
(2015) 01 DEL CK 0214

In the Delhi High Court

Case No : Writ Petition (C) No. 1337/2014 and Conn. and W.P. (C) Nos. 1337, 1817, 2506, 2136, 2180, 2181, 2182, 2183, 2184 and 2185 /2014

Jharna Banerjee

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 309

Citation : (2015) 148 DRJ 173

Hon'ble Judges : Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Padmini Gupta, for the Appellant; Sanjay Jain, ASG, Sanjeev Narula, CGSC and Astha Jain, Advocates for the Respondent

Judgement

Valmiki J. Mehta, J.

W.P.(C) No. 1337/2014

1. Petitioners are employees of respondent no.3/Family Planning Association of India. Petitioners seek the relief of quashing of the orders passed by respondents no.2 and 3 dated 24.1.2014 and 31.1.2014 terminating their services.

2. The issue is whether respondent no.3/Family Planning Association of India is a State or an authority of the State under Article 12 of the Constitution of India. Counsel for the petitioners places reliance upon the judgment of a learned Single Judge of this Court in the case of Mr. M.P. Singh and Ors. Vs. Delhi Administration and Ors. W.P.(C) No. 3007/1989 decided on 5.8.1992 to argue that respondent no.3 is a State.

3. Before referring to the applicability of the judgment in the case of M.P. Singh (supra), it is required to be noted that respondent no.3/Family Planning Association of India essentially had two parts of its operations. One part was a State under Article 12 of the Constitution of India inasmuch as that part of respondent no.3 was funded by the government for carrying out activities of the

government with respect to family planning etc. The other part of respondent no.3 was a private organization which was neither funded by the government and nor was under control of the government and therefore was not a State under Article 12 of the Constitution of India. This aspect has been considered by me while disposing of W.P.(C) No. 9063/2011 titled as Dr. T.Renuka and Ors. Vs. Government of National Capital Territory of Delhi and Ors. decided on 27.11.2013 and the said judgment read as under:-

"1. Petitioners are employees of respondent no.2-Family Planning Association of India. Family Planning Association of India has two sets of employees. One set of employees are those employees who like the petitioners became part of the department of respondent no.2 which was fully funded by the government for a family planning project. Respondent no.2 is otherwise a private NGO. The second set of employees are private employees of this private NGO who do not form part of the department of the respondent no.2 which is fully funded by the government for family planning project. Petitioners claim parity with the private employees of the respondent no.2 with respect to gratuity and other terminal benefits, and for which purpose, reliance is placed upon the judgment of a learned Single Judge of this Court in the case of M.P. Singh and Ors. Vs. Delhi Administration (now GNCTD) and Ors., in W.P.(C) No. 3007/1989 decided on 5.8.1992.

2. The principle of "equal pay for equal work" has its source in Article 14 of the Constitution of India. Article 14 of the Constitution of India applies to the State and instrumentalities of State as per Article 12 of the Constitution of India. The principle of "equal pay for equal work" cannot be enforced for claiming parity by employees of the State or instrumentalities of State with the employees who work in private commercial establishments. Therefore, petitioners cannot claim parity with private employees. Even in the judgment relied upon by the petitioners in the case of M.P. Singh (supra) parity was claimed by the petitioners who were employees of the department of respondent no.2 which was fully funded by the government for family planning projects, with those employees in other societies and organizations which were funded by the government for the family planning projects. In M.P. Singh's case (supra), there is no ratio laid down, and nor could any ratio be laid down that the principle of "equal pay for equal work" applies between government employees or employees of a State and private employees. Therefore, I reject the argument that petitioners can claim equal pay for equal work with those employees who are private employees of respondent no.2.

3. So far as the claim of the petitioners for payment of gratuity and terminal benefits similar to the benefits granted to other employees of respondent no.2 who are in the department of respondent no.2 which is fully funded by the government for the family planning project is concerned, then in that case, if the government funding and the government circulars entitle employees such as the petitioners in the department of respondent no.2 which is fully funded by the

government to the grant of gratuity and other terminal benefits, petitioners shall be granted gratuity and terminal benefits in terms of the circulars and directions of the government as applicable to the employees in the department of the respondent no.2 which is working for the family planning projects.

4. The writ petition is therefore dismissed so far as the claim for equal pay for equal work is concerned, however, it is allowed in terms of the directions given above so far as the gratuity and terminal benefits are concerned. Parties are left to bear their own costs."

4. In the present case, the admitted position is that the funding of respondent no.3 has been stopped by the government/Union of India and the Govt. of NCT of Delhi w.e.f. 1.4.2014. Therefore, w.e.f. 1.4.2014 there is no department or part of respondent no.3 which can in any manner become a State because the government has no control over the operations of respondent no.3 w.e.f. 1.4.2014 and nor is respondent no.3 being funded in any manner by the Union of India or the Govt. of NCT of Delhi.

5. At this stage, I would also like to refer to a judgment which was passed by me in the cases of N.K. Saxena and Ors. Vs. Govt. of Delhi and Ors. W.P.(C) 5292/2006 and Dr. J.B. Babbar Ors. Vs. Govt. of NCT of Delhi and Ors. W.P.(C) No. 4164/2008. Both these petitions have been disposed of in terms of the judgment dated 12.4.2013 and which judgment reads as under:-

"1. Learned counsel for the petitioner was heard at length not only today but also on two earlier dates viz. on 29.01.2013 and 28.02.2013.

2. The petitioners in these cases are employees of the respondent No. 2. Respondent No. 2 is an entity independent of the respondent No. 1/Government of NCT of Delhi and the respondent No. 3/Central Government.

3. Petitioners were specifically appointed with respect to a Composite Pattern Scheme to be implemented with respect to family planning. Respondent No. 2 was running various schemes and one such scheme was the Composite Pattern Scheme. Since the Composite Pattern Scheme was being closed, some employees were adjusted in other schemes in Delhi, whereas, the petitioners were sought to be transferred outside Delhi where other schemes of respondent No. 2/employer were being carried out/implemented.

4. It is at this stage, that the writ petitions were filed in 2006 challenging the transfer orders and seeking reliefs against the closure of the particular centre of the Composite Pattern Project at Delhi, where the petitioners were engaged in the family planning centres.

5. The Constitution Bench of the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has held that casual employees or work charged employees or contractual employees on their contracted tenures coming to an end, cannot seek regularization in service.

6. The Hon"ble Supreme Court has observed that such persons cannot claim legitimate expectation for being regularized inasmuch as such contractual employees or work charged employees when they joined the services knew that they were appointed either as casual employees or work charged employees or contractual employees or for a project only. Various other issues have also been considered by the Supreme Court in the case of Umadevi (supra) as to whether there should be regularization of casual or work charged or ad hoc or contractual employees. Following is the ratio which is laid down by the Supreme Court in the judgment in the case of Uma Devi's (supra):

(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates.

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality(except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution."

7. The aforesaid ratio makes it clear that on completion of a project, the employees of the project have no right to claim regularization by the employer in any other project or otherwise permanently in the organization.

8. In the facts of the present case, what is only found is that the respondent No. 2 is not terminating the employment of the petitioners and the employees were being transferred out of Delhi to other projects of respondent No. 2 at the relevant time when this writ petition was filed in the year, 2006.

9. In view of the aforesaid ratio of the judgment in Uma Devi's case (supra) and the fact that as per the decision prevailing in 2006, the petitioners were only being transferred to other centers and were not being terminated out of their services as per any documentation or affidavit before me. The learned counsel for the petitioners state that he has instructions from the petitioners not to press the petitions and the petitioners are ready to be transferred out of Delhi, of course, on their employment continuing with respondent No. 2 and which presently is continuing. It is further clarified that respondent No. 2 can take any action in accordance with law for taking of services from the petitioners and if the employers have a place for accommodation in Delhi then the employees can be accommodated in Delhi and if the respondent No. 2/employer feels that there is no place for accommodating the petitioners in Delhi, petitioners agree that without any further arguments or objections, they will join their duties at any centre outside Delhi.

10. The writ petitions are dismissed as withdrawn subject to the aforesaid observations."

6. A reading of the aforesaid judgment dated 12.4.2013 shows that actually the writ petition nos. 5292/2006 and 4164/2008 were found to be not maintainable because even with respect to appointments by the Government/State or authorities of the State, work charged employees and project employees cannot claim regularization in view of the ratio of the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In Umadevi's case (supra) the Constitution Bench of the Supreme Court has specifically said that the work charged employees or the project employees have no right of regularization and they cannot claim regularization because they joined with open eyes with respect to a post which was not a regular/sanctioned post. The tenure of such employees is co-terminus with the work/project/post. Even therefore assuming that respondent no.3 for

some reason can be held to be a State, however since it is the position emerging from the record that the employment of the petitioners was for a particular project of respondent no.3 which was funded by respondent no.2, once that project has come to an end w.e.f. 1.4.2014, employees such as the petitioners cannot claim continuation for their employment i.e. effectively seeking regularization of employment of a project post, and which relief if allowed will clearly violate the direct ratio of the Constitution Bench judgment in the case of Umadevi (supra).

7. For both the aforesaid reasons the respondent no.3 is no longer a State after 1.4.2014. No part of the same in which the petitioners are employed is controlled by the government or financed by the government of NCT or is any project of the government or the State. The writ petition seeking the relief of quashing of letters terminating the employment and effectively seeking continuation of employment of regularization, therefore is not maintainable. The writ petition is therefore liable to be and is dismissed on the ground that project employees or work charged employees do not have any rights to continue beyond the concerned project for which they were employed, noting that the project in the present case of the respondent no.3 which was funded by respondent no.2 has come to an end because respondent no.2 has stopped funding of the respondent no.3 w.e.f. 1.4.2013.

8. Though counsel for the petitioners argued that petitioners are not work charged employees or project employees inasmuch as the petitioners are in fact regularized by the respondent no.3 vide its orders dated 25.3.1991 and 20.11.1991, however, the argument is misconceived because appointment of the petitioners was admittedly with the respondent no.3 for the project of respondent nos. 1and2, and which was funded by respondent 2. Once the funding of respondent no.3 by the respondent no.2 has stopped, respondent no.3 will become a private organization and will not remain a State under Article 12 of the Constitution of India.

9. No doubt, the writ petition has to be dismissed so far as the relief claimed of quashing of letters terminating the employment of the petitioners is concerned, however, in terms of the judgment in the case of M.P. Singh (supra) petitioners will be entitled to all monetary benefits which they were entitled to once the respondent no.3 is a State under Article 12 of the Constitution of India till 31.3.2014. This aspect is also covered in favour of the petitioners by para 3 of the judgment in the case of Dr. T. Renuka (supra). Petitioners therefore will be entitled to all benefits as prescribed by the respondent no.2 which are available to authorities of the State under Article 12 of the Constitution of India including of salary increases in terms of the 6th Central Pay Commission till the time their employment continued till 31.3.2014 and from which date the funding of respondent no.3 was stopped by the respondent no.2. Of course I clarify and hasten to add that the entitlement of the petitioners to salaries and monetary emoluments will be till the time the petitioners actually worked with the

respondent no.3 or 31.3.2014 whichever is later and in terms of extant guidelines of the respondent nos. 1 and 2 applicable to the respondent no.3. In case, the necessary dues of the petitioners are not cleared by the respondent no.3, and to whom the respondent 2 should grant the necessary funding for clearing of the dues and which shall be positively done with a period of six weeks from today, thereafter, petitioners will be entitled to interest at the rate of 6% per annum simple from the date from which the amounts being the salary increases and another monetary emoluments became due to the petitioners.

10. No other issue is pressed or urged before this Court as otherwise discussed above.

11. The writ petition is however allowed to the extent stated above of granting the petitioners all monetary emoluments including increases of their salaries in terms of the 6th Central Pay Commission till 31.3.2014 as were being paid to any other arm/authority of the State as per Article 12 of the Constitution of India.

12. In case, there are any disputes of funding between the respondent no.1/ Union of India and respondent no.2/Govt. of NCT of Delhi, these inter se disputes with respect to payment of any monetary emoluments to the petitioners, will not be in any manner a reason for respondent no.2 not to release dues of the petitioners to the respondent no.2 so that the petitioners can be paid their dues in terms of the present judgment.

W.P.(C) 2506/2014

This writ petition is also dismissed to the extent of seeking a relief of quashing of termination of services but is allowed with respect to monetary emoluments in terms of the same directions granted while disposing of W.P.(C) No. 1337/2014.

W.P.(C) Nos. 1817/2014, 2136/2014, 2180/2014, 2181/2014, 2182/2014, 2183/2014, 2184/2014 and 2185/2014

Counsels for the petitioners agree that petitioners will be satisfied with the same directions to be given in the writ petition nos. 1337/2014 and 2506/2014. Accordingly, these writ petitions will also stand partly dismissed and partly allowed in terms of the observations and directions given while disposing of W.P. (C) No. 1337/2014. An additional direction is however given in these cases that since petitioners have continued to work with the respondent no. 3 pursuant to an interim order of this Court, petitioners till today will be paid all monetary emoluments by the respondent no.3 taking respondent no.3 as a private entity from 1.4.2014 till date and with the clarification that neither respondent no.1 nor respondent no.2 i.e. Union of India or Govt. of NCT of Delhi will be required to fund the respondent no.3 for any payments which have to be made to the petitioners for working on and after 1.4.2014 till today.