(2011) 09 DEL CK 0291

In the Delhi High Court

Case No : Writ Petition (C) No''s. 1072-1174 of 2005

Harish Bhatt and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 16, 226

Citation : (2011) 9 AD 507

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Sumeet Sharma and Mr. Rohit Kumar Singh, for the Appellant; Pradeep K. Dubey and Mr. R. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—Initially the petition was filed by 103 petitioners. In pursuance of the subsequent events, an amended memo of parties has been filed by the petitioners naming as many as 80 petitioners left in the petition. It is informed by the counsel for the respondents that one petitioner, Ram Pal Singh, who is petitioner No.50 herein, has also left the service of the respondent and thereby leaving a total number of 79 petitioners pursuing this petition. With the consent of counsel of parties, I have heard the matter finally.

2. It was the petitioners" case that they were working as daily wagers and had been appointed without any interview or advertisement and were getting minimum wages on their positions as Helpers, Waiters, etc. They made representations of regularization of their services with the respondent, DSOI, but without any action of resolution on their part. They also approached the office of Labour Commissioner for consideration where settlement was arrived at between the parties in conciliation proceedings dated 17th June, 2003. In pursuance of the same, the Memorandum of Settlement was to be filed by the parties. After that, screening of the casual employees was to be undertaken by DSOI for absorption. It is alleged by petitioners that the respondent/DSOI has not taken

any positive action in this direction though there existed more than 100 vacancies. On this premise, the relief is sought that their services be regularized w.e.f. due dates of their employments. The petition is mainly contested by the respondent/DSOI on two grounds :

1) That the DSOI is not a State but an institution of a registered society which is not getting any fund or grant-in-aid from the Government.

2) That petitioners being muster roll employees have no right of regularization in view of the judgment of Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

3. With regard to submission of the learned counsel for the respondent/DSOI that the respondent is an institute of registered society which is running and managing its affairs out of the contributions and donations of the members and is not getting any fund or grant-in-aid from the Government, the learned counsel has relied upon the cases of Asha Vij & Ors. v. The Chief of the Army Staff and Ors. 2002 VI AD (Del) 109. In this case, the petitioner was a society which was stated to be managing and running its affairs of school with the regiment fund and it was held that it would not come in the ambit of expression "State" or any other authority as envisaged under Article 12 of the Constitution of India. It was held that the Regiment fund was not a public fund and the school was managed by a society registered under the Societies Registration Act. The learned counsel for the DSOI has referred to the affidavit of Anil Bahuguna, Director, Ministry of Defence filed in a case WP (C) No.2974/1997 titled "Rajveer Singh & Ors. v. Union of India & DSOI wherein Anil Bahuguna in his capacity as Director, Ministry of Defence deposed as under :

1. That the Union of India does not control or manage the affairs of DSOI, which has been impleaded as Respondent No.2 in the writ petition. It is submitted that DSOI is a proprietary institute registered under the Societies Registration Act. It is purely a private body, and not a State of instrumentally thereof within the meaning of Article 12 of the Constitution. The DSOI is governed and run by its own set of rules and there is no government control direct or indirect in running the Institute. The DSOI is run by its own funds and it does not receive any grant of financial aid from the Govt. either directly or indirectly. No Public or Govermental Funds or Grants are used in running the DSOI.

4. As against this, the learned counsel for the petitioner states that this respondent has claimed it to be a "State" with the Sales Tax Deptt. for claiming exemption and has also declared it to be a "State" in the case filed by one employee in Civil Suit No.2206/2008.

5. I have considered the submissions made by the learned counsel for the petitioners and also the respondent/DSOI. There cannot be any dispute that respondent No.4/DSOI is a proprietary Institute of a society registered as Defence Services Officers Welfare Fund (DSOWF). In this regard, reference is made to Certificate of Registration under the Societies Registration Act which was

issued on 2nd January, 1963. The petitioners do not dispute this aspect. However, as noted above, their submission is that this respondent/DSOI has claimed itself to be a "State" before the Sales Tax authority and was claiming some exemptions. In this regard, reference was made to a letter dated 24th March, 1975 purported to have been written by some Hony. Secretary of DSOWF to the Secretary of respondent/DSOI. Reference is also made to copy of the minutes of the meeting of DSOI dated 6th January, 2008. The learned counsel has also referred to the resolution of DSOWF dated 19th May, 1986. I have perused these documents and do not see anything to be mentioned therein that DSOI was either funded, or controlled or managed by the Ministry of Defence or any other department of Government of India or any other Government. In the letter dated 24th March, 1975 purported to be written by Honorary Secretary of DSOWF to DSOI it was stated that DSOI is a subordinate office of Ministry of Defence. In the meeting of 6th January the Institute had resolved to take up the case with Ministry of Defence for exemption from payment of property tax. In the minutes of 19th May, 1986, suggestion of the Auditors was put up before the Committee and it was decided that DSOI is neither registered as a society nor it is filing income tax returns as it is branch of DSOWF. These nowhere in any form describe the DSOI to be an instrumental agency of the Government. The mention of the civil case by learned counsel also does not support his contention firstly because the same has not yet been filed in the present proceedings and so it is not known as to what was stated by DSOWF and in what context. In any case, mere fact that either DSOI or DSOWF at any point of time either claimed any benefit of sales tax or it claimed to be a department of Ministry of Defence, will not make this respondent to be an instrumental agency of the Government and an authority to be covered under the ambit of Article 12 of Constitution of India. It is primarily because there is nothing on record to controvert the plea taken by the DSOI that it has been running and managing its affairs from the contributions and donations of the members and was not taking any grant-in-aid or fund from the Government Exchequer in any form.

6. Similar question arose before this Court in the case of N.C. Rastogi Vs. Union of India and Others, wherein it was held as under :

There is no State financial assistance to AWHO. The funds of AWHO are created by the society itself. Suitable financial arrangements for the participants of the schemes are made from various financial agencies such as Life Insurance Corporation of India, banks etc. and loan from Central Government. No instrumentality of the Government is involved in making financial arrangement from the aforesaid organizations. It is clear from the Memorandum, Rules and Regulations of AWHO that the Government does not appoint or nominate the Board of Management or the Executive Committee. The Board of Management as well as the Executive Committee to whom the management and affairs of AWHO are entrusted, are controlled by the provisions of the rules of AWHO. No specific appointment is made by the Government. The officers of AWHO are not paid from the Consolidated Fund of the Government of India but are paid from the funds of AWHO.

7. In the case titled as Asha Vij & Ors. (supra), identical question arose with regard to the Army Welfare Education Society which was managing and running the affairs of its school within the Regiment Fund, it was held as under :

Society who is managing and running the respondent school out of Regimental Fund would not come within the ambit of the expression "State" or any other authority as envisaged under Article 12 of the Constitution of India. The school in question is managed out of the Regimental Fund, which is not a public fund and the said school is managed by a society registered under the Societies Registration Act. The same is neither controlled nor managed by the Government of India or by the State Government nor the society receives any fund from the said Governments.

8. In view of above, the respondent/DSOI does not fall within the ambit of Article 12 of the Constitution of India and thus the petition outrightly is not maintainable.

9. In any case, on merits also, I do not see any force in the submissions made by the learned counsel for the petitioners. The answer to the controversy as to whether the petitioners who are muster roll employees were entitled to be regularized and have a right to regularization can be found in the case of Uma Devi & Ors. (supra) wherein Hon''ble Supreme Court has categorically laid as under :

When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the temporary, contractual, casual or daily-wage employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. It is therefore not possible to accept the argument that the State action in not regularizing the employees was not fair within the framework of the rule of law.

Orders for absorption, regularization or permanent continuance of such employees are passed apparently in exercise of the wide powers under Article 226 of the Constitution. The wide powers under Article 226 are not intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution. It is time that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

The High Courts acting under Article 226 should not, therefore, ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, under "litigious employment" he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

10. In view of above, I do not see the petitioners who were muster roll daily/ wager employees of the respondent, have any right to seek regularization. The petition being without any merit is dismissed.