
(2009) 11 RAJ CK 0066
In the Rajasthan High Court

Mukesh Kumar and Others etc.

APPELLANT

Vs

State of Raj. and Others etc.

RESPONDENT

Date of Decision : 21-11-2009

Acts Referred:

Citation : (2009) 11 RAJ CK 0066

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. These writ petitions have been preferred by various petitioners who have been appointed on various posts under the National Literacy Mission Project and their services have been sought to be discontinued w.e.f. 31st March, 2009 and, therefore, all these writ petitions involved common question of facts and law are decided by this common judgment.

3. It will be appropriate to look into the background under which the petitioners were appointed and now their services are sought to be discontinued w.e.f. 31st March, 2009.

4. The National Literacy Mission was launched in the year 1988 and a scheme of Continuing Education for NEO- Literates was prepared. It was found that in the absence of learning environment and effective programme of post- literacy and continuing education, the efforts made in literacy programmes yield extremely limited results. Therefore, in the year 1982-83 the Government started funding a post-literacy and continuing education programme and specified the duration of the basic literacy, post-literacy and follow-up programmes as 350, 150 and 100 hours over a period of 3 years. Later, based on monitoring and feedback from the implementing agencies, a new time-frame of 8 months of basic literacy plus 4 months of post-literacy and 1 year of follow-up was adopted in 1985 which reduced the total period of 3 years to 2 years, keeping intact the total duration of 600 hours. In the course of the nationwide debate on the New Education Policy, it

became clear that the post efforts of institutionalise post-literacy and continuing education were inadequate and there was an urgent need to create permanent structures and facilities for this purpose. National Policy on Education (NPE) and Programme of Action (POA) have, therefore, given considerable attention to the need for creation of satisfactory arrangements for post-literacy and continuing education. The NPE as modified in 1992 envisages that comprehensive programmes of post-literacy and continuing education will be provided for neo-literates and youth who have received primary education with a view to enabling them to retain and upgrade their literacy skills, and to harness it for the improvement of their living and working conditions. The National Literacy Mission for adult literacy is based on voluntary mass-mobilisation and mass-participation in the scientific pursuit of teaching and learning and to implement that policy various plans and schemes were introduced which is continuing education programme wherein there were projects known as (i) Total Literacy Campaign (TLC), (ii) Project for Eradication of Residual Illiteracy (PRI), (iii) Post Literacy Programme (PLP) or continuing education programme (CEP). These projects/centers were created and established to provide area-specific, need based opportunities for up-gradation of literacy of literacy skills, pursuit of alternative educational programme and also to promote social and occupational development. This entire project is fully funded centrally sponsored scheme obviously by the Central Government. The scheme was revised in the year 1999 and it was implemented through various agencies, reference of which is not very much relevant for the purpose of deciding these writ petitions, but initially 100% financial assistance was provided to the State Literacy Mission Authority for the three projects by the Union of India and admissible expenditure is share equally by Central and State on 50% basis for the 4th and 5th year, after which the State Government is required to take over the total responsibility for continuation of the programme. In this entire project and mission, the project was volunteer based and, therefore, volunteers were selected, which was known as Preraks. In the scheme it was clearly indicated that incharge of the continuing education center would essentially be a part time Prerak, who may be paid appropriate honorarium or incentive out of the provision for the same made in the budget of the CEC/NCEC for the particular project year. The different honorarium were fixed for different occupations which were enhanced from time to time.

5. Since it was a matter of great importance looking to the illiteracy in the India, therefore, it appears that old project/mission was reviewed in the conference of the State Education Secretaries in Bhawan on 1st August, 2008 and based on the cumulative inputs from sources it was proposed to revise the strategy for implementation of adult education programmes. It was observed that the main difference in strategy is that rather than implementing separate and segmented programme for basic literacy, post literacy and continuing education, there will be transit seamlessly, without breaks, from basic literacy to continuing education. It was observe that this difference strategy is proposed in recognition of the fat

that literacy learning does not occur at a uniform, homogeneous pace throughout the district. Experience of implementation of literacy programmes has shown that in any district, irrespective of whether the district is at the TLC or PLP or CE stage, there would be persons who are illiterate/semi literate, people at neo-literate level as also adolescents and young adults who may have dropped out of school before completing primary or elementary education and are in need of continuing their education. Therefore, in any district basis/post literacy and continuing education programmes would need to run concurrently and learners would need to be provided a choice of programme suited to their needs and requirements. The above was disclosed in the communication sent by the Government of India to all the Education Secretaries of the States dated 19.1.2009, copy of which has been placed on record as Ex.R2/1 in reply to the show cause notice issued by this Court in SBCWP No. 2718/2009. It has also been conveyed by the same letter dated 19.1.2009 that Preparatory to initiating the revised programme, it is necessary for you to ensure settlement of accounts of the schemes presently underway in the districts of your State, irrespective of whether the projects are for Total Literacy Campaign (TLC) Project for Eradication of Residual Illiteracy (PRI), Post Literacy Programme (PLP) or continuing Education Programme (CEP). Then the State Governments were directed to initiate the steps which includes All TLC/PRI/PLP projects should be declared closed with effect from 31st March, 2009.

6. Principally, the controversy has been raised by the petitioners on the basis of the above directions whereby it has been directed that all TLC/PRI/PLP projects should be declared closed and in this direction No. 1, it has not been conveyed that continuing education programme (CEP) be also closed.

7. The contention of the petitioners is that, that the Union of India has not taken a decision to close down the continuing education programme, therefore, the petitioners' appointment under the continuing education programme cannot be directed to discontinue. It is also submitted that even if any decision has been taken to continue the national literacy mission in another form then yet no final decision yet has been taken by the Union of India to implement the continuing education programme in another form and since there is need of the employees in the existing mission, therefore, until the new projects are launched, the petitioners are entitled to continue. Learned Counsel for the petitioners submitted that the petitioners are appointed on various posts and are looking after numerous work including maintaining and conducting the libraries in the villages and if their services will be discontinued then no provision has been made for handing over the libraries to anybody either by the State Government or by the Union of India. It is also submitted that in fact, the petitioners are sought to be removed by new employees to be selected by the same process. Meaning thereby, even when petitioners are duly selected in project/mission by changing the name of scheme/project or mission, the respondents arbitrarily wants to remove the existing employees by substituting them with the employees appointed in the same manner in which petitioners have been given

appointment. Therefore, this arbitrary decision is illegal. It is also submitted that all the petitioners who are dependent and are employed in the programme will become unemployed and their family will have to face hardship and their removal will result into increase in unemployment. The petitioners further submitted that in same or similar situation, the persons working under the Lok Jumbish were absorbed in other programme then petitioners are also entitled to be absorbed in the recognized programme, which may be launched in any name by Union of India/State as continuing education programme. It is also submitted that Rajasthan Primary Education Council also recommended for absorption of the candidates working under this scheme and for this copy of such recommendation has been placed on record in SBCWP No. 3069/2009 as Annex.P/12. It is also submitted that the petitioners were given appointment not only as Prerak but on the post of Manager/Conductor as well as Librarian and all have been assigned their work of social services for which they are being paid. The petitioners are working with devotion and made the programme in success. It is submitted that re-constitution of the programme can be made even by continuing the petitioners in the reconstituted programme, which will benefit the programme as the petitioners are experienced workers. In sum and substance the contention of the petitioners are that; (i) they have given appointment though in project/mission on contract basis on the honorarium, but they have been appointed after due process of selection and discharging the duties then they cannot be replaced by other persons by appointing them on the same conditions of service and by selecting them by same process of selection by which petitioners have been selected as that would amount to replacing one person by another person without there being any reason ignoring the experience acquired by the persons already working, (ii) the project is continuing and it has not been decided by the Union of India to discontinue the programme but the programme will be in new way, but with same aims and objects, therefore, the petitioners can be absorbed in a new project and the same was the procedure adopted when Lok Jumbish programme was stopped and their employees were absorbed in employment by the Government, (iii) the petitioners' need has not come to an end and lastly (iv) the Union of India has not decided to close the continuing education programme, which is apparent from the Annex.R/2/1 dated 19.1.2009, the communication sent by the Government of India to the Education Secretaries of the various States.

8. Learned Addl. Advocate General Shri RL Jangid appearing for the State submitted that since the scheme has been abandoned and closed, therefore, all the engaged persons i.e., volunteers/Preraks cannot be continued. It is submitted that none of the petitioners can claim himself to be employee of the either State Government or of the Union of India or any instrumentality of the Union of India or State Government. It is clearly provided in their contract itself that the scheme is volunteer based and the petitioners were paid only honorarium, neither salary nor wages. The nature of work assigned to them clearly demonstrates that such work can be done only by the volunteers as social

service and further they are not supposed to work for full time and, therefore, are not full time worker. They are free to do their own work in view of the limited working hours under the present scheme/mission. In view of the above, the petitioners even have no right to hold the post under any of the rules or scheme. Learned Addl. Advocate General also pointed out that very small amount of honorarium like 500, 700 and 1200 per month were paid to these motivators etc. which amount is only to motivate the persons to work as motivator and the petitioners are engaged in other work also. It is submitted that now the decision has been taken by the Government of India to close down all the projects under the scheme/mission and post literacy programme and continuing education programme are one of the same and non-mentioning of continuing education programme (CEP) in first direction to the State Governments is insignificant and cannot be read without context in which the direction was issued. The policy decision was taken to stop the separate and segmented programme for basic literacy, post literacy and continuing education programme to have transit seamlessly, without breaks, from basic literacy to continuing education programme, therefore, the intention of the Union of India was clear that continuing education programme also be stopped to facilitate a new programme. It is submitted that the policy decision of the Union of India to stop all these projects neither under challenge nor can be challenged because it has been decided by the Government with the help of opinion of the experts. In sum and substance, the petitioners are not employees and they are volunteers having no right on and over the post and they cannot seek continuation of their occupation when the project itself has come to an end.

9. Learned Sr. Central Government Standing Counsel Sh. VK Mathur appearing for the Union of India submitted that the Union of India has taken the decision to stop the separate and segmented programmes for basic literacy, post literacy and continuing education programme which is clear from the second part of the communication dated 19.1.2009 and there is no ambiguity in communication dated 19.1.2009 in conveying its decision to all the State Governments. It is submitted that this policy decision was placed before the Joint Session of Parliament wherein Her Excellency the President of India in her address announced that Government will recast the National Literacy Mission as National Mission for Female Literacy to make every woman literate in the next five years. The Union of India also submitted in the reply that in the scheme Preraks/Asstt. Prearks were essentially volunteers and Government of India never promised that the persons appointed as volunteers can be continued permanently or shall be absorbed. Thus, the petitioners have no right to claim permanent retention of their alleged services.

10. I considered the submissions of learned Counsel for the parties and perused the scheme referred above as well as the judgments relied upon by learned Counsel for the parties including the decision of Single Bench of this Court delivered in the case of Rajendra Kumar Sain and Ors. v. UOI and Ors. (SBCWP No. 5510/2009, decided on 30th June, 2009) alongwith other 66 writ petitions.

11. It will be appropriate to first look into the judgment of this Court delivered in Rajendra Kumar Sain's case (supra) wherein the orders passed by the State Government dated 10.2.2009, 17.2.2009 and 12.3.2009 were under challenge whereby the Government decided to close the scheme of National Literacy Mission and dispensed with the services of the Samanvyak/Nodal Prerak/Prerak/Asstt. Prerak.

12. The Central Government's letter dated 19.1.2009 whereby the impugned decision was conveyed was under consideration before the Coordinate Bench of this Court in the case of Rajendra Kumar Sain (supra) and this Court disposed of the writ petitions by following order:

I have gone through the record of the writ petitions and considered the rival submissions of the parties. In my view, the letter dated 19.1.2009 clearly reveals that the revised scheme is to be implemented instead of old scheme, hence, mere change of the scheme will not result in unemployment and fresh selection. However, the petitioners cannot claim the wages of the intervening period on account of non- allotment of the budget.

The action of the respondents envisages the impugned orders of termination of the present petitioners is declared illegal and the petitioners are allowed to continue on their respective posts till the scheme of Lok Talim is implemented. However, they will be entitled for continuity in service but not entitled to fixed remuneration for the intervening period in case the scheme of Lok Talim is implemented.

The writ petitions are disposed of as indicated above.

13. As a Coordinate bench, this bench is bound by the decision of Jaipur bench of this Court delivered in the case of Rajendra Kumar Sain (supra).

14. However, learned Counsel for the respondents submitted that the facts which have been submitted before this Bench in these writ petitions in pleading were not under consideration in the case of Rajendra Kumar Sain (supra) and these facts goes to the root of the matter. He also vehemently submitted that none of the petitioners was ever given any appointment, the appointment in legal term. The petitioners were engaged as volunteers and, therefore, there was no relationship of employee and employer between the petitioners and the respondents. They have not been engaged for full time and from the duty assigned to them itself, it is clear that they were discharging social services not on payment of salary or wages, but on payment of honorarium. The honorarium given in the present contract cannot be termed to be wages or salary so as to create a relationship of employee and employer between the petitioners and the respondents. The petitioners undertook to volunteer their services and executed the contract and they are bound by the terms of the contract. It is also submitted by learned Counsel for the respondents that whether to continue a project is the sole discretion of the Union of India and the State Government and once the Union of India found it necessary to close the project itself, may it be to

implement another policy decision then the decision was taken well within the jurisdiction of the Union of India. The closure of one project and giving a new project in itself cannot be termed as continuation of the old project in new form. It is also submitted that admittedly new project yet has not been launched by the Union of India then no direction can be issued to Union of India to keep the old project continuing and particularly when without stopping work under that old project, new project cannot be implemented. As per implementation of new project, all accounts are required to be taken off old project. It is also submitted that the petitioners cannot claim their absorption in new project for the reason that they do not have any legal right to claim absorption and further the respondents cannot be directed to pay the honorarium to the petitioners till new project comes or launched by the Union of India or by the State Government. Learned Addl. Advocate General submitted on behalf of the State that after certain period, liability of payment came upon the State and State is not prepared to continue any project as was launched by the Union of India at that point of time. Learned Counsel for the respondents also with the help of various judgments submitted that the persons like petitioners cannot claim regularization particularly in view of the judgment of the Hon"ble Supreme Court delivered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

15. It may be true that the ground raised by the respondents were not under consideration before the Coordinate Bench at Jaipur of this Court, but that was because of the reason that those points must have not been taken by the respondents or and if taken, were not pressed. If any decision is given on any of the point raised by the respondents before this Bench of the High Court and if that many result into dismissal of the writ petitions of the petitioners then that will be contrary to the decision given by the Jaipur Bench of this Court and which is absolutely impermissible. The consequence of accepting any of the point of the respondents may result into two contradictory judgments, one granting reliefs to the persons and denying the same to others similarly situated persons. The respondents cannot over come from the hurdle in their way unless they successfully challenge the judgment of this Court delivered in the case of Rajendra Kumar Sain (supra) and connected matters decided by the Jaipur Bench of this Court vide judgment dated 30th June, 2009.

16. Following the principles of precedent these writ petitions are also disposed of in the light of the decision given by Jaipur Bench of this Court without expressing any opinion on the points raised by the respondents. The petitioners are also not entitled to more relief than what has been granted to the petitioners of the case decided by the judgment dated 30th June, 2009.

17. In view of the above reasons, the impugned orders of termination of the petitioners is declared illegal and the petitioners are allowed to continue on the respective posts till the scheme of Lok Talim (or scheme in any other name) is implemented. The petitioners shall be entitled for continuity in service, but not entitled to fix remuneration for intervening period in case the scheme of Lok

Talim (or in any other name is implemented).