

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment delivered on: May 05, 2022**

+ W.P.(C) 9119/2017 & CM APPL. 37301/2017

ISRAR AHMED

..... Petitioner

Through: Mr. K. C. Mittal, Mr. Yugansh Mittal, Mr. Sachin Kaushik and Mr. Keshav Pratap Singh, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Mr. Vivek Goyal and Mr. Bibash Kumar, Advs. for NCW

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. This petition has been filed by the petitioner with the following prayers:-

*“In view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to Issue:*

*a. Issue appropriate writ in the nature of certiorari or any other writ/ order/ direction as may be deemed fit and appropriate by this Hon’ble Court against the respondent quashing and setting aside the office order dated 03.10.2017 being arbitrary, unjustified and illegal;*

*b. Issue appropriate writ in the nature of certiorari or any other writ/ order/ direction as may be deemed fit and appropriate by this Hon'ble Court directing the respondent no.2 to allow the petitioner to continue and perform his duties as driver; and*

*c. Pass any other order(s)/ directions as this Hon'ble Court may be deem fit and proper in facts and circumstances of the present case.”*

2. The challenge in this petition is to an office order dated October 03, 2017 by which the engagement of the petitioner as Driver in the respondent No.2 has been dispensed with.

3. It is the case of the petitioner, so contended by Mr. K.C.Mittal, learned counsel for the petitioner, that the petitioner was initially appointed as Driver on contractual basis on July 20, 2002 and after a period of 15 years, his services have been terminated. According to Mr.Mittal, the reasoning given by the respondent in the impugned order is untenable, inasmuch as the disengagement of the petitioner was in view of the judgment of this Court in ***Mahender Singh & Ors. v. UOI & Ors., W.P.(C) 4293/2001*** decided on August 01, 2017, which has no applicability in the facts of this case, inasmuch as in the said case this Court had come to a conclusion that the drivers in the organisation were to be appointed through deputation and not by direct recruitment. The Court had held that the petitioners therein are not entitled to regularisation. He stated that the petitioner in this case is not seeking the regularisation of his services. The only prayer which he has made is for reinstatement, as his services have been terminated without any rhyme or reason.

4. He also referred to a judgment of the Division Bench of this

Court in the case of *Narinder Singh Ahuja & Ors. v. Secretary, Ministry of Health and Family Welfare and Ors. 2014 (146) DRJ 167*, wherein the Court had held that contractual employees cannot be replaced by another set of contractual employees and the decision to discontinue the petitioner's engagement is based only on the policy decision to outsource the contractual employment to a third party, which is impermissible. He also, for similar proposition, relied upon a judgment of a Coordinate Bench of this Court in the case of *Abhinav Chaudhary & Ors. v. Delhi Technological University & Anr., W.P.(C) No.3512/2014* and connected writ petition, decided on January 20, 2015.

5. On the other hand, Mr. Vivek Goyal, learned counsel for National Commission for Women-respondent No.2, by drawing my attention to the counter affidavit filed by it, stated that pursuant to the decision, the matter was taken up in the meeting of the Commission held on September 20, 2017 and it was decided to disengage the services of drivers working on daily wage and obtain services for driving vehicles through an outsourcing agency. He stated that the petitioner was hired on daily wage basis to help the day to day work with effect from July 20, 2002. During the engagement of the petitioner on daily wage basis, time and again numerous complaints in respect of his services were received. Initially, the respondent No.2 was of the view that the services of the petitioner be disengaged. However, instead of taking an adverse action against him, the respondent No.2 took a lenient and humanitarian view and the services of the petitioner were changed to that of a Peon on daily wage basis

with effect from June, 2016 and he continued to be engaged as a Peon with effect from June, 2016. In other words, he was working as a Peon and not as a Driver.

6. Mr. Goyal has also stated that there are four drivers, who were engaged much prior to the petitioner, whose services are being continued and any further requirement of the respondent No.2 with regard to drivers / cars is fulfilled through outsourcing mode by placing requisition on the e-commerce platform of the Government of India. Mr. Goyal states that in view of the above, there is no requirement for engagement of a driver.

7. Having heard the learned counsel for the parties, the issue is whether the petitioner has any right to be engaged as a driver. The appointment of the petitioner, though made in the year 2002 was only on contractual / daily wage basis. It is the case of the respondent No.2 that the petitioner had worked as a driver till 2016 and not thereafter. This position is contested by Mr.Mittal by stating that even after 2016, the petitioner worked as a driver.

8. Without going into the said issue, the question would be whether the petitioner is required to be re-engaged as a driver. Though a reference has been made by the respondents in respect of certain complaints made with regard to the working of the petitioner as a driver, suffice to state that the complaints are not the ground on which the petitioner's services were disengaged. The disengagement is primarily because of the judgment of this Court in the case of *Mahender Singh & Ors. (supra)*. In the said judgment, this Court held that the petitioners therein are not entitled to be continued as car

drivers as the recruitment rules provide the engagement through the process of deputation and not direct recruitment. In that sense, the petitioners therein could not have been appointed. Be that as it may, it is not the case of the respondents herein that even the recruitment rules in the respondent No.2 Organisation contemplates appointment of drivers through deputation and not through open selection.

9. Further, Mr.Mittal is right in stating that the petitioner is not seeking regularisation of his services but only seeking his re-engagement. The issue of re-engagement has to be seen keeping in view the stand taken by the respondents in the counter affidavit and also during submissions by Mr. Goyal, inasmuch as there is no continuous requirement of drivers in the organisation. According to him, four drivers appointed, much prior to the petitioner, are in place and any further requirement is fulfilled by requisitioning the car with driver through the e-commerce platform of the Government of India. In that sense, no further requirement is there for drivers on a continuous basis.

10. The learned counsel for the petitioner has relied upon *Narinder Singh Ahuja & Ors. (supra)* to contend that contractual employment cannot be replaced by another contractual employment. There is no dispute on the said proposition of law as it is well settled by the Supreme Court in *State of Haryana and Ors. v. Piara Singh and Ors. etc. (1992) 4 SCC 118*. But it is not the case of the petitioner that any person junior to him has been retained to work as a driver on continuous basis. According to Mr.Goyal, four drivers who are being continued to be engaged as drivers joined much before the petitioner.

In that sense, they are senior to the petitioner.

11. As regards the reference made by Mr.Mittal on the judgment of *Narinder Singh Ahuja & Ors. (supra)*, there the Division Bench of this Court was concerned with engagement of drivers in a Scheme called Revised National Tuberculosis Control Programme (RNTCP) funded by donor agencies including the World Bank and the said Scheme continued to be in operation till 2017. In that factual situation, the Division Bench had directed the respondents therein to continue the engagement of the petitioner till the Scheme is in place. Hence, the judgment is distinguishable.

12. Similarly, the judgment relied upon by Mr.Mittal in the case of *Abhinav Chaudhary & Ors. (supra)* would not be applicable as the engagement of petitioner as a driver has not been substituted by another contractual employee directly engaged by the respondent No.2.

13. In view of my above discussion, I do not see any reason to interfere with the impugned decision and grant the prayer, as sought for by the petitioner in this petition. The petition is dismissed. No costs.

**CM APPL. 37301/2017 (for stay)**

In view of the order passed in the writ petition, the application has become infructuous.

**V. KAMESWAR RAO, J**

**MAY 05, 2022/ak**