



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP-38197-2018 (O&M)
Date of decision: 11.02.2025**

Shiv Kumar and another ...Petitioners

VERSUS

State of Haryana and others ...Respondents

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**CWP-7179-2021 (O&M)
Date of decision: 11.02.2025**

Shiv Kumar and another ...Petitioners

VERSUS

State of Haryana and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Chanderhas Yadav, Advocate and
Mr. Harjit Yadav, Advocate for the petitioners.

Mr. Tapan Kumar, DAG Haryana.

Mr. Vivek Saini, Advocate for respondent No.2-MICADA
in CWP-7179-2021.

VINOD S. BHARDWAJ, J. (Oral)

1. Whether State should be permitted to replace a set of contractual employees by another by way of a clandestine transfer of the scheme to another nodal instrumentality of the State, with a re-naming of the department, and thereby stopping the budgetary allocation to the department in which the petitioners were contractually engaged, and then to plead that since the State funding to the scheme is discontinued, the petitioners need to be relieved, is the core issue that arises for adjudication in these writ petitions. The same are thus taken up together.



2. Certain undisputed facts necessary for adjudication of these writ petitions are that the petitioners, who possess the qualification of Bachelor of Technology (B.Tech.) in Agricultural Engineering from the Chaudhary Charan Singh Haryana Agricultural University, Hisar (hereinafter referred to as 'CCS HAU') had participated in the campus recruitment/selection process undertaken for the post of Horticulture Development Officers, by the Department of Horticulture, Haryana in June-2012. The Director General, Horticulture, Haryana as well as the Deputy Director, Horticulture in Micro Irrigation were members of the Selection Committee that conducted the campus interview of the petitioners on 20.06.2012 and being fully eligible, the Committee recommended the petitioners for appointment to the post of Horticulture Development Officers (Micro Irrigation) for a period of one year vide letter of appointment dated 14.08.2012. As per the nature of duties to be performed, the petitioners were to provide latest technological knowhow in the field of horticulture to the farmers at their door-step through extensions and perform any other duties that may be so assigned by the Director General, Horticulture or any other senior officer. The said contractual appointment continued to be extended from time to time.

3. It would be relevant also to record that the respondent-Government of Haryana had earlier notified a policy for engaging/outsourcing of services/activities vide its memo No.43/5/2001-IGSI dated 16.02.2009 in partial modification of the previous Haryana Government circular for engaging persons on contract basis through service



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providers under the outsourcing regular contract policy issued on 01.09.2006. The said policy of 16.02.2009 was in two parts. While Part-1 dealt with policy for outsourcing of services/activities where the posts had not been sanctioned, the departments was to engage services of persons through an outsourcing agency on the prescribed criteria, Part-2 on the other hand dealt with engagement of persons even directly by the department on contract basis where a regular post existed. In such circumstances, an option was granted to the department to either engage persons through the Employment Exchange or on contract basis at its own level. The petitioners were, however, engaged directly by the Department and thus there existed an employee-employer relationship.

4. Apprehending that the respondents might indulge in an illegal discontinuation of the employment of the petitioners, CWP-17441-2013 was filed before this Court and the apprehension anticipated by the petitioners was noticed by this Court in the judgment dated 03.08.2016 that the respondent-authorities may resort to a methodology whereby one contractual employee was likely to be replaced by another. A direction was thus sought to the respondents to allow the petitioners to continue performing their duties till such time the posts were filled-up on regular basis. The above writ petition was also contested by the respondent-State of Haryana and it placed reliance upon the Haryana Government Outsourcing Policy dated 16.02.2009 to submit that the outsourcing policy did not provide for an extension beyond a period of one year and since the petitioners completed



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the contractual engagement, they would have no right to claim further continuance in service beyond August-2012. A reference was also made to the 77th Staff Meeting of the Directorate of Horticulture, Haryana held on 14.06.2013 under the Chairmanship of Additional Director Horticulture, Haryana in relation to engagement of Horticulture Development Officers (Micro Irrigation), reflecting that there was a requirement of 22 posts across different districts in the State. It was thus noticed that not only there was workload for engagement of more Horticulture Development Officers (Micro Irrigation) but also a conscious decision had been taken by the respondents to engage more officials to execute the work in the respective departments and under the said scheme.

5. The objection of the respondent-State to the effect that as per the changed outsourcing policy adopted by the State, the engagement of Horticulture Development Officers (Micro Irrigation) was to be done at the hands of NABARD, which had not been impleaded as a party-respondent in the said petition was also considered alongwith objections relating to the scheme document and terms of engagement.

6. This Court recorded a finding after considering all aspects, that the position in law being well settled in the judgment of the Hon'ble Supreme Court in the matter of **Hargurpratap Singh Versus State of Punjab and others**, reported as **2007 (13) SCC 292** that a contractual employee shall not be substituted by another similar arrangement, came to a conclusion that the substitution of the petitioner by any other contractual



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employee would be impermissible and that services of the contractual employees i.e. the petitioners herein could be dispensed with only if their work and conduct was found to be wanting; there was reduction of the workload or in case budgetary/financial constraints compel the employer not to carry out the work or implement the project in question. It was held that the rights of the petitioners could not be defeated merely by referring to the outsourcing policy and to thereby enable the State Government to shirk from its responsibilities. The relevant extract of the judgment dated 03.08.2016 is extracted as under:-

“Counsel for the parties have been heard at length and pleadings on record have been perused.

It is by now well settled that one contractual employee cannot be replaced by another similar arrangement. A reference in this regard may be made in the judgment of Hon'ble Supreme Court in Hargurpratap Singh Versus State of Punjab and others, 2007 (13) SCC 292. However, a contractual arrangement in favour of an employee would always be subject to the right of the employer to resort to a method of regular appointment. It would also be open for the employer to dispense with the service of the contractual employee if his work and conduct is found wanting. Furthermore, if there is no requirement or reduction of workload, it would again be open for the employer to



disengage the contractual appointee. Yet again, even if there be work, and on account of Budgetary/Financial constraints the employer chooses not to carry out the work or implement the project in question, it would always be open for the employer not to engage any contractual employee.

The pleadings on record, however, indicate that in the facts and circumstances of the present case, there is workload justifying engagement of Horticulture Development Officers (Micro Irrigation). Such fact is even conceded by Mr. Ravi Pratap Singh, learned State counsel on instructions from Mr. Satbir Sharma, Establishment Officer, Directorate of Horticulture, Panchkula, Haryana who is present in Court.

At this stage, the submission raised by learned State counsel as regards the engagement of manpower on contractual basis in the light of an outsourcing policy framed by the Government requires to be dealt with. In the considered view of this Court, the rights of the petitioners cannot be defeated merely by making a reference to an outsourcing policy and to thereby enable the State Government to shirk from his responsibilities even with regard to any contractual engagement that may have been entered into. After all, the agency which would engage and make contractual engagement is only an interface between the appointee and



the Government. Undisputedly, the work that is to be carried out by such contractual appointee even though engaged at the hands of a contractor/outsourcing agency is that of the Government. The salary also has to be paid ultimately by the Government itself. Accordingly, it is held that the rights of the petitioners emanating in pursuance to a contractual engagement cannot be diluted merely in the light of an outsourcing policy having been framed.

In view of the above, the present writ petition is disposed of with the directions that the present petitioners would not be replaced by another contractual employee. It is, however, clarified that it would be open for the respondent/department to dispense with and to bring to an end the contractual engagement of the petitioners in the light of the eventualities and circumstances that have already been taken note of and culled out in this order.”

7. Learned counsel for the petitioners further contends that after passing of the above judgment, the respondents served a notice dated 07.12.2018 (Annexure P-8) to the petitioners whereby they called upon the petitioners to submit an option to join the job as Horticulture Development Officer (Plasticulture) on contract basis under Part-I of the Outsourcing Policy i.e. through an outsourcing agency instead of the Part-II of the Outsourcing Policy dated 16.02.2009 on the pretext that the post against



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which the petitioners had been engaged i.e. Horticulture Development Officer (Micro Irrigation) was not a sanctioned post under the Government.

8. Challenging the said Show Cause Notice, the petitioners approached this Court in CWP-38197-2018, alleging that the same was only a means to over-reach the judgment passed by this Court wherein the nature of relationship between the petitioner and the respondents-State has been clearly defined. It is pleaded that this Court specifically considered the policy dated 16.02.2009 and yet recorded a finding in favour of the petitioners and against respondents by specifically holding that the petitioners continued to be engaged for and in relation to the works of the Government and that the said rights cannot be diluted merely in light of the outsourcing policy having been framed.

9. Notice of motion was issued in the writ petition on 06.02.2019 and an interim order was passed to the effect that the petitioners shall not be relieved by another set of contractual employees and that the judgment in CWP No. 17206-2014 titled as “*Yogesh Tyagi and another vs. State of Haryana and others*” could be made a ground to relieve them. The said interim order has continued till date.

10. Thereafter, for proper utilization and prompt implementation of the Micro Irrigation Scheme, a meeting of Irrigation & Water Resources Department was held under the Chairmanship of the Chief Minister on 26.06.2020 whereby a separate specific head for executing micro irrigation project through a separate authority was discussed and a new Micro



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Irrigation Mission Authority (MIMA) was introduced which later merged with Command Area Development Authority (CADA) and was renamed as Micro Irrigation Command Area Development Authority (MICADA). As per the approved memorandum on 13.08.2020, all the Minor Irrigation Schemes under the Department of Agriculture were transferred to the Irrigation and Water Resources Department including the *Pradhan Mantri Krishi Sinchai Yojna (PHKSY)*, which was then being implemented by the Agriculture & Horticulture Departments. The operative part of the approval ordered on 13.08.2020 is extracted as under:-

“1. Introduction/Background

Hon'ble CM has ordered that the subject of "Minor Irrigation Scheme" at Sr. No.18 of the Agriculture and Farmer's Welfare Department in the Haryana Government (Allocation) Rules 1974 may be transferred to the Irrigation & Water Resources Department to bring all matters concerning irrigation as well as surface and sub-surface water under the control of one department. Hon'ble CM has further ordered to prefer the proposed enactment for regulation and management of Ground Water Resources in the State to be handled by the Irrigation & Water Resources Department.

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c) Pradhan Mantri Krishi Sinchayee Yojana (PMKSY), being implemented on 60:40 sharing basis and the funds are



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being provided by the Ministry of Agriculture & Farmers Welfare, Govt. of India. An amount of Rs.25.00 crore is allocated by the GoI as its share against the Annual Action Plan of Rs.132.60 crore (GoI share) for the year 2020-21. The scheme is being implemented by the Agriculture & Horticulture Departments. Similarly, an amount of Rs.790.94 crores sanctioned by the NABARD as loan under MIF for one project of A&FW Department & 3 projects of I& WR Department and CADA. The scheme PMKSY can be transferred to the Irrigation & Water Resources Department is the Micro Irrigation Mission Authority (MIMA) has been constituted under the Department of I&WR.

In view of the comments of Agriculture Department depicted under Section a) Agriculture Department has agreed to transfer the Ground Water Cell of the A&FW Department has further as per Section c) the scheme to be implemented under PMKSY. But under Section b) the shifting of the Soil Conservation Section Schemes along with manpower has not been recommended. In view of the above remarks of A&FW Department the comments of I& WR Department are as under:-For implementing the centrally sponsored schemes alike (PMKSY schemes alongwith Atal Bhujal Yojna) in holistic manner the staff of Agriculture and Farmer Welfare Department will be required to ensure the



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end to end connectivity of Micro Irrigation activities. The officers/ officials i.e. DSCOs/ASCs/ADOs/Agriculture Inspectors etc. who are having good contacts with end users/farmers needs to be transferred in proportionate manner as they are essentially required for achieving the herculean task of last mile connectivity beyond farm-gate specially adoption of Drip and Sprinkle systems. The Soil Conservation Section of Agriculture Department is entrusted with some of activities which are also the part of assigned projects i.e. Micro Irrigation in PMKSY and Ata Bhujal Yojna. It is therefore proposed that for time being 1/3rd staff Soil Conservation Section of both filled up (118) as well as vacant (199) posts described at Annexure-II (Sr. No.3, 4, 8, 22) be transferred to IWRD/MIMA. The exact requirement of the staff may be reviewed later-on by convening a meeting of department under the Chairmanship of CS.

5. Approval of Hon'ble C.M.:-

Approval of Hon'ble Chief Minister Haryana has been obtained to place the matter before Council of Ministers alongwith exemption to place the same in Hindi version.”

11. It was thus also decided by the Government that in addition to the scheme, the engaged staff be also transferred to the new authority.
12. A proposal was thereafter moved by the CADA to shift certain



employees to MICADA including the petitioners. Relevant extract of the same reads thus:

“Matter Matter was discussed with W ACSTWR.

Micro Irrigation related work is being done by Agriculture and Horticulture Departments as of now. As per mandate of MIMA, all micro irrigation work is to be carried out by MIMA and existing schemes work is also to be shifted, gradually, to MIMA. A proposal for decision about restructuring of CADA and merging MIMA with CADA is also under consideration of Government.

In either case, either MIMA or restructured CADA will be carrying out Micro Irrigation works. As no officials having domain knowledge is here in either MIMA or CADA, such officers from other departments are required to be taken. Therefore, it will be appropriate, that following officials be deputed for looking after work of Micro Irrigation, till decision on CADA restructuring is finalised. Thereafter, these officials may be taken on regular deputation in the organisation, so finalised.”

13. A meeting note in this regard was put up before the Chief Minister for placing services of officers/officials of the Agriculture Department and Horticulture Department on deputation at the disposal of MICADA. The same was also approved. Two persons namely Anil Rana and Pawan Kumar were also shifted to MICADA on deputation. The newly constituted authority itself opined that no official possessed domain knowledge with regard to the implementation of the micro irrigation scheme and therefore, the petitioners may be sent on deputation with MICADA for



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implementation of the project and without any further impediment being caused.

14. Notwithstanding the request sent by the MICADA for shifting the petitioners and inviting them vide different communications, the respondents declined the shifting of the petitioners vide letter No. 7197 dated 22.03.2021 on the ground that the petitioners having not been recruited/engaged on contract basis by the newly constituted authority, their services could not be utilized there and that the newly constituted authority should engage fresh people on contract basis. Alleging that the said permission had been declined solely to terminate the services of the petitioners, respondent-State having failed to succeed in their goal in view of the interim order passed by this Court in CWP-38197-2018, the present methodology was revised. The said decision of the respondents declining permission to shift the petitioners is now a subject matter of challenge in CWP-7179-2021.

15. A reply was filed by respondent Nos. 1 to 4 through Sh. Ranbir Singh, Joint Director of Horticulture, Directorate of Horticulture, Haryana, wherein it was averred that the petitioners had been given an option to join the same post under Part-I of the Outsourcing Policy through an agency, that was notified on 16.02.2009. It is further averred that vide letter dated 31.03.2007, sanction had been granted for implementation of a new Centrally Sponsored Scheme (Sharing basis) on Micro Irrigation 2006-07 Plan and in the said scheme, there was a specific condition to the effect that



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technical posts shall be filled up for the project duration only provided that if technical people were available in the department, the posts were to be filled-up by transfer/deputation.

16. For implementation of scheme, 24 new posts including 20 posts of Horticulture Development Officer. The petitioners alongwith five others were engaged on contract basis for one year. The institution of CWP-17441-2013 is admitted alongwith the orders passed therein.

17. It is further averred that only a limited direction was issued by this Court in its order dated 03.08.2016 to the effect that the services of the petitioners cannot be dispensed with by replacing them with fresh contractual employees except in circumstances prescribed thereunder.

18. Reference was also made to the judgment dated 31.05.2018 passed by the Division Bench of this Court in **CWP-17206-2014** titled as '**Yogesh Tyagi and another Vs. State of Haryana and others**' to contend that a direction had been issued to replace all contractual employees with regular employees within a period of 06 months. Advise was accordingly sought for. The Chief Secretary advised that the post being a project duration, was not a regular sanctioned post, hence, Part-I of the Outsourcing Policy was applicable. Hence, show cause notice dated 07.12.2018 was served upon the petitioners to exercise an option to join the same post under Part-I of the Outsourcing Policy. The petitioners instead chose to file CWP-38197-2018. It is further stated that via letter dated 24.11.2020, 217 posts were sanctioned for smooth functioning of the Micro Irrigation Mission



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Authority and no posts or budget was shifted to MICADA.

19. A request dated 15.03.2021 was received from MICADA that they need experienced manpower already working under PMKSY for smooth working of scheme from April-2021 onwards in MICADA and asked about terms & conditions of engagement/mode of engagement. Response dated 22.03.2021 was sent that petitioners were not regular employees of the Horticulture Department and that they were working under Part-II of the Outsourcing Policy. The State Government having not sanctioned the plan scheme for the financial year 2021-22 wherein the posts against which petitioners were engaged, as such, the Department has no option other than discontinuing the contract of the petitioners for non-availability of scheme, posts or budget beyond 31.03.2021. Not being on regular employment, they could not be sent on deputation. Prayer was thus made for dismissal of the writ petition.

20. It is further informed that the process for filling up the vacant posts of Horticulture Development Officer, as advised by the Government, was initiated vide letter dated 02.05.2011 and advertisement was got published on 12.02.2012 to engage 20 Horticulture Development Officers (Plasticulture) on contractual basis under the outsourcing policy dated 16.02.2009. 20 Candidates were selected based on merit and subsequently, orders were issued on 16.04.2012, by respondent No.2, for engaging the selected candidates for one year under the outsourcing policy. However, only 17 candidates joined, who signed individual agreements as per



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provisions of the outsourcing policy dated 16.02.2009. Thereafter, the 17 selected candidates were acquainted with the working of the Department, particularly in Micro Irrigation activities, given intensive training at Vadodara in Gujarat and subsequently, their test was conducted. A second training was again conducted at Centre of Excellence for Vegetables at Gharaunda in Karnal District from 29.05.2012 to 08.06.2012 to check their suitability for the job requirement under the Micro Irrigation Scheme.

21. A further reference is made to the separate reply that has been filed by the respondent-State of Haryana in CWP-7179-2021. It has been averred in the reply filed in the said writ petition that the direction issued by this Court on 03.08.2016 was only to the limited extent that services of the petitioners could not be dispensed with by replacing them with fresh contractual employees but there was no legal bar to dispense with the services of contractual employees if their work and conduct was found wanting. Further, such engagement could be discontinued on account of reduction of workload and it was open for the employer to disengage the contractual employee on account of Budgetary/Financial constraints to the employer even in the case of work being required. Reference is made to the judgment dated 31.05.2018 of the Division Bench passed in **CWP-17206-2014** titled as '**Yogesh Tyagi and another Vs. State of Haryana and others**' to contend that the petitioners in any eventuality could not have been retained for a period of more than 06 months from the date of passing of the said judgment. Hence, the department was entitled to end the contractual



engagement of the petitioners considering the eventualities referred above. An intimation in this regard was thus sent to the petitioners that they could not have been sent on deputation as they were not regular employees of the department and that their contract had been discontinued in view of the non-sanctioning of scheme which was a permissible contingency as per the order passed by the Learned Single Judge on 03.08.2016.

22. A separate written statement has been filed on behalf of respondent No.2-Micro Irrigation and Command Area Development Authority, Haryana through Administrator, Dr. Satbir Singh Kadian in CWP No.7179 of 2021, wherein it has been averred that even though the petitioners were undisputedly engaged on contract basis by respondent No.3-Horticulture Department, Haryana but they never worked in the department/organisation of respondent No.2 and that there was no provision to transfer the contractual employees from one department to other department. Since there was no employer-employee relationship between the MICADA and the petitioners, hence, no relief, as claimed for by the petitioners, could be directed against the respondents. It is further submitted that respondent No.2 had engaged the persons on non-sanctioned posts on contract basis through an outsourcing agency i.e. M/s Narwal Super Security on terms and conditions of the said outsourcing agency and that the conditions governing the engagement of employees/workman on contract basis in both the organizations are different and not at par. Hence, the writ petition deserves to be dismissed.

**ARGUMENTS BY THE PETITIONER(s)**

23. Learned counsel appearing on behalf of the petitioners has argued that the petitioners had been engaged in the PMKSY which is a Micro Irrigation Scheme in force since 2012 and that they been engaged by following the due process of law and facing all the competitive examinations i.e. interviews as well as the recruitment drive. The petitioners have since then handled the work of 20 officers towards effective implementation of the Micro Irrigation Scheme in the entire State of Haryana. They have worked with different authorities from time to time. He further submits that the above said micro irrigation scheme which was earlier being executed through the Department of Horticulture but has now been shifted to the Micro Irrigation Command Area Development Authority (MICADA), by re-organisation of the departments and through MIMA. The nature of work or the scheme itself has neither been changed nor closed and it is only that the new agency is executing the said scheme. He submits that the respondents thereafter took a decision not to transfer the petitioners, who were originally recruited under the above said scheme, which is now being implemented by a different agency, solely to over-reach the judgment of the High Court that had been passed in favour of the petitioners and to oust the petitioners under a disguise. On shifting of the execution of the scheme from the Department of Horticulture to the MICADA under the Department of Irrigation, they have stopped the budgetary provision for the said scheme to the Department of Horticulture and are now citing the same as the reason for



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discontinuing/disengaging petitioners on contractual basis and pleading to be compliant of the judgment dated 03.08.2016. It is thus a means devised by the respondents to over-reach the interim orders that had been passed in the present case and the earlier judgment passed by this Court in favour of the petitioners and that the same being a malicious exercise, the mandate of law should not be permitted to be defeated by such devised means and mechanism.

24. No other argument has been raised nor any judgment cited by the learned counsel for the petitioners.

25. Responding to the above, learned State counsel on the other hand re-iterated the averments as recorded in the written statement/reply and contended that since the original engagement of the petitioners was under the scheme which was run under the aegis of the Department of Horticulture, which having come to an end and there being no budgetary provision to the Horticulture Department for execution of the said scheme, hence, the petitioners cannot be granted any further extension. It is contended that the said scheme is now being implemented by a separate Department i.e. MICADA and under a separate authority-Micro Irrigation Management Authority which has been constituted to ensure optimal execution of the said scheme and that the said organization has already engaged technical persons against posts that are not regular posts through an outsourcing agency. The petitioners not having been engaged by the said authority cannot seek transfer of their contractual engagement from the Department of Horticulture



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to the Department of Irrigation under the MICADA. Learned State counsel contends that the petitioners/employees would not have a right to seek their continuation after termination of a contract by way of transfer/deputation to another department.

26. No other argument has been urged nor any judgment cited.

27. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition with their able assistance.

28. Having heard learned counsel for the parties and on going through the file as well as the documents appended, I am of the opinion that it is a classic case where the State has carried out an administrative re-organisation to defeat the orders that have been passed by this Court and to over-reach the judicial pronouncements. Undisputedly, the petitioners had been engaged contractually by following a due process of law and through a rigorous selection procedure in the year 2012 to act as a Horticulture Development Officer (Micro Irrigation). The said engagement had been done by the Government directly at its own level notwithstanding the existence of the outsourcing policy dated 16.02.2009 even on the said date. Eventually, the respondents decided not to grant any further extension due to the period limitation prescribed under the scheme but notwithstanding that the respondent-department, at the same time wanted to expand the engagement of the Horticulture Development Officers (Micro Irrigation) and initiated the process of filling-up 20 more posts. The petitioners thus



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approached this Court by way of CWP-17441-2013 wherein the defence of respondent-State about the outsourcing policy as to whether the petitioners were to be covered under Part-I or II alongwith the scheme documents were also taken into consideration while allowing the writ petition vide judgment dated 03.08.2016. It was specifically recorded that the petitioners therein became contractual employees of the Government Department and hence, they could not be substituted by any other set of contractual employees except in circumstances where they were found wanting in performance; where the scheme itself had been discontinued or on account of reduction of the workload or even in circumstances when the budgetary allocation was not made available. Despite the specific directions of this Court in the abovesaid judgment, the respondents issued another notice to the petitioners as to whether they would opt for being engaged under Part-I of the Policy dated 16.02.2009 notwithstanding rejection of their same claim. The said show cause notice became a subject matter of challenge in CWP-38197-2018 and an interim order was granted in favour of the petitioners vide order dated 06.02.2019 which still remains in force. It is in the same sequence that a subsequent decision was taken by the respondents whereby a re-organisation and transfer of the scheme itself was undertaken by the respondent-authorities and a separate authority namely Micro Irrigation Management Authority (MIMA) under the MICADA was constituted and the entire scheme was transferred for execution to the said MICADA through the MIMA under the Department of Irrigation and Water Resources.



On account of transfer of the execution of the said project to the Department of Irrigation, the budgetary allocation post 01.04.2017, to the Department of Horticulture was discontinued. The same now became a basis for the respondent-State to initiate the process of discontinuation of engagement/non-extension of the contractual engagement of the petitioners and to resort to engagement of fresh personnel on identical posts requiring similar qualification by the MICADA by way of an outsourcing agency. This is thus a clear-cut case to do indirectly what could not have been done by the State directly. The re-designation/re-organisation of the authorities/the Department for executing the same project cannot be permitted as a means devised by the employer to defeat the mandate of the judgments that have been pronounced. I find that such an exercise on the part of the respondent-State is mischievous and was initiated solely to do what the Court orders restrained them from doing. It is thus neither a case where the work-load requirement had been reduced nor that the budgetary allocation was not made available for expansion or execution of the project of Micro Irrigation. It is also not a case where the petitioners were found wanting or were not satisfactorily discharging their functions, rather, it is a case where the respondents devised a mechanism, by virtue whereof they transferred the execution of scheme to another department and then to contend that since the budgetary allocation of the funds to the department, through whom the petitioners had been engaged on contract basis stood discontinued, hence, they would be within their rights not to continue with



the extension of the contractual engagement of the petitioners. I find that such a methodology adopted by the respondents is clearly in the teeth of law and the orders passed by this Court.

29. The respondent has neither discontinued the scheme nor the funding to the same in budgetary allocation. While the respondents initially sought to discontinue the engagement of the petitioners by pleading that the scheme did not provide for extension beyond one year and hence essentially linking the engagement of the petitioners to the scheme. The said plea was accepted to a great extent by the Court in its judgment of 03.08.2016 when it protected the employment of the petitioners by linking the same with the scheme & permitting discontinuation on closure of scheme, deficiency of petitioners or in an event of reduction of work-load in the scheme. The respondents have now changed their stance and have linked the engagement by the department and completely overlooking the scheme.

30. A scheme based engagement by a Govt. Department has to be construed as a scheme based engagement by the Government. Hence, a mere change of the nodal/executing department for the scheme, the status of the employer remains that of one engaged by the Govt. for the execution of the scheme. An administrative jugglery of the departments cannot be an assured route to violate enforceable orders. The process, if permitted, has a huge potential of violating Court orders, all in the garb of administrative facelift. Such a dissection of departments cannot be accepted as a valid amputation of relationship or severance of rights declared in favour of an



employee by way of judicial pronouncement.

31. It is further a ruse of an argument raised by the respondent-State by emphasizing that services of contractual employees need to be discontinued in light of the judgment in the matter of *Yogesh Tyagi* (supra) without disclosing that the Hon'ble Supreme Court of India has already directed a status-quo to be maintained. I am refraining at this juncture to venture as to whether notwithstanding the interim order passed by the Hon'ble Supreme Court, whether the respondents could have still proceeded with their decision.

32. Consequently, the writ petitions are **allowed** and the notice dated 07.12.2018 (under challenge in CWP-38197-2018) and letter/order dated 22.03.2021 (under challenge in CWP-7179-2021) issued/passed by the respondent-authorities declining permission of engagement of the petitioners in MICADA for the same scheme and purpose is held to be bad and liable to be set aside. Even though the respondents have averred in their reply(ies) that the terms & conditions of engagement of staff by MICADA/MIMA are separate, however, for the reasons best known, the said distinction has not been drawn or brought out in the written statement filed by them. Withholding of the best document by the respondents reflects the malicious intent on the part of the respondent-Department. Hence, this Court has no basis to conclude that the schemes in question are different or distinct in terms of their methodology or provide any separate qualification or eligibility or as to that the nature and scope of duties to be performed by the



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officers in the Micro Irrigation Project. The writ petitions are hence allowed and the services of the petitioners are ordered to be reinstated on contract basis, if discontinued, on the same terms & conditions on which they were issued letters of appointment in the Department of Horticulture, with the MICADA/MIMA under the Department of Irrigation and Water Resources.

33. As it has also been pointed out that the petitioners have not been granted any extension since 2021 and as such, they have been clandestinely kept out of their employment by taking recourse to an extralegal methodology, hence, the respondent-State is also held liable to pay a consolidated cost of Rs.1,00,000/- to each of the petitioners. The State of Haryana is at liberty to effect recovery of the said cost from the officer(s) found responsible for the same.

34. Let the needful be done within a period of 03 months of the receipt of a certified copy of this order.

35. If the needful is not done within the stipulated time period, an additional cost of Rs.50,000/- is ordered to be deposited by the respondent-State with the Poor Patient Welfare Fund (PPWF) of Post Graduate Institute of Medical Education & Research, Chandigarh.

(VINOD S. BHARDWAJ)
JUDGE

11.02.2025*Mangal Singh*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No