

## **SUNITA YADAV v. STATE OF HARYANA , (2022-2)206 PLR 457 , 2022 PLRonline 6864**

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Lisa Gill.

SUNITA YADAV - Petitioner,

Versus

STATE OF HARYANA and others - Respondents.

CWP-23136-2021 (O&M)

**Service Matter - Out sourcing policy service provider is not an agency of the State - The service provider enters into an agreement with the State agency to provide the work force on certain terms and conditions - The candidates are selected by the service provider and supplied to the Government department - Thus, in this scenario it cannot be held that there is any privity of contract between the contractual employees and the State/department.**

Cases referred to:-

1. (2007)13 SCC 292, *Hargurpartap Singh v. State of Punjab*.
2. 2014(11) RCR (Civil) 262, *Nishan Singh v. State of Punjab*.

*Ms. ShaliniAtri*, for the petitioner.

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**Lisa Gill, J. - (6<sup>th</sup> January, 2022)** - This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

2. Petitioner, in this case, was admittedly appointed to the post of Restorer of a Library on contractual basis through an outsourcing agency i.e. respondent No. 4 in July 2020. She is aggrieved of dispensation of her service. It is submitted that work and conduct of the petitioner is satisfactory and there is nothing adverse thereto. It is further submitted that petitioner is in fact working for the respondent -State authorities and her salary is also being released by the State. Learned counsel for the petitioner refers to communication dated 08.11.2021 by Directorate, Higher Education, Haryana, Panchkula to Principal, Government College for Women, Narnaul to submit that privity of contract between the petitioner and the State - Department cannot be denied. It is contended that the respondent - authorities cannot displace the petitioner to appoint another contractual employee. Reliance is placed on the decision of Hon'ble Supreme Court in *Hargurpartap Singh v. State of Punjab*<sup>1</sup> (2007) 13 SCC 292. It is argued that one set of contractual

employees cannot be replaced by another such set of contractual employees unless their work and conduct is found to be unsatisfactory. Reliance is placed upon the pendency of CWP-433-2020 and similar writ petitions.

3. I have heard learned counsel for the petitioner and have perused the file.
4. Learned counsel for the petitioner is unable to deny that the petitioner was appointed on contractual basis through a service provider as per Outsourcing Policy of the State (Part-I). There is admittedly no appointment letter issued to the petitioner.
5. Keeping in view the facts and circumstances of the case, it is clear that privity of contract does not exist between the petitioner and respondents No. 1 to 3. Controversy at hand stands conclusively settled now. Reference in this regard can gainfully be made to a judgment of a co-ordinate Bench in CWP29655-2018 titled *Anmol Garg and another v. State of Punjab and others*, which has been upheld in LPA-1910-2018. The First Division Bench of this Court in LPA- 1910-2018 upheld the decision of the Single Bench while specifically observing as under:-

“ Learned Single Judge finding that the appellant was an employee of outsourcing agency which was having a license under the contract to supply manpower held there was no privity of contract between the appellant and the employer and she was not even a contractual employee. The principle being canvassed before us applies only in case there is a privity of contract between the employee and the employer. In the case in hand, the appellant was an employee of the service provider. The benefit of the said principle is not liable to be extended to her and, thus, we do not find any illegality committed by learned Single Judge in dismissing the writ petition.”
6. Reference in this regard can also be made gainfully to CWP-19762-2018 titled *Vikash v. The State of Haryana and others*.
7. A Division Bench of this Court in *Nishan Singh and others v. State of Punjab and others*<sup>2</sup> 2014 (11) RCR (Civil) 262 has clearly observed that a service provider is not an agency of the State. The service provider enters into an agreement with the State agency to provide the work force on certain terms and conditions. The candidates are selected by the service provider and supplied to the Government department. Thus, in this scenario it cannot be held that there is any privity of contract between the contractual employees and the State/department.
8. In an identical situation, another co-ordinate Bench refused to interfere in a similar matter on 02.12.2020 in CWP-17454-2020. Similar contentions on behalf of the petitioners in the said case, including the applicability of decision of *Umed Singh's case (supra)* as well as *Hargurpartap Singh v. State of Punjab*<sup>1</sup> (2007) 13 SCC 292 have been succinctly dealt with and I am in agreement with the same. The argument that petitioner should not be replaced by another set of employees lacks merit in the given factual matrix and, is hence, rejected. It is a matter of record that the Outsourcing Policy Part - I in any case is not under challenge and moreover once there is no privity of contract between the petitioner and the respondent - Department/State, the said argument does not hold good.

9. Another argument vehemently urged by learned counsel for the petitioners is that this writ petition should be adjourned, to be taken up with some other similar matters stated to be listed on 20.01.2021. Keeping in view the definitive pronouncement of the Division Bench of this Court, I do not find any ground or justification for adjourning these matters for the said date.

10. Accordingly, this writ petition is dismissed with no order as to cost.

11. Needless to say, the petitioner is at liberty to avail alternate remedy, if any, as may be, available to her qua the service provider.

R.M.S.

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*Petition dismissed.*

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