
(2020) 09 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14830 Of 2020

Naveen Kumar

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 18-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 09 P&H CK 0178

Hon'ble Judges : Manjari Nehru Kaul, J

Bench : Single Bench

Advocate : Narender Pal Bhardwaj, P.K. Longia

Final Decision : Dismissed

Judgement

Manjari Nehru Kaul, J

Due to the outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India, inter alia for issuance of a writ in the nature of Mandamus for directing the respondents to regularize the service of the petitioner as clerk with respondent No.4 - Municipal Committee, Beri, keeping in view his length of service as well as in view of the Notification dated 09th July, 2014 (Annexure P- 10) of the Haryana Government, General Administration Department, General Services I and also in view of the judgment of the Apex Court rendered in Secretary, State of Karnataka and others Vs. Umadevi and others, 2006 (4) SCC I (Annexure P-15). Besides this, petitioner has also prayed for issuing directions to the respondents not to relieve/remove/replace the petitioner with another contractual employee.

The petitioner has submitted that he has completed more than 13 years of service on the post of clerk in the Municipal Committee Beri, which he had joined on 17th April, 2007. Hence, he is entitled to be regularized against the sanctioned post which are lying vacant. He has further submitted that despite

representations dated 08.06.2017 and 25.10.2019 (Annexures P-19 and P-20, respectively), having been made to the respondents for regularizing his services and an assurance also having been given to him, the respondents have been sitting over his representations by failing to take any steps in said direction.

The grievance of the petitioner is once in pursuance to advertisement No. 5/2019, issued by the Haryana Staff Selection Commission, regular appointments are made, he would be thrown out from service despite having served for a continuous period of 13 years in the Municipal Committee Beri. In support of his contentions, he has placed reliance upon the judgments of the Apex Court rendered in *Secretary, State of Karnataka and others Vs. Umadevi and others*, 2006 (4) SCC I (Annexure P-15) and *Amarkant Rai Vs. State of Bihar and others*, 2015 (3) Scale 505 (Annexure P-17).

Mr. Pawan Kumar Longia, DAG, Haryana, has put in appearance on behalf of the State, and at the very outset questioned about the maintainability of the writ petition itself by contending that the petitioner was an outsourced employee through his service provider/outsourcing agency namely M/s Khatri Security and Placement Services. He has submitted that firstly M/s Khatri Security and Placement Services has not been arrayed as a party in the present writ petition and secondly no doubt that the petitioner had been serving as a clerk since 2007, but being an outsourced employee, he could not claim regularization of his service against the vacant post, as there was no employer-employee relationship between the petitioner and Municipal Committee Beri, which had in fact, outsourced the work through the outsourcing agency M/s Khatri Security and Placement Services.

Heard.

It is not disputed that the petitioner is an outsourced employee. An outsourced employee cannot seek protection under Article 311 of the Constitution of India, as their appointments to the Department, where their services are outsourced are not made under the constitutional scheme of public appointments. The reliance placed by the petitioner on Umadevi's case (*supra*), would be of no avail to him, as it has been held in Umadevi's case (*supra*), that any appointment made in the State and its instrumentalities should only be in accordance with the rules and procedure relating to regular recruitment. In the instant case since the petitioner was an employee of an outsourcing agency, at the time of his appointment by his employer i.e. M/s Khatri Security and Placement Services, he would have been employed as per the eligibility criteria fixed by the outsourcing agency and without adhering to any recruitment rules as may have been provided for appointment to a public post. Concededly, the process of recruitment to public/Government post is controlled by a detailed procedure, which includes amongst other things, age criteria, mode of appointment, educational qualification etc., which cannot be given a go by, as any appointment to a public post cannot be beyond the terms of the constitutional scheme.

In view of above, no ground is made out to invoke the extraordinary writ jurisdiction of this Court. Accordingly, the writ petition stands dismissed.