

Inamul Hasan And Others Vs State Of Haryana And Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 2, 2021

Acts Referred: Constitution Of India, 1950 – Article 226, 227

Hon'ble Judges: Jasgurpreet Singh Puri, J

Bench: Single Bench

Advocate: Shalini Atri, Naveen Singh Panwar

Final Decision: Dismissed

Judgement

Jasgurpreet Singh Puri, J

The petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of the

impugned letter dated 18.02.2021 (Annexure P-8).

The learned counsel for the petitioner has submitted that the Civil Surgeon, Nuh, had asked the respondent No.4 i.e. M/s Classic Manpower &

Construction Services which is a company which provides the outsource employees to the Civil Surgeon to appoint and inform two drivers on

temporary basis for 89 days vide letter dated 29.07.2020 (Annexure P-1). Thereafter, sanction was received regarding three persons vide letter dated

21.08.2020 (Annexure P-2). Thereafter, vide orders dated 10.08.2020 (Annexure P-3) and 27.08.2020 (Annexure P-4), the petitioners were selected

through the outsourcing agency for a period of 89 days. Thereafter, they were granted extension vide Annexure P-5 for another period of 89 days.

However, vide impugned letter dated 18.02.2021 (Annexure P-8), the Civil Surgeon, Nuh wrote to respondent No.4-outsourcing agency that three

drivers who are present petitioners did not fulfill the condition with regard to their driving licence and, therefore, asked the outsourcing agency to

replace the petitioners with another set of three drivers. The learned counsel further submitted that it amounts to replacing of a contractual employee

with another set of contractual employee and, therefore, this is not permissible under the law.

Mr. Naveen Singh Panwar, learned DAG, Haryana submitted that he has received the advance copy of the present petition and has also sought

instructions in this regard. He submitted that firstly the present petition is not maintainable in view of the fact that the petitioners were appointed by the

outsourcing agency and not directly by the State. He further submitted that vide letter dated 29.07.2020 (Annexure P-1) while seeking requisition from

respondent No.4, a clear cut pre-requisite qualification has been mentioned that the driver must have a valid driving licence to drive heavy transport

vehicle, as the case may be, which must be at least three years old and thereafter, vide letter dated 21.08.2020 (Annexure P-2) when the sanction

was granted with regard to three persons with the same qualification with regard to driving licence were mentioned. He further submitted that when it

was found that these drivers did not have pre-requisite qualification of three years of HMV, the Civil Surgeon, Nuh asked the outsourcing agency-

respondent No.4 to replace them with another set of three drivers vide letter dated 18.02.2021 (Annexure P-8) and therefore, there is neither any

illegality nor any perversity in the action taken by the Civil Surgeon, Nuh.

The learned State counsel further referred to Annexure P-10, which are the driving licences of all the three respondents which clearly show that they

got the licences for driving the heavy vehicles only in the years 2018, 2019 or 2020 and therefore, the pre-requisite of three years was not fulfilled and

therefore, has prayed for the dismissal of the present petition.

I have heard the learned counsel for the parties.

The petitioners were selected for 89 days basis through outsourcing agency and, therefore, certainly the petitioners did not have any privity with the

State. An express condition was mentioned in the Annexures P-1 and P-2 that the drivers must have a valid driving license of HMV which should be

three years old and the petitioners also got extension of 89 days but in fact their driving licenses were not of three years old. Thereafter on detecting

the same, the Civil Surgeon, Nuh wrote to the outsourcing agency to replace these drivers because they did not fulfill pre-requisite qualification of

three years driving licence of HMV. It is a case where petitioners did not fulfill the basic qualification which is apparent from their driving licences

Annexure P-10. Furthermore, this is not a case where a set of contractual employees are replaced by another set of contractual employees. As per

Annexures P-1 and P-2, the petitioners were appointed by respondent No.4 through outsourcing agency and were then selected and awarded work by

the Civil Surgeon.

The petitioners were to perform their duties in the Health Department and their duties were supposed to be sensitive in nature. In case they do not

fulfill the least minimum pre-requisite qualification of three years old HMV licence, which is evident from their licenses Annexure P-10, then the

petitioners do not have any right to continue with the same. Therefore, there is no perversity or illegality in the order passed by the Civil Surgeon, Nuh

vide Annexure P-8 in asking the outsourcing agency to recall the petitioners and to send another set of three drivers.

Consequently, the present petition is dismissed.