

CWP-31523 of 2019

2026.PHHC.119010



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

CWP-31523 of 2019

Amrik Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

Sr. No.	Particulars	Details
1.	The date when the judgment is reserved	19.08.2026
2.	The date when the judgment is pronounced	25.08.2026
3.	The date when the judgment is uploaded on the website	25.08.2026
4.	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Sheesh Pal, Advocate,
for Mr. H.K. Brinda, Advocate,
for the petitioner.

Mr. Vikas Sonak, AAG, Punjab.

Mr. Abhivadya Sood, Advocate,
for respondents No.3 and 4.

NAMIT KUMAR, J.

1. Instant petition has been filed by the petitioner claiming the following relief: -

“Issuance of a writ in the nature of certiorari or any other appropriate writ order or direction quashing the action of respondent No.2 dated 19.09.2019 (Annexure P-12) qua proposal/resolution No.57 dated 20.08.2019 (Annexure P-11) of respondent No.3 for extension of service of the petitioner and issuing direction to respondent No.2 to grant approval to resolution No.57 of respondent No.3 for



extension of services of the petitioner, as recommended and forwarded by respondent No.3 vide its resolution No.57 dated 20.08.2019 (Annexure P-11) and also in view and compliance of the instructions dated 29.03.2019 (Annexure P-9) issued by the Punjab Government in the facts and circumstances of the case and to further extend the services of the petitioner.

Further, a writ of prohibition directing respondents No.2 to 4 not to relieve the petitioner on completion of his tenure of service till regular appointment is made, as his services are essential for maintaining and running the fire services in Municipal Council, Moga, and in view of specific recommendations by the authorities to grant extension in his contractual time limit.”

2. Briefly stated, the facts of the case, as have been pleaded in the petition, are that in pursuance to the advertisement dated 05.02.2008, the petitioner was engaged as driver on contract basis for a period of six months, vide letter dated 17.07.2009 (Annexure P-2) by Municipal Council, Moga, and the said contract engagement was extended from time to time. Resolution No.57 dated 20.08.2019 (Annexure P-11) was passed by the General House of the Municipal Council, Moga, for extension of contract period of the petitioner from 01.04.2019 to 30.09.2019 and was sent to the Government for approval. However, vide letter/order dated 19.09.2019 (Annexure P-12), the said resolution was disapproved by the Government and it was directed that no further action be taken. The said order/letter has been impugned in the instant petition.



However, later on and during the pendency of the present petition, the said resolution was reconsidered by respondent No.1 and vide letter dated 21.08.2020 (Annexure P-17), the same was approved and approval was granted for appointment on outsource basis, as per the instructions issued by the Government of Punjab dated 29.03.2020.

3. Short reply by way of an affidavit of Rakesh Kumar, Joint Secretary, Department of Local Government, Punjab, Chandigarh, on behalf of respondents No.1 and 2 has been filed, wherein it has been stated that respondent No.3 has moved an application dated 06.07.2020 to the Director, Local Government, Punjab, with a request to reconsider resolution No.57 dated 20.08.2019 for approval of extension of contract period of the petitioner and the same was reconsidered and approved, vide letter dated 21.08.2020 that petitioner be allowed in service through approved outsource agency in view of instructions dated 29.03.2020. Separate reply on behalf of respondents No.3 and 4 has also been filed, wherein also the same stand has been taken.

4. Learned counsel for the petitioner submitted that petitioner has performed the duties as driver from 17.07.2009 to 31.03.2019 and his case for continuation in service was recommended by respondent No.3, however, the Government wrongly did not approve the same. He further submitted that the action of the respondents is totally illegal and arbitrary in not allowing the petitioner to continue in service after 31.03.2019.



5. *Per contra*, learned State counsel, assisted by learned counsel for respondents No.3 and 4, submitted that though initially resolution No.57 dated 20.08.2019 of respondents No.3 and 4 was not approved by the Government, however, later on an application submitted by respondents No.3 and 4, the matter was reconsidered and the petitioner was allowed to continue in service through outsourcing agency. On instructions, they have stated that the petitioner has not joined the said post after 31.03.2019 in pursuance to letter dated 21.08.2020 (Annexure P-17), whereby approval to appoint the petitioner through outsource agency was granted.

6. I have heard learned counsel for the parties and perused the record.

7. The undisputed facts of the case are that the petitioner was initially engaged as driver on contract basis on 17.07.2009 and continued in service from time to time and his case for extension in service was approved by respondents No.3 and 4, vide resolution No.57 dated 20.08.2019, subject to approval by the Government, however, the said resolution was disapproved by the Government, vide letter dated 19.09.2019 (Annexure P-12), and on reconsideration, the Government granted approval for engagement of petitioner through outsource agency, vide letter dated 21.08.2020 (Annexure P-17).

8. Resolution of the Municipal Council did not attain operative or enforceable finality. The resolution was placed before the competent authority and was disapproved. Once the competent



authority disapproved the resolution, the petitioner cannot claim an enforceable right upon a resolution which did not ultimately receive the approval necessary for its implementation.

9. A resolution of an elected local body, by itself, cannot claim override the statutory framework, the powers of the competent authority, the Government's supervisory control, or a binding policy decision governing engagement of personnel. Unless the resolution is legally operative and within the competence of the authority passing it, it cannot furnish the foundation for issuance of a writ of mandamus.

10. Even assuming that the General House had initially desired extension of the petitioner's services, such desire could not confer upon the petitioner a vested right to insist that he must continue to be engaged in the same contractual manner for an indefinite period.

11. The choice of the employer/public authority as to the manner in which its administrative requirements are to be met ordinarily lies within the domain of the executive/competent authority. The Court exercising jurisdiction under Article 226 does not sit as an appellate authority over such administrative policy choices. Unless the decision is shown to be illegal, arbitrary, irrational or actuated by *mala fides*, judicial review cannot be invoked merely because another arrangement may appear preferable to the Court or to the petitioner.

12. Once the competent authority has chosen a lawful mechanism for procuring the required services through an outsourcing agency, an individual who was earlier engaged on contractual basis



cannot claim a constitutional right to compel the public authority to retain the earlier mode of engagement.

13. After reconsideration, the respondents did not simply leave the petitioner without any option whatsoever. The decision was taken to engage the required personnel through an outsourcing agency. The petitioner, however, did not join pursuant to the said arrangement and is out of service since 01.04.2019. Having declined to join under the arrangement pursuant to which the respondents proposed to obtain the services, the petitioner cannot thereafter seek a writ of *mandamus* directing the respondents to restore the very arrangement which stood superseded by the subsequent decision. A person cannot, on the one hand, decline the mode of engagement offered by the competent authority and, on the other hand, claim that the authority is under a legal obligation to continue his earlier individual contractual engagement. It is also apt to mention here that the petitioner cannot derive any advantage from his own decision not to join under the revised arrangement. The principle that a person cannot approbate and reprobate is attracted in substance, having declined the mode of engagement which was made available pursuant to the subsequent decision, the petitioner cannot claim an enforceable right to the earlier contractual arrangement.

14. The petitioner has also not demonstrated any vested or statutory right to the post or any right under the applicable service rules



which would compel the Municipal Council to continue his personal contractual engagement.

15. It is settled that a writ of mandamus can be issued only when the petitioner establishes a corresponding legal right and a public/statutory duty on the part of the respondent. In the absence of such right and duty, a mandamus cannot be issued merely on grounds of sympathy, past service or equitable considerations.

16. The Hon'ble Supreme Court in ***Chief Executive Officer, Zila Parishad, Thane and others v. Santosh Tukaram Tiware and others, 2023(1) SCC 456***, wherein also the respondent was engaged as driver on contractual basis and his engagement continued for a substantial period and subsequently the authority adopted a policy of obtaining the services of drivers through an agency and brought the contractual engagement to an end, has held that mere continuation for a longer period on contractual basis does not confer a right to regularization or continuation, particularly where a policy decision had been taken to avail the services of drivers through an agency. The Hon'ble Supreme Court in the said judgment has held as under: -

“6.2 Merely because respondent No. 1 continued in service for longer period on contractual basis the High Court ought not to have passed the order of regularization more particularly, when a policy decision was taken to avail the services of the driver by the agency/contractor and that the appointment of respondent No. 1 and other similarly situated drivers was not made after any selection procedure. The appointment of respondent No. 1 was



purely on stopgap and on contractual basis. Under the circumstances, the High Court has committed a very serious error in ordering regularization as well as quashing and setting aside order dated 15.07.2021 by which on the contract being awarded to M/s Rakshak Security Services and Systems Pvt. Ltd., the services of respondent No. 1 was put to an end.

6.3 Now so far as the reliance placed upon the decision of this Court in the case of Pandurang Sitaram Jadhav (supra) is concerned, on facts the said decision shall not be applicable to the case on hand and/or of any assistance to respondent No. 1. It was a case where this Court found an unfair labour practice. It was found that employees similarly situated working in the same establishment were granted regularization. Similarly, the decision of this Court in the case of Sheo Narain Nagar (supra) also shall not be applicable to the facts of the case on hand. It was a case where the authorities conferred temporary status and it was found that there was requirement of work and availability of posts too, and it was found that it was not a case of back-door entry, the services of the concerned employees were directed to be regularized w.e.f., 02.10.2002 from the date on which the authorities conferred the temporary status. Therefore, on facts the said decision shall not be applicable to the facts of the case on hand.

7. In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court quashing and setting aside communication dated 15.07.2021 putting an end to services of respondent No. 1 on the contract being awarded to M/s Rakshak Security Services and Systems Pvt. Ltd., and the order directing the



appellants to regularize the services of respondent No. 1 as a driver deserves to be quashed and set aside and is accordingly quashed and set aside. Consequently, writ petition preferred by respondent No. 1 stands dismissed. Present appeal is accordingly allowed. In the facts and circumstance of the case there shall be no order as to costs.”

17. For the foregoing reasons, this Court finds no merit in the present petition. Consequently, the same is dismissed.

25.08.2026
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No