



2026:AHC-LKO:19712-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 275 of 2019

Ram Baran Saroj And Another

.....Appellant(s)

Versus

The State Of U.P.Throu.Prin.Secy.Geology And
Mining Lko.And Ors.

.....Respondent(s)

Counsel for Appellant(s)	: Pt. S. Chandra
Counsel for Respondent(s)	: C.S.C., Ashok Kumar Bajpai, Dipak Seth, Shyam Bahadur, Soorya Narayan Pandey

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE AMITABH KUMAR RAI, J.**

1. Heard Shri Pt. S. Chandra, learned counsel for the appellants and Shri Sanjiv Singh, learned Standing Counsel for the State-respondents.
2. By means of this appeal, a challenge has been raised to the judgment and order dated 04.07.2017 passed in Writ Petition No.14121 (S/S) of 2017, by which the writ petition of the appellants-petitioners has been dismissed on the ground that a writ petition under Article 226 of the Constitution of India is not the appropriate remedy for the grievances raised.
3. The contention of the appellants' counsel initially was that, in similar circumstances, a Co-ordinate Single Judge Bench has disposed of the writ petitions with a direction to absorb the persons similarly situated as the appellants, but in the case of the appellants, the petition has been dismissed on the ground of statutory alternative remedy.
4. In this regard, we have already decided the connected appeals and such judgments where directions of absorption had been given have been quashed. One such judgment passed in connected SPLA 396 of 2015 reads as under :-

"1. Heard learned Standing Counsel for the State-appellants and Shri Sameer Kalia, learned Senior Advocate assisted by Shri Srideep

Chatterjee and Mohd. Shameem Rizvi, learned counsel for the respondents.

2. This is an appeal filed by the State challenging the judgment and order dated 17.06.2016 passed in Writ Petition No.14277(S/S) of 2016 as well as order dated 28.07.2016 passed in review application.

3. The contention of the appellant's counsel is that admittedly, the respondents-petitioners were engaged as a stop-gap arrangement through a service provider till the posts of Khanij Moharrir (Class III post), driver and peon are filled up regularly. In fact, the post of Khanij Moharrir, being a Class III post, falls within the purview of the Subordinate Services Selection Commission and recruitment has to be made through the said Commission. A person engaged as a purely stop-gap arrangement through a service provider does not have any right of absorption on the regular post; therefore, the order is apparently unsustainable. An application seeking review of the impugned judgment and order dated 17.06.2016 was filed by the respondents-petitioners in Writ Petition No.14277 (S/S) of 2016, wherein an order was passed on 28.07.2016 reviewing the aforesaid judgment and providing that the respondents-petitioners along with other similarly situated persons, shall be considered on the basis of eligibility criteria to be laid down by the department, subject to their fulfillment of eligibility criteria for absorption against the respective vacant posts before making any regular appointment. It was further clarified that the case had been decided by the Court keeping in view the peculiar facts and circumstances of the case, which shall not be a precedent for other matters.

4. The contention is that there is no provision for absorption of persons engaged through a service provider on regular posts in the department, an aspect which has been lost sight of by the learned writ Court.

5. It is informed by the counsel for the appellant that, except for nine persons in Special Appeal No.396 of 2025 and three persons in connected Special Appeal No.395 of 2025, none of the other persons have been working after 2016 and they had worked only for about two years.

6. Learned counsel for the respondents-petitioners submitted that in the order of review itself, conditions have been put for considering their absorption; therefore, the appellants herein are at liberty to see as to whether the respondents-petitioners fulfill those qualifications and conditions or not.

7. We are not impressed by the arguments advanced by the learned counsel for the respondents-petitioners for the simple reason that it is an admitted position that the respondents-petitioners were engaged through a service provider purely as a stop-gap arrangement till the regular posts

are filled up by regular recruitment as per the procedure prescribed in the rules. The respondents-petitioners did not have any right to claim absorption on any such regular post. There is no such provision for absorption of such personnel engaged through service provider in the rules determining the conditions of service on the post of Khanij Moharrir, driver and peon, nor has any such provision been shown. Even for considering regularization of services, there are rules on the subject framed by the State Government and there are no such rules under which the respondents-petitioners may fall for consideration. We accordingly find that the learned Single Judge has gravely erred in allowing the writ petition and then passing another order in the review proceedings as noticed hereinabove.

8. *We accordingly **allow** the appeal and quash both the impugned orders. The writ petition and the review application stand dismissed.*

9. *Our order shall also not come in the way of continuance of service of any of the respondents-petitioners, if they are still working and in future there are any rules under which such persons are entitled to be considered for regularization, our order will not come in the way of such consideration."*

5. As regards this appeal, we find that the writ petition was filed by the appellants-petitioners seeking the following reliefs :

"I. Issue a writ of mandamus or writ order or direction in the nature of mandamus thereby commanding the opposite parties No.1 to 4 to consider the candidature of the petitioners on the post of Kushal Sramik in view of the past 3 years continuous services under the O.P. No.1 to 4 and accordingly the representations moved by the petitioners may be directed to be decided within the time to be stipulated by this Hon'ble Court.

II. Issue a writ of mandamus or writ order or direction in the nature of mandamus thereby commanding the opposite parties No.1 to 4 to reserve four posts of Khanij Shramik and not to make fresh appointments pursuant to the notification dated 18-5-2017 till decision on the claim of petitioners during the pendency of the present petition, in the interest of justice.

III. Issue any order or direction as deemed fit and just by this Hon'ble court in the fact and circumstances of the case."

6. Admittedly, the respondents-petitioners were engaged through a service provider in pursuance to orders dated 27.01.2016 and 29.01.2016, which are on record. We have perused the same. These orders were for engaging

certain persons for the posts of Khanij Moharrir, peon and driver through service provider as stop-gap arrangement till the posts in question are filled by regular recruitment.

7. In paragraph 8 of the writ petition, it is stated that the appellants-petitioners had pursued their appointment before the agency and accordingly a list dated 30.05.2014 was forwarded to the Director, opposite party No.2. In paragraph 9, it has been stated that in pursuance to list dated 30.05.2014 forwarded by the agency (which is obviously a reference to the service provider, arrayed as opposite party No.4), the Director approved the list, and accordingly, the appellants-petitioners submitted their joining and worked. In paragraph 11, it is stated that the appellant No.1 and 2 joined on 16.08.2014 and 29.10.2015 respectively. On being asked, learned counsel for the respondents submitted that they worked only for about two years and nobody has worked after 2016.

8. Now, we may quote the judgment impugned before us, which reads as under :

"It appears that certain work was outsourced by the department for providing different services, and engaged a contractor. The petitioners claim that they have been working in the department as a contract employees. Grievance of the petitioners is that the department has proceeded to invite tenders to engage a fresh contractor, and therefore petitioners are likely to be terminated.

Prayer is thus made to direct the respondents to consider petitioners' claim for engagement on priority basis.

Petition is opposed by the State contending that in view of the nature of engagement of petitioners, no right accrues to them to claim any preferential treatment.

Perusal of the record goes to show that certain persons including petitioners have been engaged on contractual basis pursuant to outsourcing of work. Petitioners admittedly are employees of Oriental Security Guard Services i.e. respondent no.4. There does not appear to be any privity of contract between the petitioners and the respondent State. In case the department has called for fresh tenders, none of the rights of petitioners can be said to be infringed. Petitioners can at best have

grievance only against respondent no. 4, which is the contractor, and had engaged the petitioners.

It is settled by the Apex Court in Steel Authority of India Ltd. Vs. Union of India and others, 2001(7) SCC 1 that any dispute with regard to employment between the contractor, its employees, viz-a-viz the principal employer is ordinarily to be entertained by the 'industrial adjudicator'. Writ petition for the relief sought is not the appropriate remedy. Para 126 of the report is reproduced:-

"126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

Leaving it open for the petitioners to seek appropriate remedy, in accordance with law, writ petition is consigned to records. "

9. During course of arguments, it was submitted by Shri Pt. S. Chandra, learned counsel for the appellants that the respondents are resorting to malpractice of disengaging earlier outsourced employees and substituting them by subsequent different outsource employees. We do not find any such pleadings in the writ petition; nevertheless, if it is so, then this is a dispute between the service provider, who is the employer of the appellants, and the appellants.

10. We have gone through the impugned judgment and we do not find any error therein for the reason that the dispute and essentially, the relief prayed for in the writ petition so far as the State authorities are concerned, is not maintainable, as there is no provision in law under which such persons who have been engaged through a service provider and worked for a short period of two or three years could be absorbed or regularized on regular sanctioned posts under the State.

11. At this stage, Shri Pt. S. Chandra, learned counsel for the appellants

submitted that in paragraph 3 of the interim application filed in the appeal it is stated that the appellants were disengaged on 14.06.2017, meaning thereby that they have not been working since then and they worked for a very short period as mentioned hereinabove.

12. As regards their assertion in the appeal (not in the writ petition) that they have been disengaged in 2017, firstly, there was no relief prayed in the writ petition in this regard; secondly, we find that the learned Single Judge rightly relegated the appellants to the remedy before the labour/industrial court, as essentially the dispute is between the service provider and the appellants. The appellants are not employees of the State and cannot be treated as such. As regards the reliance placed by Shri Pt. S. Chandra, learned counsel for the appellants upon the decisions of the Supreme Court in *Secretary, H.S.E.B. vs. Suresh and others reported in (1999) 3 SCC 601*; *State of Haryana and others, etc. vs. Piara Singh and others, etc reported in (1992) 2 UPLBEC 1353*; *Jaggo vs. Union of India and Ors. passed in SLP (C) No.5580 of 2024 decided on 20.12.2024* and *Manish Gupta and Anr. Etc. Etc. vs. President, Jan Bhagidari Samiti and Ors. Etc. Etc. reported in 2022 LiveLaw (SC) 406*, we have gone through the same carefully and, in the facts of the case, the said decisions have no application at all.

13. As regards, reliance placed in *Jaggo (supra)*, the persons (appellants herein) have not been working since 2017. In the writ petition itself, the facts are not clear as to whether the appellant Nos.1 and 2 were engaged in 2014, 2015 and 2016. Even assuming that they were engaged in 2014, the fact is that they were disengaged admittedly so in March, 2017. Therefore, we fail to understand as to what right could accrue to them for regularization or absorption, as the case may be, based on the aforesaid facts.

14. Shri Sanjiv Singh, learned State Counsel, in fact, refers to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

15. We, therefore, do not find any error in the impugned judgment. Accordingly, the special appeal is **dismissed**.

16. Our order shall not come in the way of the opposite parties, if the

service provider in question wants to provide their services, if so required to the official opposite parties.

March 18, 2026
Shubhankar

(Amitabh Kumar Rai,J.) (Rajan Roy,J.)