bhargava and others'*, has held that *“An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. Individual wrongs or breach of mutual contracts without having any public element cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.”*

In view of the principles and guidelines settled by the Hon'ble Apex Court in the Judgements(s) quoted/referred to above, it is crystal clear that although a writ of *mandamus* can be issued even against a private authority/body/entity, however, such private authority/body/entity must be discharging a 'public function' involving 'public law element' and the act complained/under challenge must be having direct nexus with discharge of public duty and individual wrongs or breach of mutual contracts without having any public element as intergrade part cannot be rectified through a writ petition under Article 226 of the Constitution of India and wherever the Courts have intervened their exercise of jurisdiction under Article 226, either the service conditions of the employee were governed/related by the statutory provisions or the employer had

the status of “State” or “its authority” within the expansive definition under Article 12 of the Constitution or it was found that the action complained has public law element.

18. In view of the Judgements referred to above, it is a settled proposition of law that primarily a writ of *mandamus* and power of Judicial review is designed to prevent cases of abuse of power and neglect of duty by public authorities, however, the power of the High Courts under Article 226 is very wide and is couched in such a way that a writ of *mandamus* can be issued even against a private authority, however, such private authority/body must be discharging a 'public function' and that the decision sought to be corrected or enforced must be in discharge of a 'public function' involving 'public law element' or the service conditions of the employee ought to have been governed by the statutory provisions of the State.

19. A bare perusal of the said termination letter dated 30.11.2023 (Annexure P-2) would show that the petitioner is an outsourced employee of service provider – Respondent No.5 and there is no master and servant relationship between the petitioner and respondents – State of Punjab or its instrumentality, against whom the present relief is being sought, and the impugned action is having no direct nexus with discharge of public duty and the termination of services is merely a breach of private contract without having any public element and moreover the service conditions of the employee-petitioner were not related to/governed by any statutory provisions of the State and the employer of the petitioner i.e. Respondent No.5 does not come within the purview/definition of “State or its authority” within the expansive definition under Article 12 of the Constitution of India. The question of maintainability of the writ petition in respect of the claim of outsourced employees, *qua* the State or its instrumentality

where they have been posted, is no longer *res integra* and the said question of law has been settled by the Hon'ble Supreme Court and this Court in a cantena of judgments, as referred to above, that there is no master and servant relationship between the State or its instrumentality and outsourced employees and a contract would not become statutory simply because it is in respect of a public utility service and it has been awarded by statutory body and, therefore, writ petition by an outsourced employee against the State or its instrumentality is not maintainable.

20. 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.

21. Dismissed with no orders as to costs, however, if the petitioner is having any other legal right against the service provider-Respondent No.5, this order shall not preclude him from taking recourse to appropriate remedies available to him, in accordance with law.

January 19, 2024
mkkoundal

(NAMIT KUMAR)
JUDGE

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