

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Case No.	Writ Petition No.28416 of 2021
Parties Name	<i>Sandeep Kumar Pathak & Others Vs. The State of Madhya Pradesh & Others</i>
Date of Order	24/02/2022
Bench Constituted	Justice S.A.Dharmadhikari
Order passed by	Justice S.A.Dharmadhikari
Whether approved for reporting	Yes
Name of counsel for parties	For Petitioner : Shri Subhash Kumar Chaturvedi, learned counsel. For Respondents/State : Smt.Gulab Kali Patel, learned Government Advocate.
Law laid down	The decision taken by the Government to outsource certain services would not amount to infringement of legal right of the petitioners. Normally Courts should not interfere with the policy matters of the State.
Significant paragraph numbers	Para Nos.7, 8, 9 & 10

**(S.A.DHARMADHIKARI)
JUDGE**

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 24th OF FEBRUARY, 2022**

WRIT PETITION No. 28416 of 2021

Between:-

1. **SANDEEP KUMAR PATHAK S/O
BADRIPRASAD PATHAK, AGED ABOUT 36
YEARS, OCCUPATION: A.G.III, DATA ENTRY
OPERATOR GOVT.HIGH SCHOOL DHONGA,
BLOCK DEOSAR, DIST.SINGROLI (MADHYA
PRADESH)**

2. **AMBRISH KUMAR PATHAK S/O SHRI VINOD
KUMAR PATHAK , AGED ABOUT 30 YEARS,
OCCUPATION: ASSISTANT GRADE 3/ DATA
ENTRY OPERATOR GOVT. HIGH SCHOOL
PIPRI, BLOCK DEOSAR (MADHYA PRADESH)**

3. **MANISH KUMAR SHUKLA S/O SHRI
SHYAMCHARAN SHUKLA , AGED ABOUT 29
YEARS, OCCUPATION: ASSISTANT GRADE 3/
DATA ENTRY OPERATOR GOVT. HIGH
SCHOOL THARAKTHAILA BLOCK DEOSAR
(MADHYA PRADESH)**

4. **KAMAL NAYAN CHATURVEDI S/O SHRI
ANANT PRASAD CHATURVEDI , AGED
ABOUT 31 YEARS, OCCUPATION:
ASSISTANT GRADE 3/ DATA ENTRY
OPERATOR GOVT. HIGH SCHOOL
GHINHAGAON, BLOCK DEOSAR (MADHYA
PRADESH)**

5. **SANJAY KUMAR CHATURVEDI S/O SHRI
JAGDISH PRASAD CHATURVEDI , AGED
ABOUT 39 YEARS, OCCUPATION:
ASSISTANT GRADE 3/ DATA ENTRY
OPERATOR GOVT. HIGHER SECONDARY
SCHOOL BETAHADAND, BLOCK DEOSAR
(MADHYA PRADESH)**

6. **VIMLESH KUMAR CHATURVEDI S/O SHRI
ACHUYATA PRASAD CHATURVEDI , AGED
ABOUT 35 YEARS, OCCUPATION:
ASSISTANT GRADE 3/ DATA ENTRY
OPERATOR GOVT. MODEL SCHOOL**

DEOSAR BLOCK DEOSAR (MADHYA PRADESH)

7. **DHANESHWARA PRASAD DWIVEDI S/O SHRI BALMIKI PRASAD DWIVEDI , AGED ABOUT 26 YEARS, OCCUPATION: ASSISTANT GRADE 3/ DATA ENTRY OPERATOR GOVT. HIGHER SECONDARY SCHOOL JUDWAR, BLOCK DEOSAR (MADHYA PRADESH)**
8. **ANJALI SINGH D/O SHRI SHRINAGAR SINGH, AGED ABOUT 26 YEARS, OCCUPATION: ASSISTANT GRADE 3/ DATA ENTRY OPERATOR GOVT. HIGHER SECONDARY SCHOOL MAHUAGAON, BLOCK DEOSAR (MADHYA PRADESH)**

.....PETITIONER

(SHRI SUBHASH KUMAR CHATURVEDI, LEARNED COUNSEL FOR THE PETITIONER)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY SCHOOL EDUCATION DEPTT. VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **STATE OF M.P. THR. THE COMMISSIONER PUBLIC INSTRUCTION, GAUTAM NAGAR BHOPAL (MADHYA PRADESH)**
3. **M.P.CON LTD, THR. ITS STATE COORDINATOR 204, SIDDHARTH APARTMENT 68B, KASTURBA NAGAR BHOPAL (MADHYA PRADESH)**
4. **STATE OF M.P. THR. THE DISTRICT EDUCATION OFFICER SINGRAULI OFFICIATE DISTRICT PROJECT COORDINATOR SAMAGRA SHIKSHA ABHIYAN (SECONDARY EDUCATION) GOVT. OF M.P. RASHTRIYA MADHYAMIK SHIKSHA ABHIYAN (MADHYA PRADESH)**
5. **STATE OF M.P. THR. THE BLOCK EDUCATION OFFICER BLOCK DEOSAR**

SINGRAULI (MADHYA PRADESH)**.....RESPONDENTS****(SMT. G.K.PATEL, LEARNED GOVERNMENT ADVOCATE, FOR
THE RESPONDENTS/STATE)**

This petition coming on for admission this day, the court passed the following:

ORDER

By filing this petition under Article 226 of the Constitution of India, the challenge has been made to the order dated 10.12.2021 (Annexure P-4) passed by the respondent no.2; whereby it has been decided to outsource the services through the Outsourcing Agency and has also directed to conduct the fresh selection for appointment on the post of Assistant Grade-III/Data Entry Operator by conducting an open written examination.

2. The brief facts leading to filing of this case are that the respondent no.2 had issued the directions dated 25.1.2018 by which the procedure for appointment of Assistant Grade-III/Data Entry Operator through the outsourcing agency is envisaged. The petitioners were initially appointed as Assistant Grade-III/Data Entry Operator in their respective schools after appointment on contractual basis through the Outsourcing Agency namely; World Class Services Limited. The petitioners were performing their duties honestly and sincerely and their services were extended from time to time. To the utter surprise of the petitioners, the respondent no.2 issued the impugned order dated 10.12.2021; whereby the respondent no.3 has been authorized to outsource the services by conducting fresh selection for appointment of Assistant Grade-III/Data Entry Operator.

3. The learned counsel for petitioners relied on the judgment delivered in *Writ Appeal No.418/2017 (State of M.P. Vs. Puneet Mohan Khare)* to contend that in similar situation, the Division Bench had disposed of the Writ Appeals by modifying the order passed by the learned Single Judge as follows :-

“1. The appellants shall not engage another contractual employee including outsourcing the services of Trainers.

2. In case a Trainer in a particular Trade is not required at a particular Centre, the appellants shall avail the services of such Trainers in the other Skill Centers, subject to the consent of such Trainer to work in another center.

3. The services of the Trainer in the other Training Centers shall not be dispensed with unless the appellants find that services of the Trainer are not required in any of the Centres and its need shall not arise in the near future.

4. But if in future, any Trainer is required in a particular Trade after dispensing the service of a Trainer, the Appellants shall re-engage the Trainers, who were engaged at an earlier point of time.”

In view of the aforesaid, learned counsel for petitioners submitted that the existing employees, like the petitioners, cannot be replaced by another set of employees appointed through outsourcing agencies.

4. It is further submitted that in identical situations, the Co-ordinate Benches of this Court have entertained the writ petitions and passed the interim orders, therefore, the petitioners are also entitled for the same treatment.

5. On the other hand, learned Government Advocate opposed the prayer and submitted that the petitioners herein were never appointed by conducting a regular selection by the State Government. From the beginning itself, as per the appointment letters, it can be seen that they were appointed through outsourcing agency namely; World Class Services Limited, Indore. The Agency through which the petitioner was appointed, is not made a party in this writ petition. It is for the Government to change the mode of appointment by outsourcing the services as per requirement on contract basis. The aforesaid decision for outsourcing has been taken in the interest of economy and efficiency. Thus, this petition is filed merely on the basis of apprehension, as is evident from Annexure P-4 dated

10.12.2021; wherein all the District Education Officers throughout the Madhya Pradesh have been instructed to outsource certain services. The decision relied on by the learned counsel for petitioners in the case of ***Puneet Mohan Khare (supra)*** is not applicable in the facts and circumstances of the case inasmuch as the petitioners therein were employed on different posts such as Managers, Office Assistant-cum-Accountants etc. for the purpose of establishing Kaushal Vikas Kendra in the State in furtherance of the resolution of the Legislative Assembly No.50 for upliftment of vocational education, I.T.I. Institutes or to restructure and upgrade them. Initially, the posts were filled-up on contract basis. Subsequently when the contract period came to an end, decision was taken to outsource the services. The petitioners were never appointed by the State Government or by any of its agency, which is evident from the appointment order. As such, this petition is not maintainable and the same is liable to be dismissed.

6. Heard the learned counsel for parties.

7. On perusal of the record, it can be seen that the petitioners have not filed any appointment order issued by the State Government or its agency appointing them on various posts. Admittedly, they have been appointed through the Outsourcing Agency namely; World Class Services Limited, Indore. The salary of the petitioners is also not being paid through the State Ex-checker but the same is paid through the Contractor.

8. In view of aforesaid, the nature of relationship of the petitioners with the respondents particularly regarding terms and conditions of their services, is not established. Apparently the petitioners have no right to stop the respondents from outsourcing certain services in the interest of economy and efficiency. The identical issue came up for consideration before the Division Bench of this Court in ***Writ Petition No.22083/2012 (Laxmi Prasad Dubey & Others Vs. Union of India & Others)***, which was decided on 11.2.2013. The operative portion of that order reads as under :-

“This petition under Article 227 of the Constitution is directed against the order dated 26.9.2012, passed by the Central Administrative Tribunal, Jabalpur, whereby it has dismissed the petitioners' Original Application No. 746/2011.

The petitioners' claim themselves to be daily wage workers of the respondents. The Central Board of Direct Taxes (CPDT) vide letter dated 04.7.2011 has informed all the cadre controlling authority to outsource the services like data entry/typing/cleaning/security on contract basis without employing the individual contingent workers for these purposes. The letter dated 04.07.2011 reiterates the direction of the Department of Personal & Training (DOPT) New Delhi Instruction Dated 7.6.1998. It even has the reference of General Finance Rules (GFR) 178 which permits outsourcing of various services. The aforesaid decision for outsourcing was taken in the interest of economy and efficiency. The petitioners apprehending discontinuance of their services filed O.A. No. 746/2011 before the Tribunal, which has been dismissed by the impugned order.

The Tribunal while dismissing the original application in paragraph 8 of the order has held as under:

“Thus, in our considered opinion, the decision of Annexure A/1 is a policy decision which is in consonance of GFR 178 and the same is not open to challenge, that too at the instance of the applicants only on the ground that the aforesaid decision is likely to be enforced retrospectively and that may affect their employment and they may be removed from service. In the absence of any specific order of removal of the applicants as casual worker and in view of the specific stand of the respondents in their reply that no action for removal of the applicants is being taken/contemplated at present and payments are being made to them in individual capacity as per the Government's guidelines regarding payment of wages to the casual workers, the instant Original Application is premature and the same is accordingly dismissed, however, without any order as to costs.”

The petitioners despite opportunities have not filed their appointment orders. The respondents have stated that no appointment orders have been issued to the petitioners. The nature of relationship of the petitioners

with the respondents, particularly regarding terms and conditions of their service, is therefore not clear. Apparently, the petitioners have no right to stop the respondents from outsourcing their certain services in the interest of economy and efficiency. The respondents submit that there is no bar for contractor if he decides to appoint the petitioners for carrying out the services outsourced. For these reasons we find no illegality in the impugned order and merit in the present petition.

The petition is accordingly dismissed. In the result, the interim order dated 27.12.2012 passed in favour of petitioners stands vacated.”

9. Thereafter being aggrieved, the petitioners therein, approached the Apex Court in Special Leave to Appeal (Civil) No.25479/2013; wherein the aforesaid order was upheld and the SLP was dismissed; meaning thereby the order passed by the Division Bench has attained finality.

10. It is a settled legal position that one set of contractual employee cannot be replaced by another. The petitioners herein were never appointed through regular selection or on contract basis directly by the State Government but their services were outsourced through a private agency. In the light of *Laxmi Prasad Dubey (supra)*, the petitioners have no legal right to stop the respondents from outsourcing services in the interest of economy and efficiency. In any case, it is also a settled position that the Courts should refrain from interfering with the policy matters of the State.

11. Accordingly, finding no merit in the petition, the same is hereby **dismissed** at the admission stage itself.

(S.A.DHARMADHIKARI)
JUDGE