
(2014) 09 AHC CK 0165
In the Allahabad High Court
Case No : Service Single No. 4696 of 2014

Digvijay Nath Pandey

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Citation : (2014) 6 ALJ 782 : (2014) 4 UPLBEC 2976

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Alok Mishra, Advocate for the Appellant

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—The petitioners are aggrieved by the order dated 10.07.2014 which is a letter written by the Director, Education (Secondary) Lucknow addressed to all the District Inspector of Schools, U.P. whereby it has been informed that the term of contract of those agencies engaged for imparting computer education on contract basis under the I.C.T. programme is coming to an end and therefore, respective Inspectors should inspect the computer instruments and that the assets are properly maintained so that the responsibility of continuing of computer education which will fall upon the colleges can be maintained and managed properly.

2. According to the petitioners they were appointed in the different schools on contract basis under the I.C.T. programme for imparting computer education to students upto high school level and for imparting computer training to the teachers of the schools. Annexure-2 filed alongwith writ petition is the Agreement entered into between the Director, Secondary Education Government of U.P. with Educomp Solutions Ltd. which was the Agency contracted to provide Computer Instructors for installing computer system in High Schools in the State of U.P. and to impart computer education to students and teachers at the High School level.

3. Heard Sri Alok Mishra, learned counsel for the petitioners, Sri Sandeep Sharma, learned counsel for the respondent no. 1 and the learned Additional Chief Standing Counsel for the respondents no. 2 to 6.

4. Sri Alok Mishra, learned counsel for the petitioner sought to submit that the appointment of the petitioners was under the Scheme of the Central Government and in this regard he has referred to a letter of the Ministry of Human Resources Development, New Delhi dated 14.02.2013 and the submission is that it is under the Scheme for promotion and advancement of computer education that the petitioners were appointed. The letter dated 14.02.2013, however, shows that the Scheme was for the year 2013-14. He has also referred to a letter of the Ministry of Human Resources Development, New Delhi dated 15.04.2014, Annexure-9 to the writ petition to show that certain amendments were introduced in the Scheme which would continue in the financial year 2014-15 and therefore, the Scheme was likely to continue in 2014-15 also and therefore, by the order impugned in the present writ petition the services of the petitioners would stand terminated even though the Scheme is continuing.

5. Paragraph 8 of the Agreement provides that the Agency, namely, the Educomp Solutions Ltd. would provide one full time Instructor having requisite qualifications in each schools and will also provide duly qualified faculty with required skills for each computer lab in each school where the project is implemented.

6. In paragraph 8 of the Agreement filed as Annexure-2 to the writ petition the responsibility for remuneration to be paid to the Instructor was that of the Agency and remuneration was to be paid not less than Rs. 3,500/- to each faculty.

7. In paragraph 6 of the Agreement it is provided that the Agency shall maintain the entire system in working condition during the period of contract which was five years.

8. Paragraph 7 of the Agreement further provides that the Agency shall update the system as per need during the period of contract of five years.

9. Paragraph 10 of the Agreement stipulates that the Agency shall supply adequate stationary and consumables at each school in which Computer Laboratory is to be established during the entire period of the contract.

10. Paragraph 11 provides that the Agency shall impart training of computer operation, operating system, application software and computer based training on multimedia consisting of text, graphics, sound, animation and video to at least five teachers per year, per school and ensure such efficiency that they may develop child centered education through multimedia.

11. In paragraph 4 of the writ petition it is the own case of the petitioners that they were selected by the Educomp Solutions Ltd. as Computer Teachers for imparting computer education to the students upto high school level and also for

imparting training to the teachers of the schools in computers. A sample of the agreement entered into between the Agency, namely, Educomp Solutions Ltd. with one of the petitioners, Vinod Kumar Upadhyay, petitioner no. 4 has been filed as Annexure-3 to the writ petition which mentions that the basic salary to be paid to the Instructor would be Rs. 12,600/- which would be the only component forming part of salary for purposes of computing Provident Fund. The Instructor would also be paid HRA of Rs. 12,000/- per annum and a conveyance of Rs. 9,600/- per annum as per the conveyance policy of the Company. The Instructor will also be entitled to allowance for telephone rentals and local/STD/ISD calls subject to a limit of Rs. 6,288/- per annum for official calls expenses. It was also provided that the tenure of appointment would commence from the date of reporting for duty and shall automatically cease at the end of academic year every year till the completion of the Scheme.

12. The contract of appointment clearly mentions that the Instructor would have no right to claim permanency against the Company as the appointment is only for the Scheme. What is noteworthy is that the contract of appointment is between the Agency and the Instructor, and mentions that it is the Company which is appointing him as Computer Teaching Instructor for the I.C.T. U.P. Phase 2.

13. Paragraph 8 of the letter of appointment mentions that the appointment is with the Company and the Instructor will be allowed to resign from the services of the Company by giving a clear one month notice in writing or by payment of one month basic salary in lieu of such notice. The Company likewise would have the right to terminate the services of the Instructor by giving him one month's notice in writing or on payment of one month gross salary in lieu of such notice. Thus, from Annexure-3 to the writ petition, it is clear that the petitioners were appointed not by the State Government or by any Department of the State Government but by the Company-Educomp Solutions Ltd. The condition of service of the petitioners is also governed by the terms and conditions laid down in the letter of appointment issued by the Company-Educomp Solutions Ltd. This shows that there is no master-servant relationship between the petitioners and the State Government or any Department of the State Government.

14. The learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court reported in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, That was a case where the Supreme Court had held that the appellants were employed under the Prevention of Infiltration of Foreigners Additional Scheme, 1987 and though initially they were employed for a period of two years the Scheme was extended from time to time and is still being continued. The Supreme Court held that if the temporary or ad hoc engagement or appointment is in connection with a particular project or specific Scheme, the ad hoc or temporary service of the persons employed under the project would come to an end on completion/closure/cessation of the project or Scheme. 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. 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. Paragraphs 13, 14 and 15 of the judgment read as follows:

"13. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said scheme is being extended from time to time and is being continued. If the temporary or ad-hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad hoc or temporary service of the persons employed under the Project or Scheme would come to an end, on completion/closure/cessation of the Project or the Scheme.

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 regularization. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts co-terminus with the scheme and not of permanent posts.

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 regularization 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 (3), 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."

15. The petitioners, however, rely upon the observations made in paragraph 17, wherein, it has been mentioned that 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.

16. The petitioners have not been appointed by the Government through any known process of selection but rather they are appointees of Educomp Solutions Ltd. which is a registered Company under the Companies Act, 1956 with its registered office at New Delhi. Moreover, as already noted above the State Government entered into a contract with Educomp Solutions Ltd. for a period of

five years for hiring the services of the petitioners on terms and conditions as mentioned in the Agreement but the petitioners were appointed by the Company and their services would be governed by the terms and conditions of their letter of appointment, copy of which has been filed as Annexure-3 to the writ petition. The aforesaid judgment therefore has no application to the facts of the present case and is rather against the petitioners.

17. The petitioners have also relied upon the order of the Division Bench of this Court dated 22.05.2014 passed in Public Interest Litigation (PIL) No. 28719 of 2014, Vindhya Vasini Jan Seva Sanstha & Another Vs. Union of India & Others, wherein, the Division Bench declined to entertain the writ petition as it was essentially one relating to employment and in which the Division Bench observed that there is no reason for the Court to assume that the State would not be keen to provide adequate computer education to the children of the Schools. There is no finding recorded by the Division Bench that the petitioners were appointed by the State Government as computer teachers and a mere observation that there is no reason for the Court to assume that the State would not be keen to provide adequate computer education to the children of the schools does not imply that there was any direction that the petitioners who are appointees of the Company, Educomp Solutions Ltd. would be entitled to claim to have been selected as computer teachers in the Secondary Schools in the State Government and therefore, would be entitled to continue as such. The observation made by the Division Bench in PIL No. 28719 of 2014 also has no application to the facts of the present case.

18. The third judgment relied upon by the petitioners is dated 13.08.2014 passed in Service Single No. 3638 of 2014, Pushpendra Singh Vs. State of U.P. & Others. That was the case where the petitioner had prayed for a direction to the respondents to take work from him after renewing the contract of the petitioner on the vacant post of driver under the National Leprosy Eradication Programme. The learned Single Judge relying upon the decision of the Supreme Court in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another, observed that in the said judgment the Supreme Court has held that merely because contract labour work under the supervision of officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer. The learned Single Judge in its order dated 13.08.2014 has held that the claim of the petitioner for re-engagement directly by the Government fails but since the continuation of scheme is not disputed, a direction was given to the State Government to issue necessary directions to the service provider agency to first engage the petitioner, who has already discharged the duties and after absorption of such experienced persons, the new persons shall be engaged. In my opinion the said judgment also has no application to the facts of the present case inasmuch as the petitioner is an employee of a Company registered under the Companies Act whose services are governed by the terms and conditions of service entered into between him and the Educomp Solutions Ltd. and their services were hired only for a period of five

years under a contract of Agreement entered into between the Government of U.P. and Educomp Solutions Ltd. and in terms of paragraph 2 of the Agreement, the Agreement was to be valid only for a period of five years from the date of signing the Agreement. Under the said Agreement the Company was required to set up computer labs in High Schools identified by the State Government, in Meerut Zone, Lucknow Zone, Jhansi Zone, and Gorakhpur Zone, provide computers, all electric fittings, tables, chairs and all other computer accessories and also maintain the same during the period of the contract. Computer Instructors (petitioners) were to be provided by the Company who would impart computer education to High School children and also train the teachers to be able to maintain and manage the computer labs later on. The Scheme is sponsored by the Central Government but there is not a single document on record to show that the State Government intends to continue the Scheme within the State of U.P.

19. Thus, from the terms and conditions of the contract of Agreement entered into between the Government of U.P. and Educomp Solutions Ltd. as well as the contract of employment signed between the petitioners and Educomp Solutions Ltd. it cannot be inferred that the petitioners were employees of the State Government or that they were entitled to continue working as Computer Instructor as their tenure was only during the existence of the Agreement between the Government of U.P. and Educomp Solutions Ltd. In fact there was no separate Agreement entered into between the Government of U.P. and the petitioners. The Agreement was signed on 01.07.2009 and therefore, it came to an end on 30.06.2014.

20. However, from the above discussion what emerges is that the petitioners were never appointed by the State Government or by any Department of the State Government. They were hired for working in the establishment of the State Government and for the work of that particular department on the basis of a contract entered into between the Government of U.P. and Educomp Solutions Ltd. Which was valid for a period of five years from the date of signing the Agreement (paragraph 2 of the Agreement). The Agreement was signed by the Director, Secondary Education on behalf of the Government of U.P. and Educomp Solutions Ltd. on 01.07.2009 but the letter of appointment of the petitioners was issued by the Educomp Solutions Ltd. which was a Company duly registered under the Companies Act, 1956 with its registered office at New Delhi and that the petitioners were the employees of the Company as would also be clear from the letter of the appointment, Annexure-3 to the writ petition. The State Government, for purposes of advancing and encouraging computer education in the high schools in U.P., entered into an agreement with the Company, namely, Educomp Solutions Ltd. to provide Instructors who would impart education alongwith computers and all other accessories which would be required for establishing computer lab in the secondary schools in the State Government. That does not make the petitioners employees of the State Government. It also cannot be said that the Educomp Solutions Ltd. was merely a hiring Company to

provide Instructors rather the Educomp Solutions Ltd. Company only provided the Instructors with computer accessories to establish laboratories for the purposes of training and imparting computer education to the students as well as to train the teachers and that the service conditions of the petitioners were governed by the terms and conditions of their contract of appointment with the Educomp Solutions Ltd. and not the rules and regulations framed by the State Government which govern the service conditions of the employees of the education department of the State Government. Here also it is not the services of the petitioners which are being terminated by the State Government but rather it is the term of contract between the State Government and Educomp Solutions Ltd. which has come to an end and the impugned order dated 10.07.2014 only informs all the District Inspectors of Schools to check the computers and laboratories and other accessories provided by Educomp Solutions Ltd. to ensure that the same are in proper order at the end of the period of contract.

21. In this view of the matter the petitioners cannot claim continuance under the State Government nor can they claim the status of an employee of the State Government. In view of the aforesaid facts of the case and law laid down by the Supreme Court in Mohd. Abdul Kadir (supra) as well as the International Airport Authority of India (supra), I do not find any illegality or infirmity in the impugned order dated 10.07.2014.

22. The Writ petition is wholly misconceived, devoid of merit and is accordingly dismissed.