

Bal Krishan vs. State of H.P. and Ors. a/w connected matter

CWP No.7474 of 2022 a/w CWP No.14512 of 2024

Item No. S-4

CWP No.7474 of 2022

08.01.2025 Present: Mr. Abhimanyu Rathore and Ms. Poonam Gehlot, Advocates, for the petitioner.

Mr. Anup Rattan, Advocate General with Mr. Pranay Pratap Singh and Rakesh Dhaulta, Additional Advocate Generals for respondents–State.

Mr. Manohar Lal Sharma, Advocate, for respondent No.4.

CWP No.14512 of 2024

Mr. Sanjeev K. Suri, Advocate, for the petitioners.

Mr. Anup Rattan, Advocate General with Mr. Pranay Pratap Singh and Rakesh Dhaulta, Additional Advocate Generals for respondents–State.

Ms. Tim Saran, Advocate, for respondent No.2.

CMP No.3 of 2025 in CWP No.7474 of 2022

This application has been filed for vacation of stay order passed on 07.11.2024, wherein the Bench had noticed that the outsourced employees are being recruited by the agencies/companies, so identified by the H.P State Electronic Corporation.

2. Notice for requisition has been sent to these agencies/companies by different departments for providing requisite human resource on outsource basis and said

companies are inviting applications from respective candidates and final selection will be made as per the criteria mentioned in the advertisement. In the absence of any fair and transparent manner in which the names of such candidates were being sponsored, directions were issued that firstly the names of the candidates seeking employment shall be displayed on the official website of the sponsoring agency as well as of the H.P State Electronic Corporation, as per seniority i.e. "first come first serve". Restrain order was passed that no appointment on outsource basis shall be made.

3. In support of the application for vacation of stay, the learned Advocate General has stated that needful has been done while referring to a letter dated 17.12.2024 (Annexure R-II) issued by the HPSEDCL and addressed to All Empanelled Agencies (Outsource Manpower), as per the directions. Also, the selection committee comprising of the members having requisite domain knowledge were to be put in place, so that candidates could be selected by duly constituted selection committee.

4. A reply has been filed, opposing the application for vacation of stay.

5. In order to realize the gravity of the situation in the manner in which the State proposed to recruit employees

on outsource basis through empanelled agencies, a reference can be made controversy in issue. The main prayer in the writ petition is for the quashing of the order dated 13.10.2022 (Annexure P-22), vide which the State while following Rule 112 of the H.P. Financial Rules, 2009 provided for outsourcing of services in public interest for effective delivery of services by the departments. As per Clause 2, the persons employed in the department(s) and their agencies on outsource basis may be continued till further orders. Rule 112 reads as under :

“Outsourcing of Services – A Department may outsource certain services in the interest of economy and efficiency and the detailed procedures and instructions for this purpose shall be such as may be prescribed.”

6. The plain reading of the Rule as such would go on to show that the purport, as such, is for outsourcing certain services in the interest of economy and efficiency leaving the State free to provide a detailed procedure and instructions. Apparently, the purpose is to get over an exigency created by a situation and not resort to large scale outsourcing of services, which is apparently proposed to be done, leading to the filing of the petition, seeking investigation on the criminal side, as such, regarding the 110 fake service providing

agencies with the allegations that crores of rupees as commission may be received from Government/public exchequer and fair selection which has to be conducted by the recruitment agency i.e. Himachal Pradesh Public Service Commission and H.P. Staff Selection Commission under the Recruitment and Promotion Rules is being thrown to the wind.

7. In order to appreciate the controversy, we have been informed that for example for Staff Nurses, the cadre position in the Health and Family Welfare Department as on 09th of June, 2024 was 3848 and it was manned by 3201 persons and the vacancy was 647. Apparently, on account of the need, the number of strength were increased to 3918 and the staffing was of 3168 leading to vacancy of 750 as on 31st July, 2024.

8. As per requisition details, posts of only 28 Staff Nurses were sought to be filled up on 17th December 2024 vide which the breakup was given, whereby, the unreserved posts of 12 staff nurses and for other various reserved categories relevant break up had been provided to be filled up on contractual basis.

9. The Recruitment and Promotion Rules for the said post of Class III (Non-Gazetted) in the Department of

Health and Family Welfare, H.P. has provided the scale of Pay, which is stated to have subsequently been revised. The said rule is reproduced as under:-

4.	Scale of Pay	i) Pay Scale for regular incumbents. Rs.10300-34800 +3200 Grade Pay. ii) Emoluments for contractual Employee(s): Rs.13,500/- PM as per details given in Col. No.15-A.
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10. The method of recruitment under Clause 10 reads as under :

10	Method(s) of recruitment, whether by direct recruitment or by promotion/second ment/transfer and the percentage of post(s) to be filled in by various methods:	(1). 45% by Direct Recruitment on a regular basis or by recruitment on contract basis, as the case may be through the concerned recruiting agency. (2). 45% by direct recruitment on batch wise basis on a regular basis or by recruitment on contract basis, as the case may be, at Department level from amongst the candidates possessing the requisite educational qualification prescribed for direct recruitment against Column No.7(a) above and are registered with the HP Nurses Registration Council of the State on the basis of seniority of the batch. Provided that for the purpose of appointments the year-wise combined seniority list shall be prepared wherein the candidate senior in batch in a particular recruitment year shall be reckoned senior to the candidate who has obtained the requisite educational qualification and registered with the HP Nurses Registration Council of the State in subsequent batch. Provided further that where in a recruitment year more than one candidate of the same batch are eligible to be considered for appointment then their inter-se-
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		seniority will be determined with reference to their date of appointment in that recruitment year or the merit, if any, prepared at the time of making selection for recruitment on batch basis, as the case may be. 3). 10% by promotion, failing which by direct recruitment on batch wise basis @5% each on a regular basis or by recruitment on contract basis, as the case may be.
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11. The contractual employees’ remuneration is also provided for under Clause 15-A(II), which reads as under:

	(II) <u>CONTRACTUAL EMOLUMENTS</u> The Staff Nurse appointed on contract basis will be paid consolidated fixed amount @ 13,500/- P.M. (which shall be equal to minimum of the pay Band + Grade Pay). An amount of Rs.405/- (3% of the minimum of pay band plus grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.
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12. A perusal of the above Rules would go on to show that 45% posts are to be filled by direct recruitment on regular basis or by recruitment on contract basis. The sub-clause 2 further provides that 45% of the direct recruitment on batch-wise basis on regular basis or similarly by recruitment on contract basis at department level as per the educational qualifications, which is provided under Column No. 7(a). It is not disputed that the outsourced persons would be paid an amount even less than the contractual employees as per the

rules. The resort, as such, by the State to outsourcing the health of the people of State to the recruitment agencies apparently seems to be inconsistent with the mandate of constitutional provisions, which provide for the benefit of certain rights to the marginalized provided under Article 16.

13. As noticed above, for regular recruitment of 28 posts, certain posts are reserved and the rest are for General category. By virtue of resorting to the outsourced methodology, as such, the procedure, provided in the constitution is apparently being thrown to the winds apart from resorting to unfair labour practice by paying pittance to the medical staff and not resorting to regular recruitment. We cannot but record one agony on the methodology, which is adopted by the State.

14. The arguments raised that due to financial exigency of the State, as such, the State is resorting to outsourcing may not carry much favour, as it is a settled principle that it is for the State to look after its finances in a prudent manner and by resorting to the recruitment process through outsourcing agencies for various wings of the Government which are entrusted with the functioning and for which adequate responsibility may be required to be fixed for posts like Junior Engineers would not augment for the

smooth functioning of the departments in any manner without resorting to advertising and initiating recruitment process on a regular basis as per the Rules.

15. In such circumstances, we do not find any plausible reason, as such, to vacate the stay at this stage unless the State shows its inclination to start with regular recruitment process for the posts in question. Accordingly, the application for vacation of stay is dismissed.

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16. List on **24.03.2025**.

(G.S. Sandhawalia)
Chief Justice

8th January, 2025
(priti)

(Satyen Vaidya)
Judge