

(2014) 05 RAJ CK 0213

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 3070 and 3251/2014

Hanuman Ram

APPELLANT

Vs

State of Rajasthan and Others
 Mahendra Singh Deora
Vs State

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2014) 4 CDR 2059 : (2014) 3 RLW 2655 : (2014) 4 SCT 342

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Rajeev Purohit, Mr. Abhishek Sharma, Mr. R.C. Joshi, Mr. Shreekant Verma, Mr. V.R. Choudhary, Mr. Bharat Devasi and Mr. D.S. Sodha, Advocate for the Appellant; P.R. Singh, Addl. Advocate General and Mr. Dinesh Ojha for State and Mr. B.L. Bhati and Mr. Mukesh Dave, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—The present batch of writ petitions involving common point is being disposed of by this common order. The facts are illustratively taken from SBCWP No. 3070/2014--Hanuman Ram vs. State of Rajasthan & ors. in which State Government has filed reply and also from S.B. CWP No. 2783/2014--Manisha Joshi & ors. vs. State of Rajasthan & ors.

2. The facts in nutshell leading to the present set of writ petitions are like this.

3. The petitioners were appointed on contractual basis as Computer Instructors by the private placement agencies, namely: M/s. Compucom Software Limited, Jaipur and Educom Solutions Ltd., Gurgaon in the computer education project of the State Government, namely; ICT, in the first phase in 2008 started in 2500 Government schools. The said scheme was sponsored by the respondent State and the petitioners upon being so appointed through the private placement agencies in 2008 have continued to work as Computer Instructors in different Government Schools and the term of their contract in favour of these two

companies aforesaid was extended last upto 30/4/2014 under the orders of Director, Secondary Education, Bikaner dated 4/3/2014, a copy of which is placed at Annex. 11 (page 74 of the paper book in Manisha Joshi's case (supra) and the present writ petitions were filed on 10/4/2014 and 21/4/2014 respectively, just before the expiry of contractual period of these two private placement agencies, seeking a direction from the Court that the respondent State may be directed to extend the term of contract of petitioners as also of these private placement agencies so that the petitioners, who have worked for a long period as Computer Instructors may continue in the said computer education programme of the State Government since the education of children is a fundamental right under Article 21A of the Constitution of India as also as per the Right of Children to Free and Compulsory Education Act, 2009 and since the State Government has failed to make any suitable alternative arrangements for computer education for the students in the State, the respondent State Government should be given mandamus direction to extend the contract of private placement agencies as also of present petitioners lest the computer education is seriously and adversely effected. The petitioners have also claimed regularisation in service as computer instructors.

4. Learned counsel for the petitioners, Mr. Rajeev Purohit, who led the arguments on behalf of the petitioners, brought to the notice of the Court the judgment of coordinate bench of this Court at Jaipur Bench dated 15/9/2011 in the case of Rajeshwar Singh & ors. vs. State of Rajasthan & ors.- SBCWP No. 12448/2009, whereby, the learned Single Judge disposed of the batch of several writ petitions by holding that the State Government is expected that in future they will take a decision to make the post of computer instructors to be a regular post and fill up the posts on regular basis. On taking such decision, it was further expected by the Court that keeping in mind the long experience of those petitioners, some preference would be given to them while making the regular recruitment. The Court also found that since the post of computer instructor was not an encadred post in the State and they are being filled in through private placement agencies/ companies entering into the contract with the State Government, therefore, aforesaid expectation was expressed in the said judgment dated 15/9/2011.

5. Learned counsel for the petitioner submitted that the State has not even by now encadred the said post of computer instructor nor any regular appointments have been made for such posts and in the absence of any alternative suitable arrangements being made by the State, the aforesaid directions deserve to be given to the respondent State for extending the contract of the petitioners. Learned counsel for the petitioners also submitted that under the interim order of this Court, the petitioners are continuing even now after 30/4/2014 and, therefore, till regularly selected computer instructors are available to replace the petitioners, their contractual employment deserves to be continued.

6. Per contra, learned Addl. Advocate General Mr. P.R. Singh appearing for the respondent State & Mr. B.L. Bhati, Government Counsel appearing on behalf of

the Education Department vehemently opposed these writ petitions and inter alia raising certain preliminary objections as to maintainability of the writ petitions as in some of the writ petitions the aforesaid private placement agencies, who employed these petitioners as computer instructors to work in the aforesaid project of the State Government have not been impleaded as party respondents. Besides the reply filed in the writ petition No. 3070/14--Hanuman Ram vs. State, the respondents have contended that the Court cannot give any such mandamus directions to the State to extend the term of contract of the placement agencies, whose contractual period has expired on 30/4/2014 and as far as continuance of computer education of the students in the State is concerned, the respondent State submitted that for the 3rd phase of planning for computer education starting from July, 2014, the State Government has already planned to train the regularly selected and already appointed teachers of the science stream in the respective schools and such trained teachers will continue to impart computer education to the students and by not extending the contractual employment of the present petitioners or the private placement agencies, the State Government is likely to save huge amount for being utilized for other purposes.

7. Learned counsel for the respondents also pointed out that the contract of these private placement agencies were of two types--BOO (Build--Own--Operate) and BOOT (Build--Own--Operate--Transfer) in which the aforesaid private placement agencies were expected to set up the computer labs, install their equipments, train the teachers as well as students and at the end of the contract the option of transfer their equipments was given under the BOOT arrangement, which was not so available under the BOO arrangement. The relevant portion of the reply of the respondent State is quoted below for ready reference:-

7. That as mentioned hereinabove that to impart computer education to the students at Secondary/Sr. Secondary level the State Government invited tenders from eligible service providing agency and accordingly M/s. Compucom Software Limited was given tender and on completion of the same, neither the service providing agency has got right for extension of contract nor the incumbents rendering services through the said agency are having any right to challenge the lawful action of the respondents. Much important to mention here that the contract was on Build-Own-Operate (BOO) or Build-Own-Operate-Transfer (BOOT) basis and thus the regularly selected teacher of the science stream are being imparted computer training in order to impart computer education and thus the petitioner cannot question the said action as the eligible candidates would be assigned computer teaching work, which shall certainly save a huge amount of public ex-chequer.

It is respectfully submitted that so far the computer education has not been implemented at the secondary/sr. secondary education set up as a compulsory subject and there were two phase of implementation of computer education at the secondary/sr. secondary level but now the State Government has decided to expand the computer education programme, for which third phase of the

planning for computer education is going to be implemented w.e.f. July, 2014 and in this way, the regularly selected teacher of Science Stream are being trained and certainly the same shall save a huge amount. It is reiterated that Computer Instructor is not an encadred post and therefore the regularly selected teachers are best option to impart computer education and as such the decision taken by the State Government is having reasonable nexus and an object sought to be achieved. On the other hand no indefeasible right accrues in favour of the petitioner and alike only on the count that they are having requisite qualification in the field of computer education as required by the State Government, while inviting the tenders from the service providing agency. More so workload of the petitioner and alike is just one or two periods in a day and therefore the writ petition preferred by the petitioner deserves to be dismissed on this count alone.

8. Learned Addl. Advocate General Mr. P.R. Singh also brought to the notice of the Court the order recently passed by the Division Bench of this Court headed by Hon''ble Chief Justice dated 7/2/2014 in DB Civil Special Appeal (Writ) No. 249/2014 in SBCWP No. 7628/13--Rajpal Singh Rathore & Anr. vs. State of Rajasthan & Ors. in which in similar circumstances, when the learned Single Judge at Jaipur Bench, refused to grant interim relief in the second stay petition filed by the petitioners there and the matter was taken up before the Division Bench, the appeal of the petitioners-computer instructors was rejected with the following observations:-

Briefly stated the facts, indispensable for dealing with the limited issue in the instant appeals, are that the appellants/writ-petitioners had been appointed in the respective schools, on contractual basis, in terms of an agreement entered into between the State and M/s. Compucom Software Pvt. Ltd. in the year 2008 for imparting elementary computer education to the students at the school level. The duration of the agreement was for a period of five years from the year 2008-09 and was to culminate in the month of June, 2013. The appellants/writ-petitioners claimed that they are academically qualified for the post of computer instructor to impart computer education, made compulsory in class-IX and X of the State through various projects. They, however, being aggrieved by the policy of the Government to provide computer teaching through private agencies instead of making regular recruitment and that too at a meager salary of Rs. 2500/- per month, had approached this Court with S.B. Civil Writ Petition No. 12448/2009-Rajeshwar Singh Vs. State of Rajasthan & Ors. Similar such petitions were also filed by others equally placed. This batch of writ petitions was disposed of on 15.09.2011 and by the order rendered therein, it was, inter alia, observed that the State Government, in future, would take a decision to make the post of computer instructor a regular post and to fill up the same on regular basis. It was observed further that while making such recruitment on regular basis, some preference on the basis of experience of the petitioners, would be accorded to them.

It was, thereafter, that the State-respondents took a decision on 24.12.2012 to

grant three months training to the lecturers/teachers Grade-II/teachers of Science and Maths of the schools, so as to pursue computer education in the schools after 30.06.2013, on completion of the first phase of the related project. As this decision had the potential of their ouster, the appellants/writ-petitioners approached this Court with S.B. Civil Writ Petition Nos. 7628/2013 and 21326/2013. By order dated 24.05.2013, the learned Single Judge directed the State-respondents not to take any action contrary to the directions contained in the judgment and order dated 15.09.2011. While the matter rested at that, the State-respondents reiterated their decision as on 24.12.2012. Meanwhile, however the period of agreement had been extended up to 21.12.2013. The appellants/writ-petitioners further claimed that the term of their service has since been extended up to 31.01.2014. Situated thus, they submitted the second stay application for securing their continuance in service. By the impugned order, to reiterate, the learned Single Judge has declined to accede to this request.

Whereas, Mr. Shah has insistently argued that the decision to replace the appellants/writ-petitioners, who are qualified computer instructors, by serving teachers of the schools, who lack in academic qualifications and expertise in computer technology, would be apparently destructive of the avowed objectives of imparting and consolidating the knowledge of computer science to the students community at large and thus, having regard to the letter and spirit of the determination made in the judgment and order dated 15.09.2011, the appellants/writ-petitioners ought to be continued in service, the learned Additional Advocate General has urged that having regard to the nature of appointment of the appellants/writ-petitioners, they have no right to continue in service on completion of the Phase-1 of the project and the initiation of Phase-2 thereof. Mr. Gill has reiterated that Phase-2 of the project encompass instructions to introduce the students to use hardware and software tools and technologies and thus, the serving teachers of the schools with the contemplated condensed training of theirs, would be equally equipped to train the students and thus, as the appellants/writ-petitioners would not be replaced by a fresh set of contract employees, their request for continuance in service has been rightly declined.

Upon hearing the learned counsel for the parties and on a consideration of the recorded facts, we are of the view that the impugned order does not warrant any interference. We find ourselves in complete agreement with the conclusions recorded in the impugned order. For obvious reasons as the writ petitions are pending adjudication on merits, we refrain from dilating on further details. Suffice it to reiterate that in the attendant facts and circumstances, we see no persuasive reason to interfere with the orders impugned in the instant appeals.

The appeals are accordingly dismissed. The stay applications also stand dismissed. The application I.A. No. 2306/2014 in DBSAW No. 249/2014, stands disposed of.

A copy of this order be placed in the connected file.

Sd/-

(Veerendr Singh Siradhana), J

Sd/-

(Amitava Roy), C.J.

9. I have heard the learned counsels at length and perused the record including the orders and judgments cited at the bar.

10. In effect, all these petitioners have sought from the Court in the present set of writ petitions, to direct the respondent State to extend the term of contract given to the private placement agencies for engaging the computer instructors, who are supposed to impart computer education and training to the students and teachers of the Government Schools, which term, admittedly, expired on 30/4/2014.

11. At the out set, though no such prayer has been made in the writ petitions, in fact, in substance, the case of the petitioners hinges upon the same and it may be observed that the contract of this nature is based upon the concept of mutuality and the terms agreed upon between the parties mutually and only thus such a valid contract can come into existence under the contract law. The Court, to say the least, cannot give any such mandamus directions as aforesaid claimed by the petitioners in the present writ petitions. Other than this, the foundation of these contracts of private placement agencies with the State Government, the petitioners have simply no case to continue in the contractual employment as Computer Instructors in the Government Schools run by the State Government.

12. The petitioners are admittedly and indisputably employees of these private placement agencies & not of the State Government and the privity of contract is between these placement agencies and the State Government and was never between the petitioners and the State Government. Therefore, the directions sought in the writ petitions for continuing of contractual employment of the present petitioners is without any basis when there is no privity of contract between the petitioners and the State Government. These two are different things altogether and one cannot be mixed with the other.

13. The argument sought to be raised by the learned counsel for the petitioners that petitioners are well trained computer instructors and have been working for long period of more than 4-5 years by now are in a better position to impart computer education to the students in the Government Schools run by the State and, therefore, the respondent State cannot be allowed to take a stand that they will continue such programme of imparting computer education in the third phase from July, 2014 with the help of their regularly selected and already appointed teachers, who have been or are being trained for imparting such computer education is an argument misconceived, to say the least. It is absolutely within the domain & discretion of the State Government to take such a policy decision and no interference can be made by the Court in such realm of

policy decision making.

14. In the absence of any policy decision taken to the contrary, the stand of the respondents taken in the reply that such is going to be the pattern of imparting computer education in the third phase from July, 2014 deserves to be accepted. That is why, precisely in these circumstances, despite the sanguine hope expressed by the learned Single Judge in the judgment dated 15/9/2011 in the case of Rajeshwar Singh & Ors. vs. State of Rajasthan & ors., the Division Bench was constrained not to interfere in such matters and protect the contractual employment of the petitioners while passing the order dated 7/2/2014 rejecting the intra court appeal filed by the petitioners against the refusal to grant interim relief by the learned Single Judge. The observations quoted above by the Division Bench not only touch and rebut the arguments raised at the bar in the present set of writ petitions.

15. It is also clear that there is no legal, much less fundamental or constitutional right of the petitioners to seek any continuance of the contractual employment though the private placement agencies much less a mandamus direction from the Court for extending the term of contract of the private placement agencies or computer software companies. Since there is no basis or foundation for expressing the apprehension that the present petitioners will be replaced by the another set of contractual employees or as of now no process has been initiated to encadre the post of computer instructors by the State Government, it will be futile to deal with these arguments of the learned counsel for the petitioners and to direct the continuance of petitioners in the contractual employment till such events take place.

16. Viewed from any angle, this Court does not find any merit in the present writ petitions and the same are liable to be dismissed.

17. Accordingly, the present writ petitions are dismissed. No costs. Copy of the order be sent to the parties concerned forthwith.