

(2021) 09 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Latter Patent Appeals No. 81 Of 2021 (O&M)

Kumar Saurabh And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 23-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2021) 09 P&H CK 0045

Hon'ble Judges : Rajan Gupta, J;Karamjit Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Karamjit Singh, J

Case has been heard through video conferencing on account of COVID-19 Pandemic.

The appellants have filed this appeal against the order dated 30.9.2020 passed by the learned Single Judge whereby CWP-12274-2020 filed by the appellants was dismissed.

The case of the appellants is that they were appointed on the posts of Peon and Computer Operator in the office of Sirsa Central Co- operative Bank Ltd., Head Office Sirsa, District Sirsa (in short 'the Bank') through private service provider i.e. Ding Man Power & Securities Services Pvt. Ltd. The appellants challenged order dated 31.01.2020 (Annexure P-5) passed by the aforesaid outsourcing agency, addressed to Chief Manager of the Bank, requesting for relieving the appellants, who were appointed through the said private outsourcing agency, on completion of its contract with the Bank. The further prayer of the appellants was for quashing the orders by which certain employees, who were appointed by the subsequent outsourcing agency i.e. M/s Sona Enterprises, Panchkula in June/ July, 2020.

The learned Single Judge heard the counsel for the petitioners (appellants herein) and the State counsel who was having advance notice of the writ petition and dismissed the writ petition with the following observations:-

"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."

Appellants being not satisfied, have filed present appeal.

We have heard the counsel for the appellants and the State counsel.

The counsel for the appellants contended that the learned Single Judge dismissed the writ petition on the ground that it was not maintainable. The counsel for the appellants while referring to the decisions in K.K. Saxena vs. International Commission on Irrigation and Drainage & Ors. 2015(2) SCC (Civil) 654; Secretary, Haryana State Electricity Board vs. Suresh, 1999(3) SCC 601; Ravneet Kaur vs. The Christian Medical College, Ludhiana, 1997(3) SCT 210, contended that the writ petition filed by the appellants is maintainable against the State of Haryana and the Bank. The counsel for the appellants further argued that in the present case real employer was the State Government. So called service provider was just intermediary between the Government and the appellants. The appellants were working under the control of the State Government and thus there was relationship between the Government and the appellants. The counsel for the appellants while referring to judgment of Hon'ble

Supreme Court in Secretary, Haryana State Electricity Board's case (supra) submitted that in the instant case, the so called contract system involving service provider was a mere camouflage. It was further contended that real contract of employment was between the State on the one hand and the appellants i.e. the employees on the other hand. The counsel for the appellants further referred to Hussainbhai vs. The Alath Factory Tezhilali Union and other¹⁹⁷⁸⁽⁴⁾ SCC 257, wherein the Hon'ble Apex Court while applying the principle of 'lifting the veil', held that the real employer is management and not the immediate labour contractor.

The counsel for the appellants further argued that the appellants were not replaced by the regular employees and rather they are being replaced by other set of contractual employees, which is impermissible under law. In support of his arguments the counsel for the appellants referred to Hargurpratap Singh vs. State of Punjab & Others, 2007(13) SCC 292, wherein it was held that a person engaged on ad-hoc basis cannot be replaced by another ad-hoc arrangement of the same nature. The counsel for the appellants also referred to Narinder Singh Ahuja and others vs. Secretary, Ministry of Health and Family Welfare and others 2014(23) SCT 450 (Delhi). The counsel for the appellants while summing up his arguments contended that in the light of aforementioned settled position of law the present appeal deserves to be accepted.

On the other hand, the State counsel submitted that there is no illegality or infirmity in the impugned order passed by the learned Single Judge. The learned State counsel further submitted that there was no relationship of employer and employees between the State and the appellants who were engaged through private service provider. The State counsel further argued that the citations referred by the appellants are not applicable to the case in hand. The learned State counsel while concluding her arguments submitted that the appeal filed by the appellants deserves to be dismissed.

We have considered the contentions raised by the counsel for the parties.

In the instant case, the appellants failed to produce their appointment letters, if any, issued by the Haryana Government or the Bank. Rather, it is admitted case of the appellants that they were engaged by the private service provider and their services were put at the disposal of the bank. Thus making it clear that appellants were not appointed by the Haryana Government or the Bank and they were actually hired by private outsourcing agency. It being so, the learned Single Judge rightly concluded that there is no master and servant relationship between respondents and the petitioners (appellants herein). The similar view was taken by learned Single Judge of this Court in titled as Vikash vs. 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 employees.

We are of the view that the judgments relied upon by the counsel for the

appellants are not applicable to the facts and circumstances of the present case. The judgment of the Hon'ble Supreme Court in Secretary, Haryana State Electricity Board's case (supra) was passed in the light of the provisions of Contract Labour Act 1970 which was enacted with the object to abolish contract labour and to regulate working conditions of contract labour in the industry. The case of Hussainbhai referred by the counsel for the appellants was relating to workmen who raised industrial dispute and consequently Award was passed in their favour and the factory owner unsuccessfully challenged the said Award on the ground that the workmen were not his workmen but were engaged by the private contractor.

The judgment rendered by the Hon'ble Supreme Court in Hargurpratap Singh's case (supra) is relating to contractual employees directly engaged by the authorities of the Government college. Aforementioned decision is not relating to outsourced employees as is the case in the present petition. So the appellants cannot take any assistance of the law laid down in Hargurpratap Singh's case (supra).

As has already been noticed above, the appellants have failed to show that they were under the direct employment of respondents. Besides, this it appears on the record that actually the appellants were hired by private service provider. So, there is no binding contract between the respondents and the appellants. That being so, the learned Single Judge rightly observed that the writ petition is not maintainable against respondents. We are of the view that the judicial pronouncements referred by the counsel for the appellants with regard to maintainability of the writ petition are not of any help to the appellants. The judgments in K.K. Saxena; Secretary, Haryana State Electricity Board and Ravneet Kaur's case were delivered by the Hon'ble Supreme Court and High Court in totally different context and are not relating to employment of outsourced employees. The reliance placed by the appellants in Narinder Singh Ahuja's case is also misplaced as in the said case, petitioners were aggrieved by non-extension of their contractual appointment. It is not out of place to note that the Hon'ble Apex Court in Yogesh Mahajan vs. Prof. R.C. Deka, Director All India Institute of Medical Sciences, SLP Nos. 22475-22476 of 2012 decided on 31.01.2018 has clearly observed that it is settled law that no contract employee has a right to have his or her contract renewed from time to time. It is also to be noted that Hon'ble Supreme Court in State of Karnataka vs. Uma Devi, 2006(4) SCC 1, deprecated the tendency of the Government and its departments regarding all types of irregular appointments being made by them without following the due procedure under the rules.

In the light of the above, we do not find it a fit case to interfere in the impugned order passed by the learned Single Judge and letter (Annexure P-5). Consequently, the appeal is hereby dismissed being devoid of merits. Pending application (if any), also shall stand disposed of.