(2014) 09 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 1729 and 5057 of 2013

Baljeet Singh and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Citation : (2015) 177 PLR 694

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : R.K. Garg, Advocates for the Appellant; Roopam Aggarwal, Deputy Advocate General, Advocates for the Respondent

Judgement

Gurmeet Singh Sandhawalia, J.—This order will dispose of two writ petitions viz. Civil Writ Petition Nos. 1729 of 2013 titled as "Baljeet Singh and Others v. State of Punjab and Others, No. 5057 of 2013 titled as "Jagdeep Singh and Others v. State of Punjab and Others", as common questions of law and facts are involved therein. To dictate judgment, the facts are being taken from Civil Writ Petition No. 1729 of 2013. The petitioners are challenging the order dated 27.9.2012 (Annexure P5) whereby their services from the post of Gram Rozgar Sewak (In short "GRS") were dispensed with. Further prayer has been sought for re-induction in the Mahatma Gandhi National Rural Employment Guarantee Scheme (In short "NREGS") as per the appointment letter dated 2.1.2009 (Annexure P3) and for release of one year salary from the month of August, 2011 to September, 2012.

2. As per the pleaded case of the petitioners, an advertisement dated 5.3.2008 (Annexure P2) was issued seeking staff (Additional Program Officers, Technical Assistants, Computer Assistants, Gram Rozgar Sewaks & Account Assistants) on contract basis for the National Rural Employment Guarantee Scheme (In short "the Scheme"). The petitioners applied for the post of Gram Rozgar Sewaks and were appointed vide letter dated 2.1.2009 (Annexure P3) for Block Sangrur. Their contract was extended on 20.4.2010 firstly from 1.4.2010 to 31.3.2011

and then from 1.4.2012 upto 30.9.2012 vide order dated 18.4.2012 (Annexure P4). The petitioners were doing their duties but pay was not given to them from April, 2011 onwards inspite of their protest. Thereafter, they were relieved from the above said post vide impugned order dated 27.9.2012 (Annexure P5). No reason was given but some of the earlier appointed similarly situated persons, who were ordered to be relieved along with the petitioners were held eligible for renewal of the contract and the Scheme was still running. A representation was also filed but no relief was given and therefore, legal notice was served on 18.12.2012 (Annexure P9). Resultantly, the petitioners have approached this Court.

3. In the written statement, filed by respondents No. 1 to 4, it has been averred that the petitioners were relieved after the expiry of the contract period and as per Clause 6 of the agreement. The period was upto 30.9.2012 as per service contract and, therefore, the petitioners were not entitled to claim regularization and their services were dispensed with. The supervisory staff was engaged for the period of one year and further staff was engaged on the basis of need and given the district''s ability to pay the remuneration out of the 4% contingency grant under the Scheme. Services of the petitioners were dispensed with due to the fact that need was less and curtailment was necessary as per letter dated 19.6.2007 (Annexure R4/2). The work of the GRS was analyzed and on the basis of total expenditure and performance, the GRS, who had spent above Rs. 15,00,000/-, were retained and their contract was renewed. The petitioners having performed below the limit and, therefore, their contract and services were dispensed with. The petitioners remained on strike from 10.10.2011 to 15.12.2011 and the honorarium could not be given due to paucity of funds. The salary was released from October, 2011 to September, 2012 on 19.3.2013 and the payments were made through cheques. One Manju Rani and Daljit Kaur were appointed but they were given additional charge as Computer Operator as they were having computer knowledge and since the posts of Computer Operators were lying vacant in these blocks.

4. Counsel for the petitioners has, accordingly, submitted that pick & choose policy has been resorted to and the contract of the petitioners was not extended.

5. On the other hand, counsel for the State has justified the act as per the stand taken in the written statement. As per the appointment letter dated 2.1.2009 (Annexure P3), the appointment of the candidates was only temporary and on contract basis and the remuneration was of Rs. 2,500/-. The contract would be enhanced on account of the satisfactory work and continuity of the Scheme. The candidates were also required to give undertakings regarding the conditions mentioned in the appointment letter. The relevant conditions read as under:-

"1) Appointment of the candidate will be temporary and contract basis.

2) Remuneration of lump sum amount of Rs. 2500/- (Two thousand five hundred rupees) per month will be given to the candidate. No any other remuneration or

allowance will be given except of this.

3) Candidate will not claim of seniority/promotion regarding the appointment.

4) Candidate can be released from duty without serving notice on finding unsatisfactory work or on showing irresponsibility. This contract will be on probation basis till dated 31.03.10. Contract can also be enhanced on having satisfactory work and on continuity of NREGA Scheme.

5) Candidate can also be called at work on the days of government holidays. Holidays to these employees will be provided as similar to the employees appointed on contract basis.

6) Candidate will give written undertaking regarding the above said conditions before joining the duty and will give his joining report at the office of B.D.P.O. Sangrur within 7 days of issuance of this letter.

7) Candidate can be sent at any block/place for duty."

6. In pursuance of the above said appointment letter, the service contract had also been entered into between the petitioners and the Additional Deputy Commissioner (Development), wherein the petitioners were appointed on purely temporary basis under the Scheme and the contract could be extended subject to the work and performance of the individuals and thus, the petitioners had no such legal vested rights whereby they can claim any right to continue. The appointment was for a specific period and was extended for the existence of the Scheme. In pursuance of the above terms of the appointment letter, their services have been dispensed with. The respondents have justified the policy of pick & choose by submitting that certain employees had been given additional charges as Computer Operators since they had the computer knowledge and the posts of Computer Operator were lying vacant and those, who had spent above Rs. 15,00,000/- were retained and their contract period was renewed and the services of those, who had not performed, had been dispensed with. Accordingly, in such circumstances, no fault can be found with the action of the respondents in dispensing with the services of the petitioners, as per the terms of the appointment letter (Annexure P3) and they have no legal vested rights to continue and their appointment was only temporary. A specific averment has been made that the due honorarium from October, 2011 to September, 2012 was paid through cheques and no replication has been filed to controvert the stand.

7. Reliance can be placed upon the judgment of the Apex Court in GRIDCO Limited and Another Vs. Sri Sadananda Doloi and Others, wherein it has been held that contractual employee could claim no protection, but the Court could always examine whether there was any element of unfair treatment, which, in the present case, could not be pointed out. The relevant observations read as under:-

"26. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/ compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.

27. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

28. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months'' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer.

Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise."

Accordingly, keeping in view the above discussion, this Court is of the opinion that in the absence of vested rights and, thus, being no infirmity in the action of the respondents, the petitioners have no valid cause to maintain the present writ petition. Accordingly, both the writ petitions are dismissed.

