

2025:PHHC:021863



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

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**CWP-40658-2018 (O&M)
Date of Decision: 13.02.2025**

CHETAN SETHI

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Ms. Ritam Aggarwal, Advocate
for the petitioner.

Mr. P.C. Goyal, Addl. A.G., Haryana.

Mr. G.P.S. Bal and Mr. Shubham Makkar,
Advocates for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

Seeking issuance of directions to the respondents not to replace the petitioner with any other *ad hoc*/contractual employee and further to regularize the services of the petitioner to the post of Clerk, the instant writ petition has been filed before this Court.

Learned counsel for the petitioner contends that the respondent-Office of Chief Electoral Officer had issued a public advertisement for walk in tests/interview to be held on 10.09.2011 for 01 post of Steno-Typist and 08 posts of Clerks/Moharir on contractual basis, initially for a period of six months or till regular recruitment of Steno-Typist/Clerks, whichever is earlier. She contends that the applications for the said vacancies were also invited through Employment Exchange in compliance of the Employment Exchange Compulsory

Notification of Vacancies Act, 1959. Since the petitioner fulfilled the eligibility conditions prescribed thereunder, he participated in the selection process and was declared “pass” out of a total 7 candidates that had applied for the post of Clerk/Moharir at that point of time. The result was published by the respondents on 21.09.2011. The petitioner was thus selected and was issued an appointment letter dated 01.11.2011 appointing him as a Clerk on contractual basis through an outsourcing agency viz. Ask Me Quick Services. It is further submitted that on account of certain complaints against the said outsourcing agency, the same was blacklisted by the respondents and the petitioner was then directly engaged by respondent No.3. Even though no separate letter of appointment was issued, in order to substantiate her abovesaid argument, reliance is placed on the bank account statement of the petitioner, which reflects credit of salary to the account of the petitioner directly by the office of Chief Electoral Officer since February 2012 till 2018, when the instant writ petition was filed. She further contends that the specific averment made by the petitioner in paragraph No.3 of the writ petition in this regard has not been denied or disputed by the respondents. Hence, the relationship of the petitioner thus becomes that of an employee working directly under respondent No.3 and not through any outsourcing agency. She contends that the petitioner has been continuously working against a vacant sanctioned post of Class-III, to the complete satisfaction of the respondent officials, ever since the date of his appointment i.e. 01.11.2011 on contract basis. It is also argued that the total sanctioned strength of Clerk/Moharir, as approved by the Government of Haryana in the office of Chief Electoral Officer is 19 and

out of the same, 09 posts of Clerks/Moharir were vacant at the time of filing of present writ petition.

It is argued that the respondents wanted to terminate the services of the petitioner for making another contractual appointment, which such appointment is impermissible as per settled position in law to the effect that one set of contractual employees cannot be replaced by another set of contractual employees.

On filing of the instant writ petition, notice of motion was issued on 01.01.2019 and the respondents were directed not to terminate the services of the petitioner till the next date of hearing. She contends that the respondent-Government later moved an application for vacation of the *ex-parte* interim order bearing No.CM-3739-CWP-2019, on the ground that the sanction for engagement of the petitioner on contractual basis had been granted only till 31.12.2018 and that his contract cannot be continued thereafter. It was also stated in the said application that the Haryana Staff Selection Commission made recommendations for recruitment of regular employees and that pursuant to said recommendations, 16 regular Clerks have already joined and other regularly recruited Clerks were also expected to join soon. It was thus prayed that since the engagement of the petitioner was only till the joining of regular recruits and such regular recruitment having already been recommended by the Haryana Staff Selection Commission, the petitioner had no subsisting right to work against the said post.

The said application came up for hearing on 03.04.2019. It was specifically argued by the counsel for the non-applicant/petitioner that the

averments contained in the application were not entirely true as four other employees were working on contract basis, even though they had been appointed later in August 2018. The State Counsel had sought time to file an affidavit to contradict the claim but despite a lapse of nearly six years since passing of the said order, no affidavit has been filed by the learned State Counsel clarifying whether any regular sanctioned post is/was lying vacant in the respondent-Department. She thus argues that the respondents having not shared the abovesaid information with this Court, despite a specific order passed in this regard, an adverse inference ought to be drawn against the State Government and it has to be presumed that the sanctioned posts are still lying vacant. She contends that a mere posting of the Clerks by way of transfer to defeat the rights of the petitioner is a mischievous act on the part of the State and needs to be restricted.

Further reliance is also placed by the counsel for the petitioner on the judgment of the Hon'ble Supreme Court of India in the matter of ***Jaggo Vs. Union of India and Others*** reported as ***2024 INSC 1034*** decided on ***20.12.2024***, wherein the Hon'ble Supreme Court held that the State cannot be permitted to defeat the rights of the employees as a means of exploiting their position and it further directed regularization of the petitioners therein propagating a similar position in law.

She contends that the petitioner has been working against the sanctioned post continuously since 01.11.2011 and without any complaint of any nature whatsoever against his work and conduct and the selection of the petitioner was also done through a regular selection process i.e. by way of an

advertisement and also by way of inviting applications from the Employment Exchange, hence, it is not a case of backdoor entry. Consequently, the appointment of the petitioner cannot be said to be illegal, hence, the petitioner is entitled to be regularized.

Counsel for the respondent-State of Haryana, on the other hand, submits that the petitioner was engaged through an outsourcing agency on contract basis and that the petitioner himself stopped attending the office since 31.12.2018. Hence, he stood relieved on 01.01.2019. It was thus not a case where the petitioner was not being permitted to discharge his duties and rather a case of abandonment. He further submits that the petitioner was never directly engaged by the respondent-Department and had been engaged through an outsourcing agency, hence, there was no privity of contract or employer-employee relationship between the petitioner and the respondent-Department. He further makes a reference to the averments contained in paragraph No.2 of the reply on merits to submit that when the interviews were held on 10.09.2011, the record sheets reflect that the petitioner had not participated in the selection process and that somehow in a clandestine manner, the petitioner appeared in the test and his name was reflected in the final result. He, however, submits that the record pertaining to the same is not traceable in the office. It is further argued that Haryana Staff Selection Commission has already made recommendations for regular appointment of Clerks against the sanctioned posts, through a regular selection process, hence, the petitioner has no continued right to serve against the said post as it is not a case of replacement by a contractual employee but by a regular employee. The writ petition thus deserves to be dismissed.

On being confronted with the judgment of the Hon'ble Supreme Court in the matter of **Jaggo (supra)**, learned counsel does not dispute that the controversy in the present case would be governed by the ratio of the said judgment.

Counsel for respondent No.3- Chief Electoral Officer reiterates the plea as has already been raised by the State Counsel and submits that there are no vacant posts available in the respondent-Department and that there is no privity of contract between petitioner and respondent since the petitioner had been engaged through an outsourcing agency. He contends that the petitioner cannot claim any superior right of regularization considering that his appointment is not through a regular selection process. He further submits that the petitioner had been relieved on 01.01.2019 but the said order has not been challenged, hence, the prayer to continue cannot be granted in favour of the petitioner. He further contends that the respondent-Department had sent a requisition to the Government for filling up the vacant posts and the appointment of four employees as referred to by this Court in its order dated 03.04.2019 was a stop gap arrangement during the period when the regular selection process was yet to be completed and recommendations were still to be made by the Haryana Staff Selection Commission.

Learned counsel for the respondent-Department further submits that the appointment of the petitioner cannot be said to be continuous as he has been working in the respondent-Department due to an interim order passed by this Court, hence, the plea of the petitioner for regularization of his services cannot be accepted at this juncture.

Learned counsel further contends that so far as the declaration of the result of the written examination/computer test is concerned, there was no mention of the name of the petitioner and that even on 10.09.2011, when the interviews were held, the list appended does not show that the petitioner had appeared in the same. The same has thus occurred due to some wrong documents or malpractices. Hence, the plea of the petitioner for regular appointment deserved to be discarded and the petition deserves dismissal.

No other argument has been addressed nor has any other judgment been cited by either side.

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.

Dealing with the primary objection raised by the State Counsel about the petitioner having not been properly appointed, much emphasis has been laid by the counsel on an argument that during the written test conducted by the respondents, the petitioner is not reflected to have appeared in the same and his name does not reflect even in the list of persons who had appeared for the interview, hence, it cannot be said that the petitioner had been appointed through a regular process. He contends that apparently, the appointment letter was issued to the petitioner in a clandestine manner and without any concurrence of the respondent-Department.

The counsel for the respondent-Department has been confronted with the undisputed documents i.e. the salary that has been credited from the account of the respondent No.3 to the account of the petitioner as per the

statement of accounts and also their own admission to the effect that the petitioner had been marking his presence with the respondents till 31.12.2018 which reflects that not only was the respondent-Department crediting the salary in the account of the petitioner, but they also accepted that the petitioner had been continuously discharging his duties as an employee with the respondent-Department from 01.01.2011 to 31.12.2018. Surprisingly, even though the respondents are disputing the mode of appointment of the petitioner, however, they have not offered any satisfactory explanation to this Court as to how and under what circumstances the engagement of the petitioner was done considering that a specific averment about the mode and manner by which the petitioner had been appointed has been mentioned by him in the pleadings. The respondents have been evasive and non-responsive to the specific claim of the petitioner and yet want acceptance of their objections. The entire contemporaneous evidence suggests about claim of the petitioner to be more established but for the claim made by the respondents. The respondent-Department cannot claim benefit for itself by raising a belated dispute qua question of fact by withholding documents that ought to be in their possession. Having withheld the said documents, the respondents cannot later be permitted to deny the relationship of employer and employee, more so, when they have not given any explanation as to why and under what circumstances monthly salary was being regularly credited to the account of the petitioner in case there was no such relationship.

Such a plea has been raised by the respondents at such a belated stage, without even conducting any preliminary fact-finding inquiry as well to substantiate or to support their claim. The objection is accordingly rejected.

Now adverting to the second argument of the respondents that petitioner would have no right to continue as a contractual employee since regular selection had been undertaken and recommendation had been made by the Haryana Staff Selection Commission.

It is noticed that the above plea regarding having sent a requisition to the Haryana Staff Selection Commission for recruitment of Clerks against the vacant posts was also raised in the application bearing No.CM-3739-CWP-2019 before this Court, which was moved after the declaration of result by the Haryana Staff Selection Commission. A specific contention raised by the counsel for the petitioner was noticed by this Court that four more persons, who were appointed after the petitioner, were working as Clerks in the respondent-Department on contractual/*ad-hoc* basis. The respondent-State/Department was directed to file an affidavit in this regard, but no such affidavit has been filed even though a period of six years has elapsed since then. Even today, to the pointed query raised, counsel for the respondents are not in a position to make a statement that no contractual employee has been engaged or is working currently in the office of the Chief Electoral Officer. This Court finds no reason as to why the specific information has not been furnished, especially when a specific pleading had been raised by the counsel for the petitioner that out of 19 sanctioned posts, 09 posts were vacant, and no recruitment has been made on the said posts and when this Court asked for an affidavit to be filed.

A specific query was also posed to the counsel for the respondents as to what was the total requisition against the vacant and anticipated vacancies sent by the office of the Chief Electoral Officer to the State Government and as

to how many recommendations had been actually made by the Haryana Staff Selection Commission for filling up those posts. The silence maintained by the respondents with respect to the number of vacancies and the persons appointed against the regular posts raises much doubt w.r.t. the fairness of the stand adopted by the respondents.

A specific question has also been put to the counsel for the respondents as to whether the four persons, who were noticed to be working on contract basis with the office of respondent No.3, by this Court in its order dated 03.04.2019, are still continuing or not, to which the counsel for the respondents again did not give any clear answer.

In the said circumstances, this Court has no basis to accept the argument advanced by the respondents that there is no vacant post that exists with the respondent-Department or that recommendation for appointment of regularly selected candidates against all the vacant posts has already been made by the Haryana Staff Selection Commission.

Further, as far as the contentions of the respondents that there has been a break in the service of the petitioner and thus the benefit of regularization cannot be granted to him and that there is no challenge to the order of 31.12.2018 whereby the petitioner had been relieved, hence, the petition deserves to be dismissed are concerned, I am of the view that the said arguments are misconceived. There is nothing on record to substantiate that the petitioner had been engaged intermittently by the respondents or that there was a substantive gap during the period from 01.11.2011 till 31.12.2018. The statement of bank account shows that there is consistent and regular credit of a similar amount by

the respondents towards the salary of the petitioner. Surprisingly, even though the above argument has been advanced, however, the respondents have chosen yet again to withhold the requisite record in relation to the break in service, if any. The inference thus has to be drawn against the respondents.

Moreover, merely because the order of relieving was passed by the respondents on 31.12.2018 on account of an alleged non-appearance of the petitioner in the office on one day is concerned, the same would be insignificant since an interim order has already been passed in the writ petition that had already been filed before this Court on 31.12.2018 itself. The very fact that the petitioner has promptly approached this Court shows that firstly there was no break in service and secondly it was the respondents themselves who did not allow him to join. Had it not been so, there was no occasion for the petitioner to approach this Court. The respondents cannot now be permitted to take benefit of their own illegal conduct. Further, there is nothing on record even to assume that the said relieving order had been conveyed or handed over to the petitioner ever before filing of the present writ petition. The abovesaid plea of the respondents was also not accepted by this Court when the application for vacation of interim stay was filed by the respondents and the interim order granted by this Court on 01.01.2019 was not vacated on 03.04.2019. No steps have been taken even thereafter by the respondents to bring the necessary data and record that was asked for by this Court to be filed by way of an affidavit of the respondents-Authorities. There was thus no need of raising a separate challenge to the order of relieving since it was not an order imposing penalty and the operation thereof having already been stayed, a specific prayer for setting aside the same was not

warranted since the said challenge was inherent in the prayer that had already been asked for by the petitioner herein i.e. seeking regularization of his services against the post in question. Besides, the order of relieving is not based on merit and does not assign any reason. The same is thus an administrative act and not a *quasi-judicial* order and it was inherently a subject matter of lis. The State cannot be allowed to take technical objection only as a means to harass an employee on technicality. Constitutional Court, being a Court of law and equity, can always take entirety of facts into consideration to ascertain whether the objection is substantive or not. The respondents have been granted all opportunity to defend their order of relieving and in the absence of any reason therein, no new reason can be crafted to defeat rights of an employee.

It is also noticed that the counsel for respondents have failed to dispute the ratio of the judgment of Hon'ble Supreme Court of India in the matter of *Jaggo (supra)*.

Under the given circumstances, the present writ petition is disposed of with the following directions: -

- (i) The respondents are restrained from terminating the services of the petitioner or to substitute/replace him by any other contractual/*ad-hoc*/transferred employee, till such time the regular appointment on the said post(s) is made; and
- (ii) The respondents are further directed to examine the case of the petitioner for regularization of his services by also considering the judgment of the Hon'ble Supreme Court in the matter of *Jaggo (Supra)*.

Let the necessary decision on the claim of the petitioner be taken by the respondent-Authorities/Competent Authority within a period of four months of the receipt of certified copy of this order.

Disposed of in above terms.

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

FEBRUARY 13, 2025.
Rajender

(VINOD S. BHARDWAJ)
JUDGE

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