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**(2013) 09 P&H CK 0041**

**In the Punjab And Haryana At Chandigarh**

**Case No :** LPA No"s. 469, 500, 501, 525, 552, 577, 578, 579, 580, 581, 640, 644, 675, 759, 795, 757 and 758 of 2013 (O and M)

Nishan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 30-09-2013

**Acts Referred:**

**Citation :** (2014) 1 SCT 33

**Hon'ble Judges :** Surya Kant, J; Surinder Gupta, J

**Bench :** Division Bench

**Advocate :** Rajiv Atma Ram, with Mr. Arjun Partap Atma Ram, Mr. K.S. Dadwal, Mr. Ranjit Sharma, Mr. C.L. Pawar, Mr. Manoj Pundhir, Mr. Pardeep Bhor and Ms. Aarti, for the Appellant; Amit Sethi, Advocate, Mr. Anil Kshetarpal, Advocate for the Caveators and Mr. J.S. Pari, Addl. AG., Punjab, for the Respondent

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## **Judgement**

Surinder Gupta, J.—By this judgment we propose to dispose of a bunch of 17 above captioned Letter Patent Appeals as these are directed against a common judgment dated 28.02.2013 passed by learned Single Judge dismissing the writ petitions filed by appellants. The appellants sought regularization of their services in view of the policy decision dated 18.3.2011 issued by the Punjab State. They were engaged by Service Provider and their services were put at the disposal of the Office of Deputy Commissioner in various Districts of Punjab and Department of Excise & Taxation, Punjab. The learned Single Judge on consideration of the question as to whether the employees engaged by Service Provider would be covered by the State policy dated 18.3.2011 has declined the relief sought by the appellants after holding that there exists no relationship of employer and employees between the Government Departments and the appellants.

2. For convenience sake, the facts of the appellants relating to Revenue Department, Punjab are being taken from CWP No. 18619 of 2011 titled as "Nishan Singh & others v. State of Punjab" (LPA No. 469 of 2013). The case of

the appellants in this case is that they were engaged in the year 2006 to serve on different posts like Clerks, Stenographers, Drivers, Peons and Sweepers etc. by the Service Provider against the posts sanctioned by the Punjab Government in the newly created Districts of Tarn Taran, Barnala, Mohali. The work and conduct of the appellants was statedly satisfactory and they also got appreciation letters. They were treated to be employees of the Department of Revenue and worked against the sanctioned posts. The concerned Deputy Commissioners recommended regularization of their services to the Financial Commissioner-cum-Principal Secretary to Govt. of Punjab, Department of Revenue. The appellants fulfilled all requisite educational qualifications and have gained experience during the period they have been serving under the Revenue Department of the State. On 12.12.2008, a decision was taken under the meeting convened by the Chief Secretary to Govt. of Punjab and recommendations were made that employees appointed through Service Providers may be regularised. The "Service Provider employees" also submitted a representation to the Chief Minister, Punjab, Chief Secretary, Financial Commissioner and Deputy Commissioner concerned for regularization of their services and for grant of regular pay scales. The Government of Punjab took one time policy decision dated 18.03.2011 for regularisation of the services of the employees who have completed three years service. This policy covered the daily wagers, work-charged, contractual employees working on permanent posts appointed after fulfilling eligibility criteria as per procedure. The Education Department, Punjab took a conscious decision that the Computer Teachers "appointed through Outsourcers" who had completed 2= years service be regularized. The appellants who are also covered under the policy have not been provided the benefit of regularization of their service and discriminated. The Subordinate Services Selection Board, Punjab-respondent No. 3 vide advertisement dated 28.07.2011 called for applications to fill up various vacancies in the Revenue Department. This action of the Government of Punjab has been assailed with the plea that the regular posts in the Revenue Department cannot be filled up without considering the claim of the appellants under the policy of the Government of Punjab dated 18.03.2011.

3. In view of the orders dated 16.08.2011 passed in CWP No. 14866 of 2011, the appellants served the Government of Punjab with a legal notice dated 18.08.2011 seeking regularization of their services as per the policy decision dated 18.03.2011 (Annexure P-9) and to remove discrimination but finding no positive response that the writ petition was filed.

4. In reply to the writ petition, the respondents took the plea that the appellants were not entitled to the benefit under of policy decision dated 18.03.2011 as there was no relationship of employer and employee between the parties. After calling the tenders, the contracts were awarded to the Service Providers being the lowest tenderers for providing the manpower to the office of Deputy Commissioners. The payments were made to the Service Provider, who had been supplying the manpower. There is no direct or indirect contract between the appellants and the Deputy Commissioners. It was the Service Provider who was

having overall control and supervision over the manpower being supplied by him. The make-shift arrangement was made due to creation of new Revenue Districts and the posts to be sanctioned in due course of time were to be filled up through open competition. The recommendations made by the Deputy Commissioners for regularization of the services of the appellants and also the recommendations of the Chief Secretary were not approved by the Government. Regarding the plea of absorption of Computer Teachers as regular employee in the Education Department, the respondent has explained that they were appointed on contract basis by Society called Punjab ICT Education Society floated by the Department itself which was under the control of Education Department, Punjab. There is no discrimination with the appellants on this account.

5. The facts with regard to the appellants' working in the Department of Excise & Taxation are being taken from the lead case bearing CWP No. 16395 of 2012 titled as Hardev Singh & Ors. v. State of Punjab & Ors. (LPA No. 759 of 2013). The appellants in this case have averred that in view of the ban imposed by Government of Punjab on regular recruitments in the year 2004 the posts of Data Entry Operators in the Department of Excise & Taxation, Punjab were filled through Service Provider. The appellants were duly selected in response to an advertisement floated by a Service Provider and were posted at Excise & Taxation Barriers at various locations all over Punjab. They were selected and given appointment letters by the Service Providers and since then they have been serving the Department. These appellants have also claimed their right to regular appointment under the Government policy dated 18.03.2011 and 17.11.2011.

6. The claim of these appellants have also been contested by the respondents with the similar pleas as has been taken in the case of employees of Department of Revenue. It has been averred that the appellants gave an undertaking at the time of their engagement by Service Provider not to make any claim against the Department of Excise & Taxation. In the year 2003, the tenders were called and agreements were executed between Excise & Taxation, Technical Service Agency (ETTSA) and M/s. CMC Ltd. for computerisation of Sale Tax information system. The necessity for computerisation had arisen due to the introduction of Value Added Tax (VAT). The project was spread over a period of five years with the total estimated cost of Rs. 45 Crores. However, the extensions as required were given from time to time. A sub vendor "The Providers" were further engaged by "CMC Limited". The term of agreement with CMC Limited was going to expire and thereafter, Wipro Limited was engaged for computerization of Tax Information System under the agreement dated 16.12.2012 for a period of five years. With the completion of work of data entry, it has come down by about 65% reducing the requirement of Data Entry Operator to great extent. The appellants have not impleaded their service provider as parties rendering their petitions as not maintainable.

7. Learned counsel for the parties have been heard at length and record perused.

8. The appellants have based their claim on the policy decision of the Government dated 18.03.2011 (Annexure R-I/2. Clause 2 of the policy provides as follows:

2. On the basis of the information received from the department regarding the employees working on contract basis, the matter was considered in the Cabinet Meeting held on 9.3.2011 and keeping in view the below mentioned decision taken by the meeting of Council of Ministers, the employees mentioned in the list sent by your departments (who fulfill the prescribed qualification and eligibility criteria as per the rules/instructions) are to be appointed on regular basis:--

i) Those employees who are working on Contract basis against regular posts and whose appointment has been made as per the prescribed qualification/eligibility by adopting proper & transparent procedure, their services w.e.f. 1.4.2011 or after the completion of 3 years service on contract basis, whichever is later, be regularized but no new posts will be created for this purpose.

9. As per the above policy, an employee had to fulfill the following criteria for his consideration for regularization.

(i) He was appointed as per the prescribed qualification/eligibility by adopting proper and transparent procedure;

(ii) He was working on contract basis against regular post.

10. Vide policy dated 18.03.2011 the benefit of regularization was extended to the contractual employee and daily wagers/work charge employees working in different departments while this benefit was extended to similar employees working in Boards/Corporations/Cooperative Societies/other societies and other Autonomous Body, vide policy dated 17.11.2011.

11. The question which arise for consideration is whether the appellants can claim any right against the respondent-departments under the policy of regularization dated 18.3.2011 or 17.11.2011 despite they being employees of Service Provider?

12. In support of their argument that the appellants despite being engaged by the Service Provider are deemed to be employees of the State and entitled to the benefit of regularization policy dated 18.03.2011 and 17.11.2011, learned counsel for the appellants have relied upon the following judgments:--

(i) Bhilwara Dugdh Utpadak Sahakari S. Ltd. Vs. Vinod Kumar Sharma Dead by L.Rs. and Others,

Hon"ble Supreme Court endorsed the finding of the Labour Court that the employees of the appellant taken through contractor were in fact the employee of the appellant. In para 9 of the judgment, it was also observed as follows:

9. The judgment of this Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., has no application

in the present. In that decision the question was whether in view of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 the employees of contractors stood automatically absorbed in the service of the principal employer. Overruling the decision in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], this Court held that they did not.

(ii) *Union of India and others v. Rajesh Kumar Solhar and others* (CWP No. 21225 of 2011, decided on 19.09.2012) by a Coordinate Bench of this Court.

In this case, the employees were initially engaged by the department and later on they were shown to have been engaged by contractor. The Labour Court allowed them the benefit of regular employees of the department.

(iii) *G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union*,

The workmen were held to be the employees of the ONGC with observation as follows:

- (1) That there existed a relationship of master and servant.
- (2) That there was no contractor appointed by ONGC.
- (3) That the ONGC used to supervise and allot works to individual workers.
- (4) That the ONGC took disciplinary action and called for explanations from the workers.
- (5) The workers were paid wages though they did not attend their duties due to Cachar Bandh and due to flood.
- (6) The wages were paid direct to the workers by the ONGC and the acquaintance roll was prepared by the Management to make payment to the workmen.

(iv) *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, ) Recent Apex Judgments 64 : 2007(4) S.C.T. 622 : 2007 (11) SCC 92;

The dispute in this case related to the daily wage employees of the Cooperative Electric Supply Society, which was taken over by the Electricity Board and their services were also taken over by U.P. State Electricity Board. These employees started working in the Electricity Board and claimed the benefits as being given to daily wage employees of the Board, which were allowed.

(v) *R.K. Panda and Others Vs. Steel Authority of India and Others*,

The contract labour was initially employed by the contractor but continued working for 10 years inspite of replacement and change of contractor. In these circumstances, they were ordered to be absorbed as regular employees.

(vi) *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*,

The dispute related to the Teachers appointed temporarily for three months or less by privately managed Degree Colleges receiving cent percent grant-in-aid and continued in service for years.

(vii) Tek Chand v. State of Haryana 2002 (1) SCT 308.

The matter in issue in this case was "Can the competent authority refuse to regularize the services of a daily wager merely because there was a break of more than a month even when the employer had caused the interruption in service?"

(viii) Nihal Singh and Others Vs. State of Punjab and Others,

In this case, Special Police Officers were appointed by the State in exercise of the statutory power u/s 17 of the Police Act and deputed as guards with the Bank(s). Their regularization was declined on the ground that they have been getting their salary from the Banks. The Hon"ble Supreme Court held that there was a relationship of employer and employee between the petitioners and the State.

13. In neither of the above referred cases, the dispute pertained to the regularization of services of the employees of a service provider by the State. The observations made therein thus do not advance the case of the appellants and are distinguishable.

14. 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.

15. 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.

16. 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.

17. In the light of above discussion, we find no factual or legal infirmity in the judgment of learned Single Judge. The appeals have no merit and are consequently dismissed.