
(2017) 06 AHC CK 0020

In the Allahabad High Court

Case No : 3928, 3929, 3930, 3931, 3932, 3933 and 3934 (SS) of 2014

Dharam Pal Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 15-06-2017

Acts Referred:

Citation : (2017) 06 AHC CK 0020

Hon'ble Judges : Devendra Kumar Arora

Bench : Single Bench

Judgement

1. Heard Sri Avinash Chandra, learned Counsel for the petitioners, learned Standing Counsel, Sri Savitra Vardhan Singh, learned Counsel for opposite party no.5 and Sri Vivek Raj Singh, learned Counsel for the opposite parties no.2 to 4.

2. In all the afore-captioned writ petitions, common question of fact and law is involved, therefore, all the writ petitions have been clubbed together and are being disposed of by a common order.

3. In all the writ petitions, petitioners have questioned the correctness and validity of the order dated 16.06.2014, whereby the Director/ Mission Director (NULM), State Urban Development Agency, Lucknow (opposite party no.2) has stopped the payment of salary to petitioners from 31.03.2014 on the ground that there is no post of Community Organizers & Community Development Society sanctioned under the Swarn Jayanti Sahri Rojgar Yojna (in short "SJSRY").

4. According to the learned Counsel for petitioners, petitioners of different writ petitions were appointed on the post of Community Organizer during 1999-2001 under Swarn Jayanti Sahri Rojgar Yojna [in short referred to as "SJSRY"]. The SJSRY scheme was introduced by Urban Employment and Poverty Alleviation Department of Ministry of Housing and Urban Poverty Alleviation, Government of India with a view to alleviate the poverty and urban unemployment by promoting the establishment of self employment industries. Later on, the Government of India vide Government Order dated 24.09.2013 promulgated a new scheme for

economic development and upliftment of urban poor by social mobilization, capacity building, skill training and self employment programme in the name of National Urban Livelihood Mission (in short "NULM") and replaced the earlier SJSRY Scheme. Vide letter dated 25.03.2014, the Director/ Mission Director (NULM), State Urban Development Agency, Lucknow (opposite party no.2) had published guidelines of various schemes of NULM and informed all the District Magistrate/ Chairman, DUDA, U.P. that for providing livelihood and for empowerment of urban poorer, the Government has introduced the NULM Scheme. The mission was to be implemented in phases during 12th and 13th Five Year Plan.

5. It has been urged by the learned Counsel that the operational guidelines of Social Mobilization and Institution Development, which emphasizes on building community institution in Building Community Institution in the form of Self Help Groups (SHGs), provides that experts at CMMU will work along with the Community Organizers in the field for formation of Self Help Groups. Thus the fundamental work under the NULM is to be done by the petitioners. There is a specific provision in the NULM that the Community Structures like "Neighbourhood Groups" and Community Development Society" formed under the earlier SJSRY will continue to function and effort will be made to transform them into community structures as envisaged under NULM.

6. Learned Counsel for the petitioner has submitted that the operational guidelines in respect of another component of NULM i.e. Capacity Building and Training specifically provides that for implementation of NULM, the Community Organizers will be appointed. Each Community Organizer will cover 3000 urban poor families. It further provides that the number of Community Organizer will depend upon the requirement. However at least one community organizer is necessarily to be appointed in every city. The operational guidelines for Self Employment Programme Component also provides that the beneficiary of the self employment programme will be identified by the Community Organizer and professional or urban local bodies. Vide order dated 27.03.2014 passed by the respondent no.2, all the financial liabilities and balance of SJSRY has been merged under NULM. Moreover, the State Government vide order dated 27.06.2014 had implemented the NULM at City Level and provided in the said order that at least one Community Organizer is to be appointed in every district.

7. It has also been contended by learned Counsel for the petitioner that vide order dated 16.06.2014, the opposite party no.2 stopped the salary of the petitioners on the ground that there was no sanctioned post of Community Organizer under SJSRY whereas they were performing their duties with utmost satisfaction of the authorities without there being any complaint. The petitioners are working as Community Organizer in SUDA for last 14 years in terms of SJSRY. The SJSRY has now been replaced by NULM which specifically provides for appointment of Community Organizers and also provides that the Community Structures under SJSRY will continue to function and will gradually transform into

NULM. Thus, the respondents are bound to allow the petitioners to continue as Community Organizer and pay them salary. The other persons who have been appointed on various post under SJSRY are still continuing in SUDA like Mr. I.P. Kanaujia, who was appointed under NRY and continued under SJSRY and is now continuing under NULM.

8. It has been pointed out that earlier when the petitioners were not permitted to work as Community Organizers, they preferred Writ Petition No.3262 (SS) of 2004. In the said writ petition, this Court vide order dated 25.06.2004 directed the respondents to allow the petitioners to continue in service of SUDA and to pay them salary month to month.

9. In the background of the aforesaid facts, it has been vehemently argued that the order dated 16.6.2014 is not only illegal and arbitrary but also in violation of the order dated 25.6.2004 passed by this Court in writ petition no. 3262 (SS) of 2004, which is still operative as on today wherein this Court has directed to allow the petitioners to continue in the service of SUDA and to pay them salary regularly. Moreover, the post, work and fund for Community Organizer with the same name and responsibility is available under both the Schemes i.e. SJSRY and NULM.

10. Lastly, it has been contended that the action of the respondent is violative of right to equality as guaranteed under Article 14 of the Constitution as persons like the petitioners are being allowed to continue whereas petitioner are being prevented in an illegal manner.

11. Refuting the allegations of the petitioners, learned Standing Counsel for SUDA has submitted that earlier Scheme known as Swarn Jayanti Sahari Rojgar Yojna was discontinued by the Central Government w.e.f. 13.3.2014. As a consequent therefore, vide letter dated 16.6.2014 it was directed that no further payments would be made to the Community Organizers. In the new scheme which was launched in the name and style of National Urban Livelihood Mission [NULM] on 13.9.2013, the criteria for appointment of Community Organizers was on the basis of their qualification and experience. However, this consideration for the post of Community Organizers was to be done by an external agency, which was entrusted the job of recruiting the Community Organizers. Moreover, under the new NULM scheme, the guidelines provide that the Community Organizers could be recruited by outsourcing on a payment of Rs. 10000/- per month. The petitioners were free to have applied for the post of Community Organizers under NULM scheme.

12. It has also been argued on behalf of the respondents that there was no design to oust the petitioners except the fact that the scheme had come to an end and there was no other mode except to order that henceforth no payments under the old scheme would be made. However, the petitioners should have applied for the post of Community Organizers under the new scheme and they would have been considered by the agency which was making the appointment

on the post of Community Organizers. However, petitioners have lost the opportunity as they had not applied and the appointments have been made under the scheme. It has also been pointed out that the State Government by means of Government Order dated 27.6.2014 has also mentioned the educational qualification and the experience required for the persons, who are to be employed.

13. Having considered the submission made by the parties, one thing is crystal clear that under a component of Swarn Jayanti Sahri Rojgar Yojna (SJSRY), namely, Urban Community Development Network, the Community Organizer and the Community Development Society were being allowed to work and paid honorarium. Petitioners herein were also appointed as Community Organizer under the aforesaid Scheme. Petitioners have stake their claim only on the ground that they have been working as Community Organizer for more than 13 years and thus have acquired a right to remain in service under the Scheme.

14. The State Government in its counter affidavit has stated that the aforesaid Scheme has been closed by the Central Government w.e.f. 31.3.2014. After closure of the Scheme there is no provision for grant of honorarium to Community Organizer and Community Development Society. Under the new Scheme, namely, National Urban Livelihood Mission, the guidelines have been issued and the said guidelines are to be followed for engagement of Community Organizer.. As per the said guidelines the application submitted through service provider/out source agency was to be considered.

15. Here, it is also relevant to mention that the petitioners have vehemently asserted that Sri Indra Pal Kanoujia, who was appointed like the petitioners under the Scheme has been allowed to continue. Refuting the said allegation, the learned State Counsel has stated that said Indra Pal Kanoujia was appointed against a sanction post of Project Director and not on the post on which petitioners putting forth their claim. Therefore, the assertion of the petitioners that they have been discriminated in the matter of employment, is wholly misconceived and is rejected. There is no dispute to the fact that the Swarn Jayanti Sahri Rojgar Yojna, in which petitioners were working, has been abolished and a new scheme has been introduced by the name of National Urban Livelihood Mission (NULM). Petitioners are asserting that only the name of SJSRY scheme has been changed as NULM and nothing else. This assertion of the petitioner appears to be incorrect for the reason that in the new scheme though the Community Organizers are to be employed, however certain new qualification and experience has been prescribed. The State Government by its Government Order dated 27.6.2014 has provided the educational qualification and experience required for the persons, who are to be employed. A perusal of the clause-10 sub clause-3 of the Government Order shows that the Community Organizers, who fulfil the criteria as laid down, would be given preference in the matter of employment. Later on, the State Government issued a Corrigendum dated 10.7.2014 whereby it was provided that the Community Organizers and Technical

Expert would be appointed by an outside agency.

16. It appears from the record, that after the issuance of the corrigendum dated 10.7.2014, the SUDA has issued an advertisement dated 24.7.2014 for engaging external agency for making appointment on the post of Technical Expert and Community Organizers. It may be noted that the State Government subsequently issued a Government Order dated 13th March, 2015 for engagement of Technical Experts and Community Organizers in the State through service provider as per the qualification fixed by the Central Government. Consequently, vide order dated 120.4.2015 M/s XEAM Ventures Pvt. Ltd. Chandigarh was appointed as the outsourcing agency for engagement of Community Organizer. When the aforesaid government order and appointment of M/s Xeam Ventures Pvt.Ltd. was issued, petitioners moved an application for interim relief (C.M. Appln.No.51475 of 2015) praying therein not to proceed with the appointment on the post of Community Organizers but failed to get any favourable order in their favour. Thus, it can be easily inferred that the persons might have been engaged as Community Organizers. It would be relevant to mention that had the petitioners applied under the new Scheme for the post of Community Organizers, they would have definitely been considered by the agency, which was making the appointment on the post of Community Organizers. However, the petitioners have lost the opportunity as they had not applied.

17. It would be relevant to point out that law is well settled that if temporary or ad hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad hoc/temporary service of persons employed under the project or scheme would come to an end on completion/closure/cessation of the project or scheme. Further, if the scheme had been in operation for some decades or that the employee concerned has continued for one or two decades would not entitle the employee to seek permanency. The employment of such matter is coterminous in nature. On completion/discontinuance of the project or scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right, nor seek regularization in some other project or service.

18. Here in the case at hand a perusal of the appointment orders, which have been brought on record by the petitioners, would show that petitioners were appointed on contractual basis initially for a period of six months, which was to be extended on satisfactory service. In some of the appointment letters like the appointment of petitioner-Vinod Kumar Singh, it has been clearly mentioned that he is being appointed for a period of six months from the date of taking over charge and thereafter his appointment would automatically come to an end. Therefore, it is wrong to say that the petitioners have right of continuance in service.

19. My above view is fortified by the decision of Supreme Court reported as Md. Abdul Kadir v. Director General of Police, Assam & Ors (2009) 6 SCC 611 wherein

it was observed as under:- "14. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularisation. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts coterminous with the Scheme and not of permanent posts. W.P.(C) No.1542/2010 Page 11 of 15 15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation in some other project or service. [See Bhagwan Dass v. State of Haryana, Delhi Development Horticulture Employees' Union v. Delhi Admn., Hindustan Steel Works Construction Ltd. v. Employees' Union, U.P. Land Development Corpn. v. Amar Singh, Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra, State of Karnataka v. Umadevi, Indian Council of Medical Research v. K. Rajyalakshmi and Lal Mohammad v. Indian Railway Construction Co. Ltd.] In view of this settled position, the appellants will not be entitled to regularisation.]"

20. In view of the aforesaid facts and legal position, the petitioners have no right to continue in service on introduction of new scheme and abolition of the scheme under which they were appointed for fixed term. Therefore, the petitioners are not entitled for the relief as sought for by them and the writ petitions are liable to be dismissed.

21. Accordingly, all the aforementioned writ petitions are hereby dismissed. Costs easy.