
(2011) 12 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 72563 of 2011

Chandra Bhan Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 ADJ 490

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.—Heard Sri J.P. Singh, learned counsel for the petitioners and perused the record. Petitioners have filed this writ petition under Article 226 of the Constitution assailing advertisement dated 26.11.2011 issued by district Basic Education Officer, Azamgarh inviting applications for appointment of Model Clusters/ Instructors in different trades like food and fruit conservation, beauty culture, manufacturing of incense stick etc. Petitioners claim that they were selected and appointed as Model Clusters/Instructors in the Session 2010-11 in different trades and were assigned to various Junior High Schools for imparting professional training to the girls and boys studying in those Junior High Schools run by Board of Basic Education, U.P. These Instructors/ Model Clusters are paid Rs. 150/- per day but the Government Order provides that lump sum payment to an Instructors/Model Cluster shall not be more than Rs. 7500/- in the entire session. In fact it says that no Instructors/Model Clusters shall be allowed working days of more than 50 in a Session. Having completed work in the Session 2010-11, petitioners claim to have raised their voice for regular assignment and also for continuance in the next Session, i.e., 2011-12 and a representation to this effect was also given through their association on 20.10.2011 to the Collector, Azamgarh (Annexure-3 to the writ petition). However, instead of considering their aforesaid claim respondents are now

proceeding to make fresh selection for new Session 2011-12 and advertisement impugned in the writ petition has been published accordingly. It is this advertisement dated 26.11.2011 issued by District Basic Education Officer which has been assailed in the present writ petition and a mandamus has also been sought commanding the respondents to continue all the petitioners to function as Model Clusters/Instructors pursuant to their earlier selection for the Session 2010-11 so long as the scheme, i.e., the National Programme for Education of Girls at Elementary Level (hereinafter referred to as the "NPEGEL") is continuing.

2. Learned counsel for the petitioners submitted that since the scheme is continuing and requirement is perpetual, the respondents cannot be allowed to replace petitioners by new incumbents and if performance of petitioners is satisfactory, they should be allowed to continue and should not be changed by new incumbents. Reliance is placed on Apex Court's decision in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, . It is said that any other view would make the action of respondents unreasonable, arbitrary, unfair and irrational. Reliance is placed on Apex Court's decision in *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, ; *Union of India and Others Vs. Dinesh Engineering Corporation and Another etc.*, ; and *Union of India (UOI) and Another Vs. International Trading Co. and Another*, .

3. It is lastly contended that similar attempt on the part of authorities in replacing already selected and working *Rojgar Sewaks* after completion of their tenure of three years by new one has been deprecated by this Court and authorities were directed to continue earlier selected persons by renewing their term in *Shiv Manorath Shukla and Others Vs. State of U.P. and Others*, . Sri J.P. Singh, learned counsel for the petitioners submitted that petitioners claim is similarly placed and, therefore, they are also entitled for same treatment.

4. From the pleadings and arguments it is evident that engagement of Instructors/ Model Clusters is not founded on any regular creation of institution as well as set up of regular staff by creation of requisite number of posts. This engagement in fact is a part and parcel and in furtherance and pursuance to a scheme/project namely, National Programme for Education of Girls at Elementary Level.

5. This scheme has been launched as a component of the already going on project of *Sarwa Shiksha Abhiyan* (hereinafter referred to as the "SSA"). The Government Order launching NPEGEL shows that it has launched as an amendment to the scheme of SSA for providing additional components of education of girls at elementary level. The NPEGEL has been made part of SSA and is being implemented under the umbrella of SSA but with a distinct identity. The scheme SSA was launched in 2002-02 with the objective of universalisation of elementary education. It was with a view to provide opportunity for improving human capabilities to all children including the girl child through the provision of community-owned quality education in a mission mode. It was provided for a limited financial education in the form of "innovations" at district level and free

text course.

6. NPEGEL, as evident from the project launching Government Order, is formulated for education of under privileged/ disadvantaged girls in Class I to VIII as a separate and distinct gender component plan of SSA. The area of operation of aforesaid scheme has been identified as, (a) educationally backward blocks, meaning thereby the block where level of rural female literacy is less than the national average and gender gap is above the national average; (b) blocks of districts which have at least 5% Scheduled Caste/Scheduled Tribe population and female literacy rate therein is below 10%; and, (c) selected urban slums. The strategy for implementation of scheme is to identify the project based upon conditions of block with specific targets like, (a) out of school girls; (b) drop outs girls; (c) overage girls, who have not completed elementary education; (d) working girls; (e) girls from marginalised social groups; (f) girls with low attendance; and (g) girls with low levels of achievements.

7. A complete infrastructure of the persons requires to execute the said scheme is also provided by Government Order. It requires the identification of Model Cluster school at cluster level in all selected districts/blocks where the scheme is in operation. The selected school is required to possess facilities in terms of teaching, learning equipment, books, equipment, games etc. It says that Clusters will be taken up in a phased manner, and those schools will be selected which have shown the best performance for enrolment of girls over the baseline, and which are accessible to around 10 villages/schools, whose girls can use this infrastructure and which has land for additional civil works and play fields.

8. There are some other requirements for the selection. The maximum financial ceiling available to the Cluster is Rs. 60,000/- per annum. The Model Cluster schools are permitted to engage part time instructors for additional specified subjects with a further condition that no Instructor shall be hired for more than three months and she/he would not receive remuneration of more than Rs. 1,000/- per month. The scheme, therefore, has provided for engagement of "Part Time Instructors" in a particular manner to give effect the said scheme in a most effective and substantial manner.

9. In the entire writ petition petitioners have not pleaded anything to show that said scheme or any part thereof is arbitrary or irrational warranting any interference. When a scheme has been implemented it has to be taken as a whole and one cannot be allowed to accept it in piecemeal, i.e., taking advantage thereof while disputing or not accepting some part of it. One has to take it as a whole or not at all. The petitioners admittedly were appointed in accordance with procedure and terms and conditions provided in said scheme. There is no assurance or representation to them that they are likely to continue so long as the scheme would continue. The purpose of scheme is not to provide employment to individuals but the basic objective is education to under privileged girl students. Opportunity of employment to some of the persons like petitioners is incidental and ancillary. It is well settled that when on a particular

terms and conditions a scheme has been framed, and, an individual has obtained advantage therein in a particular manner, he cannot wriggle out of some part of that scheme by saying that it would not be legal or binding. Looking to this type of appointments the Constitution Bench of Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , in para 34 of the judgment observed as under :

If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

10. The decision cited at the bar on behalf of petitioners, in my view, are not applicable to the facts of this case and in the light of what has been observed by Constitution Bench in *Uma Devi (supra)*, as noticed above.

11. First I take up the decision heavily relied by learned counsel for the petitioners, namely, *Mohd. Abdul Kadir (supra)*. Therein the Government of India formulated a scheme namely, "Prevention of Infiltration of Foreigners Additional Scheme, 1987" (hereinafter referred to as the Scheme, 1987") for Assam for strengthening Assam Governmental Machinery for detection and deportation of foreigners. The said scheme was initially launched in 1960 but extended thereafter from time to time. By order dated 3.6.1987 the Government of India sanctioned a large number of additional posts under the scheme, namely, five posts of Inspectors, 323 of Sub-Inspectors, 306 of Head Constables and 646 of Constables. The Government of India also agree to reimburse costs of pay and allowances of persons employed in additional posts provided these additional posts are filled in only by ex-servicemen. The aforesaid sanction of posts by way of additional scheme vide communication dated 3.6.1987 was initially valid for 2 years liable to be renewed later on. While making selection of persons against these additional posts the Inspector General of Police (Border), Assam issued a Circular dated 17.3.1995 laying down procedure for appointment/continuation of ex-servicemen as ad hoc Border Staff and therein it was provided that appointments shall be for a contract period of one year. It also provided that application for fresh appointment shall be made by continuing the persons along with performance report etc. at least 20 days before expiry of contract period of one year and on clearing for such fresh appointment the same incumbents will have to sign a fresh agreement. It was contended that procedure laid down by Inspector General of Police, Assam contemplates a kind of artificial annual termination and re-engagement which has an effect of denying benefit of regular annual increment etc. to the employees who otherwise would continue for years together. This condition was not improved by Government of India, the author of the Scheme. It was also contended that original scheme had been continuing since 1960 and additional scheme was continued from 1987 without break and considering importance of border security requirements it was a misnomer to call appointees as ad hoc appointees. Their posts were sanctioned by President of India, the scheme had continued for long years and, therefore, the incumbents

ought to have been regularised. It was also pointed out that 3/5 of Assam Police Border Organization was earmarked and 2/5 was reserved for ex-servicemen. Since the persons belonging to both the sources rendered same function and duties, were entitled for same treatment.

12. It is in this background the matter was considered by Apex Court. Looking to the fact that engagement was under a scheme, though may have continued for long, the Apex Court declined to grant relief of regularisation relying on various decisions including the Constitution Bench decision in Uma Devi (supra). It however, considered the validity of procedure of annual termination/ re-employment introduced by circular dated 17.3.1995 issued by Inspector General of Police (Border), Assam on his own. The Apex Court found that in the parent scheme propounded by Government of India there was no requirement of periodical termination. It only talks an engagement or re-employment and that too after undergoing regular selection. The Government of India's order did not give any impression to anybody that engagement would be for a shorter period. This annual break and re-employment system was introduced by an official of the State Government, i.e., the State Agency which was entrusted with the task of execution/operation of scheme. In para 17 of the judgement, it is in these circumstances, the Apex Court said:

17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

13. Similarly, in Shiv Manorath Shukla (supra) the learned Single Judge has considered the triennial engagement of Gram Rojgar Sewaks under the Government Order dated 25.8.2010 read with Government Order dated 23.11.2007 in the light of provisions of National Rural Employment Guarantee Act, 2005.

14. In both the cases the posts and the duties assigned therein were full time appointment. Here in the case in hand the scheme talks of a part time appointment. The engagement is also for a limited period in an academic year, i.e., for not more than three months in an academic year. The scheme takes into consideration purpose and objective and also the fact that constitution, composition and requirement of Instructors may vary from place to place, time

to time and period to period. Moreover, a person working on a part time basis obviously would be continuously looking for an alternative regular employment and even otherwise is not prohibited from undergoing other employment during the period he is not engaged under the scheme. Therefore, to have more devoted competent persons, selection for different sessions may be allowed to be made separately looking to overall contingencies and circumstances. There is no principle in service jurisprudence that once a person is engaged he is bound to continue bereft of the terms of the scheme, rules and regulations or executive orders, as the case may be under which he has been engaged. It is true that normally an ad hoc employee may not be replaced by another set of ad hoc but it will apply only when all other facts, circumstances and relevant considerations remain same and identical. Even a minor different fact may result in larger different implications.

15. It is in this context the Constitution Bench in Uma Devi (supra) had observed that when an appointment on contract basis on specific term is made it has to be governed by such terms and conditions. Moreover, if initial engagement is made by advertising that it is a time bound engagement, quality of candidates applying for the same would be different than when an advertisement is made making it known to all that incumbents selected and appointed are likely to continue for longer time. Once a person is selected and appointed under a particular scheme with particular terms and conditions, he should/cannot be allowed to challenge one or two of the conditions of his appointment while retaining the same as this would be wholly illegal and contrary to law.

16. In the present case, moreover, even the validity of Government Order providing for engagement of Instructors initially for a Session on part time basis, is not under challenge. In absence of any such challenge to the scheme it has to be implemented as such.

17. In view of above, I do not find any merit in the submissions advanced by learned counsel for the petitioners and, in my view, the writ petition lacks merit and deserved to be dismissed. Dismissed accordingly. No costs.