

(2016) 08 P&H CK 0347
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 17441 of 2013 (O&M).

Shiv Kumar and another - Petitioners @HASH State of Haryana and another

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2017) 2 RSJ 333 : (2017) 1 SCT 197

Hon'ble Judges : Tejinder Singh Dhindsa, J.

Bench : Single Bench

Advocate : Harsimran Singh Sethi, Advocate, for the Petitioners; Ravi Pratap Singh, AAG, Haryana, for the Respondents

Final Decision : Disposed Off

Judgement

Tejinder Singh Dhindsa, J. - The petitioners who are two in number possess the qualification of Bachelor of Technology (B.Tech) in Agricultural Engineering. In a recruitment drive conducted and on the verge of the petitioners qualifying such degree they were selected and engaged as Horticulture Development Officer (Micro Irrigation) in the month of August, 2012. Such appointment was purely on contractual basis for a period of one year. Suffice it to notice that such contractual appointment in favour of the petitioners was facilitated in pursuance to a selection in which the Director General, Horticulture Department, Haryana and the Deputy Director, Horticulture (Micro Irrigation), Haryana had participated.

2. The instant petition was instituted in the year 2013 on the verge of expiry of their contractual engagement raising an apprehension that the respondent/ authorities will resort to a methodology where one contractual employee would be replaced by another.

3. Precise prayer raised in the present petition is for a writ of mandamus directing the respondents to allow the petitioners to continue in service till such time the posts are filled up on regular basis.

4. On 13.08.2013, at the stage of initial/preliminary hearing of the present

petition, notice of motion was issued and interim directions were issued to the effect that the services of the petitioners be not dispensed with till further orders.

5. It is not in dispute that the petitioners have continued and are still in service under the garb of such interim direction.

6. A joint written statement on behalf of respondent No.1 and 2 has been placed on record. Stand taken on behalf of the State is that the petitioners were engaged on contractual basis for a period of one year under the Haryana Government Outsourcing Policy dated 16.02.2009. It has been stated that under the outsourcing policy, there is no provision for extension beyond a period of one year and the petitioners having completed that contractual engagement, they would have no right to claim further continuance in service beyond the period of one year commencing w.e.f. August, 2012.

7. At the very outset, it may be observed that even though stand taken on behalf of the State in the written statement is that the petitioners have been engaged on contractual basis as per Haryana Government Outsourcing Policy dated 16.02.2009, yet there is no specific denial to the averments made in the petition that the petitioners had been appointed contractually in the month of August, 2012 in pursuance to a placement/recruitment drive in which the Director General, Horticulture himself has participated. Even the letter of appointment dated 14.08.2012 at Annexure P-1 in favour of petitioner No.1 had been issued by the Director General, Horticulture himself. Categorical averments that identical appointment letter had been issued at the hands of the Director General, Horticulture himself in favour of petitioner No.2 as well, has not been met with any denial.

8. Be that as it may, during the course of hearing today, Mr. Harsimran Singh Sethi, learned counsel appearing for the petitioners has referred to proceedings of the 77th Staff Meeting held on 14.06.2013 of the Directorate of Horticulture, Haryana, Panchkula under the Chairmanship of Additional Director Horticulture, Haryana and placed on record at Annexure P-4 to contend that there would be requirement as regards engaging of Horticulture Development Officers (Micro Irrigation) and such work requirement reflects a total of 22 posts across different Districts in the State. Counsel has also referred to document appended as Annexure P-6 along with the replication i.e. a communication dated 20.05.2014 from the Director General, Horticulture, Haryana and to the Principal Consultants, NABCONS and Chief General Manager, NABARD as regards outsourcing of services for third party inspection of Polyhouse and Micro Irrigation System installation under the Government Scheme.

By making reference to such document at Annexures P-4 and P-6, it is sought to be contended that not only is there workload justifying the engagement of Horticulture Development Officers (Micro Irrigation) but even a conscious decision is discernible at the hands of Director General, Horticulture, Haryana whereby engagement of such officials through the process of outsourcing is

being resorted to.

9. Mr. Ravi Pratap Singh, learned State counsel would vehemently oppose the prayer made in the petition by submitting that the contractual engagement entered into between the State Government and the petitioners having come to an end, there would be no vested right for them to pray for issuance of writ of mandamus claiming continuance and further engagement and that too on a contractual basis. It is further contended that as per latest policy of outsourcing being adopted by the State Government, the engagement of Horticulture Development Officers (Micro Irrigation) is to be done at the hands of NABARD and who has not even been impleaded as a party respondent in this petition.

10. Counsel for the parties have been heard at length and pleadings on record have been perused.

11. It is by now well settled that one contractual employee cannot be replaced by another similar arrangement. A reference in this regard may be made in the judgment of Hon"ble Supreme Court in Hargurpratap Singh v. State of Punjab and others, 2007 (13) SCC 292. However, a contractual arrangement in favour of an employee would always be subject to the right of the employer to resort to a method of regular appointment. It would also be open for the employer to dispense with the service of the contractual employee if his work and conduct is found wanting. Furthermore, if there is no requirement or reduction of workload, it would again be open for the employer to disengage the contractual appointee. Yet again, even if there be work, and on account of Budgetary/Financial constraints the employer chooses not to carry out the work or implement the project in question, it would always be open for the employer not to engage any contractual employee.

12. The pleadings on record, however, indicate that in the facts and circumstances of the present case, there is workload justifying engagement of Horticulture Development Officers (Micro Irrigation). Such fact is even conceded by Mr. Ravi Pratap Singh, learned State counsel on instructions from Mr. Satbir Sharma, Establishment Officer, Directorate of Horticulture, Panchkula, Haryana who is present in Court.

13. At this stage, the submission raised by learned State counsel as regards the engagement of manpower on contractual basis in the light of an outsourcing policy framed by the Government requires to be dealt with. In the considered view of this Court, the rights of the petitioners cannot be defeated merely by making a reference to an outsourcing policy and to thereby enable the State Government to shirk from his responsibilities even with regard to any contractual engagement that may have been entered into. After all, the agency which would engage and make contractual engagement is only an interface between the appointee and the Government. Undisputedly, the work that is to be carried out by such contractual appointee even though engaged at the hands of a contractor/ outsourcing agency is that of the Government. The salary also has to be paid

ultimately by the Government itself. Accordingly, it is held that the rights of the petitioners emanating in pursuance to a contractual engagement cannot be diluted merely in the light of an outsourcing policy having been framed.

14. In view of the above, the present writ petition is disposed of with the directions that the present petitioners would not be replaced by another contractual employee. It is, however, clarified that it would be open for the respondent/department to dispense with and to bring to an end the contractual engagement of the petitioners in the light of the eventualities and circumstances that have already been taken note of and culled out in this order.

15. Petition is, accordingly, disposed of.