

2025:PHHC:061786



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

238

CWP-3141-2023 (O&M)
Date of Decision: 08.05.2025

RAKESH KUMAR AND OTHERS

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. P.S. Jammu, Advocate
for the petitioners.

Mr. Tapan Kumar, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

CM-3618-CWP-2023

Allowed as prayed for.

The documents Annexures P-20 and P-21 are ordered to be taken on record subject to all just exceptions. Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASE

The present writ petition is directed against the order dated 14.09.2022, passed by Respondent No. 4 – the Deputy Commissioner, Sirsa, whereby the representation submitted by the petitioners seeking their re-engagement against the vacant post of Clerk has been declined.

The facts, as emerge from the pleadings in the present petition, are that the petitioners were initially engaged on contractual basis against the posts of Data Entry Operators pursuant to an Advertisement dated 26.04.2011. Their engagement was purely contractual in nature and the same was renewed from year to year. The petitioners assert that they discharged their duties diligently and to the complete satisfaction of the respondent-authorities until the year 2018, whereafter they were unlawfully restrained from performing their functions and without assigning any cogent reason. Aggrieved of the alleged arbitrary and unlawful action of the respondent-authorities in discontinuing their services, the petitioners instituted CWP No. 21336 of 2018, praying for a direction to permit them to resume their duties with effect from 21.02.2018. The said writ petition was disposed of vide order dated 18.08.2022. The operative part thereof reads thus: -

“Petition herein, inter alia, is for issuance of an appropriate writ commanding the respondents to allow the petitioners to resume their duties, from they have which they were relieved w.e.f. 21.02.2018, for want of sanction from the Finance Department and release their pending salary w.e.f. 01.01.2017 to 20.02.2018 i.e. for the period the petitioners actually worked.

2. *It appears that during pendency of the writ petition the post in question on which the petitioners were deputed on contract have been filled up by way of regular appointments. Needless to say, petitioners were at liberty to compete for the said regular post and in case, they were unsuccessful, they have no right to continue on contract basis. And, if they chose to not compete, it is their own doing. In any case, they have no right to continue perpetually on contract when regular appointees are available. In the circumstances, no further ground is made out to interfere. However,*

it is expected that for the period the petitioners rendered their services they shall be paid the upto date salary.

3. In the parting, learned counsel for the petitioners submits that still certain posts are vacant on contract basis, and in case, there is a requirement to fill those vacant posts the petitioners should be given weightage for re-engagement on the basis of principle of 'last come first go'. I see no reason why the department would not accord them the treatment in accordance with law, subject of course, to the work exigency.

4. Petition stands disposed of in the above terms.

5. Pending civil miscellaneous application, if any, also. stands disposed of."

It was observed by the learned Single Judge, vide order dated 18.08.2022, that the vacant posts in question had already been filled through regular appointments and that the petitioners, having participated in the selection process but remained unsuccessful in comparison to other competing candidates, could not claim any vested right to continue on contractual engagement. The action of the respondent-State, in the facts and circumstances of the case as noted therein, was held to be legal and devoid of arbitrariness. However, it was further observed that in the event the respondent-State intended to re-engage personnel or to fill up any available vacant posts on a contractual basis, due consideration may be accorded to the petitioners by applying the principle of 'last come, first go' for such re-engagement.

Consequent to the decision rendered in the aforesaid writ petition, the petitioners submitted a representation before the Deputy Commissioner, Sirsa, seeking their re-engagement. The said representation, however, came to be

rejected by the Deputy Commissioner vide the impugned order dated 14.09.2022, which reads as under:

“Order of Deputy Commissioner, Sirsa Dated 14.09.2022.

Under the Out-Sourcing Policy Dated 01.09.2006 and 06.04.2015, issued by the Chief Secretary to Government of Haryana, Five Clerk-cum-Data Entry Operators (Sh. Rakesh Kumar, Sh. Ravinder Kumar, Sh. Dhirender Kumar, Sh. Karan Chhabra and Sh. Ajay Arora), were appointed on Contract Basis (D.C. Rates) under Out-sourcing policy Part-II. Due to not receiving sanction from the government, their contract period was not extended. They filed CWP No.21336 and 26776 of 2018 in the Hon'ble High Court of Punjab and Haryana at Chandigarh, in which, orders were passed by the Hon'ble High Court on dated 27 08.2018 that payment of pending salary be made to these Data Entry Operators (Petitioners) for their working period. In compliance of the same, vide Office order Endst. No.3765-69/Estt. Dated 26.12.2018, payment of pending salary to these five operators was made. As per the orders issued by the Hon'ble Punjab and Haryana High Court dated 18.08.2022, the case has been disposed of. Application has been given by these operators on dated 06.09.2022 in this office. Regarding this, it is written to them that permanent appointment of clerks has been made by Haryana Staff Selection Commission in the year 2018 and 2020, after the appointment of new clerks, no employee is being engaged on contract basis in Part-II and vide instructions issued by the Chief Secretary to Government of Haryana vide No.16/07/2015 Dated 28.09.2021, new appointment on contract basis in Group-C and D under the Out-Sourcing Policy Part-I and II, has been stopped. Therefore, appointment of new clerk by Haryana Staff Selection Commission and in view of the above instructions issued by the Government, Clerk-Cum-Data Entry Operator cannot be engaged on contract basis by the office under Out-Sourcing Policy Part-II.”

Learned counsel appearing on behalf of the petitioners contends that the rejection of the petitioners' claim by the Deputy Commissioner, Sirsa, is premised upon the instructions dated 28.09.2021 issued by the Office of the Chief Secretary to the Government of Haryana. It is submitted that the said instructions pertain to fresh contractual appointments, whereas the petitioners are not seeking appointment afresh, but are asserting a claim for re-engagement on the basis of their prior service.

Upon a pointed query put by this Court to learned counsel for the petitioners as to whether any fresh contractual appointments have, in fact, been made against the vacant posts in question, learned counsel candidly submits that no such appointments have been made by the respondent-authorities and that the posts remain unfilled as on date.

Per contra, learned State Counsel places reliance upon the judgment rendered by a Division Bench of this Court in *Manish Kumar v. State of Haryana*, LPA No. 777 of 2022, decided on 02.12.2022, to contend that a contractual employee does not possess a vested legal right to claim continuation in service after expiry of the contractual term, save and except where such continuation is underpinned by a statutory mandate or a binding policy. It is further pointed out that the decision in *Hargurpartap Singh v. State of Punjab*, (2007) 13 SCC 292, was specifically taken into consideration while rendering the aforesaid judgment dated 02.12.2022. The relevant extract of the same is reproduced hereinafter below: -

"8. The prayer made by the writ petitioners in the writ petitions was for quashing the action of the respondents where despite the issuance of letter of extension dated 06.03.2019 (Annexure P-6),

they had not been allowed to join by respondent No.2-Corporation on the post of Junior Engineers. The learned Single Judge came to the conclusion that the petitioners, on the expiry of the contract period, did not have any vested right to continue in service and they had been appointed for a period of one year or till appointment of regular incumbents, whichever is earlier. On completion of last extension, they were taken to be relieved since the Corporation was in the process of restructuring and even the requisition sent to the Staff Selection Commission for filling up regular posts including those of Junior Engineers had been withdrawn. It was held that since there was no work available, the services of the writ petitioners were not required and they could not claim to be allowed to join and work when no such work was available. The argument raised that the respondents had gone to the extent of changing the nomenclature of the jobs and coming up with a plea that sufficient work was not available was also repelled as it was for the employer to see how much work was available and how many hands were required for doing that work and whether the work available justifies hiring of more work force and the number and period for which such additional work force should be hired. The submissions made that on account of asking for hike in wages by the employees was the reason to push them out was also not made out and the fact that there was no mala fides on the part of the respondents and neither any material had been placed on record to that extent. Reliance upon the judgment of the Apex Court in Hargurpratap Singh vs. State of Punjab and others, (2007) 13 SCC 292 was also repelled on the ground that there was nothing to show that similarly situated employees on contractual basis were being appointed in their place on the same terms and resultantly, the writ petitions were as such dismissed.

9. Counsel for the appellants has vehemently submitted that there was availability of posts while referring to a communication dated 04.06.2021 (Annexure A-5) to show that revised man power

is required to be outsourced as per the requirement of the Corporation and Senior Site Engineers and Junior Site Consultants were required and it was claimed that they were in the same pay grade as such. Similarly, reliance is also placed upon the document now placed on record dated 14.03.2022 (Annexure A-1), which is a noting portion showing that there was requirement of five Junior Engineers (Civil) and 4 Junior Engineers (Electrical) at level-III. It is, thus, submitted that the learned Single Judge was not correct in holding that there was no availability.

10. We are of the considered opinion that the argument is bereft of any merit as admittedly, at an initial point of time, the appellants were appointed on the basis of a walk-in-interview as per advertisement (Annexure P-1), which was conducted for J.E. (Civil) and J.E. (Electrical). The advertisement specifically stated that the appointment shall not be beyond a period of one year or when regular employees are available, whichever is earlier as per the policy decision of the Government dated 06.04.2015 and the employees did not have any right of regularization. The letter of engagement as such was issued on 03.06.2016 (Annexure P-2) which was also mentioning the said fact and putting the appointees in the pay band of Rs.15,559/- per month, which was 50% of the initial pay + grade pay + dearness allowance of a fresh entrant regular employee. It was specifically mentioned that the service contract period was to cease on the expiry of the term without providing any claim for continuity of contract of service or any other consequential benefit and there would be no legal right to claim regularization of service or any other benefit like seniority in the Corporation. The period was extended on 21.07.2017 for a period of one year beyond 02.06.2017 with the same conditions till regular selected candidates are appointed whichever is earlier. The formal order was passed on 20.09.2017 (Annexure P-4). It is the admitted case that their services as such were dispensed with at the expiry of the said period though a proposal had gone for their extension

which was given on 06.03.2019 (Annexure P-6) but they were never allowed to join thereafter. Resultantly, the writ petitions came to be filed seeking the necessary relief on the strength of the said communication.

11. The stand by the respondent-Corporation was that they were restructuring as such and even the requisition sent for appointment of regular employees of 152 posts including the posts of Junior Engineers to the Haryana Staff Selection Commission was withdrawn on 30.10.2019 (Annexure R-2/1) and at present, there was no fresh proposal for construction of new godowns and the present strength of Junior Engineers was sufficient.

12. It is not disputed that in pursuance of the subsequent appointment which was after a period of almost 3 years on account of outsourcing of similarly situated persons out of the 8+1 writ petitioners, two who have joined, as would be clear from the grounds of appeal itself, the cause of action accrued. Apparently, there is a period of 3 years' lag as such as to when the service was dispensed with and any requirement which has now arisen on account of the intervening period which has gone by would not as such give any ground to the appellants to plead on the basis of the judgment in Hargurpratap Singh's case (supra) that they should be adjusted. Nothing could be brought on record to show that at the time when the services were dispensed with, similarly situated persons were asked to apply by way of any advertisement at that point of time.

13. In such circumstances, the reasoning given by the learned Single Judge that the judgment in Hargurpratap Singh's case (supra) is not applicable cannot be interfered with and is well justified. The terms and conditions as such of appointment were of contractual nature and the appellants were well aware of their status as they have no legal right to continue in service. It is for the Corporation to see that at what point of time, how much man-power is required and keeping in view the particular nature of work which

has to be done in view of subsequent events. If some requisition of additional staff is required, it would not give a right as such to the appellants to contend that they had a legal right to continue only on account of a ex post facto sanction which has been granted which was not acted upon. For the grant of a writ in the nature of mandamus, a legal statutory provision or a binding policy as such would be the requirement and in the absence of the same, no writ of mandamus is liable to be granted. Therefore, we are of the considered opinion that the learned Single Judge has not erred in any manner in dismissing the writ petition."

He further places reliance on the **judgment dated 22.09.2022** passed by this Court in the matter of **Monika Sharma Versus State of Haryana** bearing **CWP No.1155 of 2021** to corroborate his aforesaid arguments. The relevant extract of the same is reproduced hereinafter below:

"5. Concededly, the petitioner's services were hired on contract. The contractual employee has only limited rights confined within the four corners of the contract of employment. It is the prerogative of an employer to continue and/or discontinue with the contractual services in terms of the contract. I am of the view that on the short ground of being a matter of contract, this Court ought not to exercise its extraordinary writ jurisdiction.

6. That apart, in view of the unequivocal stand taken in the return that the services of the petitioner were engaged subject to the requirement of the work and current work exigency since does not warrant any such requirement, therefore, respondents cannot be forced to continue employing the petitioner. Being matter of contract, I see no grounds to interfere in the extra-ordinary writ jurisdiction."

It is further submitted by the learned State Counsel that the decision of the respondent-authorities not to renew the contractual engagement of the

petitioners already stands affirmed by the Division Bench of this Court. He further submits that although the instructions dated 28.09.2021, issued by the Chief Secretary to the Government of Haryana, were neither under consideration nor was their legality or enforceability examined in the earlier order dated 18.08.2022, even so, the said order merely required the respondent-authorities to consider the petitioners' claim for re-engagement in the event of deployment against vacant posts, and that too, on the principle of 'last come, first go.'

It is contended that the mere use of the expression 'new appointment' in the impugned order cannot be construed to vitiate the reasoning assigned therein. The said expression, according to learned State Counsel, is generic in nature and ought to be interpreted as referring to engagement of any person against the said post in any manner other than through regular recruitment.

He argues that it lies within the exclusive domain of the employer to determine whether or not a particular post is to be filled and that no individual, including the petitioners, can assert a legally enforceable right to seek appointment—contractual or otherwise—merely on the basis of the existence of a vacancy. It is contended that once the employer has taken a conscious decision not to fill the posts in question, no right of re-engagement can be claimed by the petitioners.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The undisputed factual position that emerges from the record is that the petitioners had previously invoked the writ jurisdiction of this Court seeking

a direction to the respondent-authorities to permit them to resume duties, alleging that their services had been unlawfully discontinued. The respondent-authorities, in defence, contended that the petitioners' contractual engagements stood determined and regular appointments had since been made against the posts in question.

The learned Single Judge, while adjudicating the earlier writ petition, accepted the stand of the respondent-authorities and found no infirmity or illegality in the discontinuation of the petitioners' services and the writ petition was dismissed to the above extent. However, a limited observation was made to the effect that, in the event the respondent-authorities intended to fill up the remaining vacant posts through any mode other than regular appointment, the petitioners' claim for re-engagement ought to be considered, having regard to the principle of "last come, first go."

It is an admitted position that the said vacant posts have not been filled up by any manner other than through regular recruitment. In such circumstances, the petitioners cannot derive any enforceable right to seek re-engagement solely on the basis of the observations made in the order dated 18.08.2022.

The law, as enunciated by the Division Bench of this Court in ***Manish Kumar v. State of Haryana (supra)***, is clearly applicable to the facts of the present case and operates against the claim of the petitioners.

Finding no illegality, perversity or impropriety in the impugned order dated 14.09.2022 (Annexure P-17) passed by respondent No.4- Deputy Commissioner, Sirsa, the instant writ petition is dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

MAY 08, 2025.
Rajender

(VINOD S. BHARDWAJ)
JUDGE

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