
(2015) 08 CAL CK 0042
In the Calcutta High Court
Case No : Writ Petition No. 9690 (W) of 2015

Murari Mohan Das

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 21, 226
Police Act, 1861 — Section 17

Citation : (2015) 08 CAL CK 0042

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Subir Sanyal and Ratul Biswas, for the Appellant

Final Decision : Disposed off

Judgement

Tapabrata Chakraborty, J—The instant writ application has been preferred, inter alia, praying for regularisation of the petitioner's service in the post of Security Officer and challenging, inter alia, the impugned attempt on the part of the respondents to fill up the post of Security Officer, purely on contractual basis, by an advertisement dated 20th April, 2015 published by the Bose Institute (hereinafter referred to as the said Institute).

2. At the very inception, Mr. Bhattacharyya, learned senior counsel appearing for the respondents has urged a point of maintainability of the writ application and thus it would be necessary to first deal with the said objection.

3. According to Mr. Bhattacharya, Bose Institute does not come within the purview of Article 12 of the Constitution. The said Institute is a society within the meaning of the West Bengal Societies Registration Act, 1961 and is a private society. It's Governing Body and Council are the highest decision making bodies and that in both private individuals constitute the majority. The said Institute has not been created on the basis of any Government decision and the said Institute was never a part of any department of the Government and it receives annual

grant from the central revenue of an amount to be mutually agreed upon with the Central Government. It is a private body with no public duty.

4. In support of such submission, Mr. Bhattacharyya has relied upon an unreported judgment delivered by a Bench of coordinate jurisdiction in the case of Sri Raj Kumar Sardar v. Union of India and Ors. In the said decision the Hon''ble Court was pleased to observe that keeping in view the decision of the Hon''ble Apex Court in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], AIR 1992 SC 76 : (1991) 4 JT 233 : (1992) 1 LLJ 331 : (1991) 2 SCALE 773 : (1991) 4 SCC 578 : (1991) 1 SCR 165 Supp : (1992) 1 SLJ 17 : (1991) 2 UJ 747 the Bose Institute is not a State within the meaning of Article 12 of the Constitution.

5. He has also relied upon a judgement delivered in the case of K.K. Saksena Vs. International Commission on Irrigation and Drainage .

6. He submits that if this Court feels disinclined to agree with the judgment delivered in Sri Raj Kumar Sardar (Supra) then it must, in keeping with the principles of judicial propriety and decorum, either follow the decision with which it disagrees or refer the issue for resolution by a Larger Bench.

7. In reply to such argument, Mr. Sanyal, learned advocate appearing for the petitioner submits that the said Institute is fully financed by the Central Government, it's regulations and bye-laws can be amended with the sanction of the Central Government, the Institute also does not have any power and authority to dispose of assets acquired out of the grants of the Government, the Council of the Institute is the ultimate managing and administering authority and out of 12 members constituting the said Council, at least 8 members are officers of Central Government or directly appointed by the Central Government or nominated subject to approval of the Central Government and the Director though appointed by the Council but from amongst candidates chosen by Search Committee appointed by the Central Government.

8. According to Mr. Sanyal, the judgment delivered in the case of Sri Raj Kumar Sardar (Supra) is no longer a good law in view of the constitutional bench judgment delivered in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, (2002) 4 JT 146 : (2002) 3 SCALE 638 : (2002) 5 SCC 111 : (2002) 3 SCR 100 .

9. A perusal of the judgment delivered in the case of Pradeep Kumar Biswas (Supra) reveals that in consideration of the objects and functions, the Hon''ble Court was pleased to observe that the Council of Scientific and Industrial Research was setup in the national interest and that its function was fundamental to the governance of the country and such character of the Institution is an indicative indicia to hold that CSIR is a State within the meaning of the Article 12 of the Constitution and on the said issue the Hon''ble Court affirmed the judgment delivered in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, AIR 1967 SC 1857 : (1971) 21 FLR 59 : (1968) 1 LLJ

257 : (1967) 3 SCR 377 wherein it was inter alia observed that the State, as defined in Article 12, is comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people.

10. In Pradeep Kumar Biswas (Supra) the judgment delivered in the case of Chander Mohan (Supra) was considered and the observations made in the latter to the effect that setting up of legislative research and reference service, organisation of training programmes in matters of parliamentary importance, activities connected with the research extension services and training, dissemination of improved educational techniques, collaborations in the educational programmes are not wholly related to governmental functions, were overruled. It is needless to say that when a binding decision of the Hon''ble Apex Court is available, the same is binding on this Court and the decision in the case of Sri Raj Kumar Sardar (Supra) cannot be followed in the light of the views expressed by the Hon''ble Apex Court in Pradeep Kumar Biswas (Supra).

11. In the instant case the objects of the Bose Institute are to provide for advertisement of knowledge by means of research, diffusion of knowledge by organising discourse, demonstrations and lectures to be given by ordinary workers in it and thinkers and application of methods of scientific investigation to problems of agriculture, industry and medicine. The functioning of the said Institute, in propagation of its objects, is fundamental to the governance of the country.

12. A perusal of the memorandum of association of the Institute further reveals that the total amount of grant both recurring and non-recurring to be availed by the Institute from Central Government will be fixed for a period of 5 years and will be based upon the report of a Reviewing Committee appointed from time to time by the Central Government. Thus, the Central Government maintains a check and restraint and regulates the disbursement of grants which is an indicative indicia of pervasive control of the Government over the said Institute.

13. In the conspectus of such discussion, I am of the opinion that the Bose Institute is an instrumentality of the State under Article 12 and therefore, will be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

14. Mr. Sanyal, learned senior counsel appearing for the petitioner submits that the petitioner is an Ex-Serviceman and his name was duly recommended for civil employment and pursuant to requisition of the said Institute, the petitioner's name was forwarded by Fort William authorities and the petitioner participated in the selection process and was appointed as Security-in-Charge in the said Institute on contractual basis on and from 3rd October, 2006. Such appointment was made in compliance with the directives issued by the Government of India and upon being satisfied about the petitioner's performance and as there was a continuing necessity, his appointment was extended from time to time for about nine years and that as such the petitioner is entitled to regularisation.

15. According to him, the contents of the memorandum dated 31st March, 2015 read with the subsequent advertisement made by the said Institute in annexure P7 would reveal that the respondents were attempting to appoint a person on contractual basis by removing the petitioner who is working in the said post on contractual basis and that such action to remove the petitioner is absolutely arbitrary and illegal.

16. In support of his arguments, Mr. Sanyal has relied upon the following judgments :--

"a) State of Karnataka and Others Vs. M.L. Kesari and Others, AIR 2010 SC 2587 : (2011) 111 CLT 209 : (2010) 127 FLR 12 : (2010) 8 JT 96 : (2010) 4 LLJ 583 : (2010) 9 SCC 247 .

b) Nihal Singh and Others Vs. State of Punjab and Others, (2013) 8 AD 689 : AIR 2013 SC 3547 : (2013) 139 FLR 309 : (2013) 11 JT 289 : (2013) LabIC 3859 : (2013) 5 LLN 109 : (2013) 10 SCALE 162 : (2013) 14 SCC 65 : (2013) 4 SCT 469 : (2013) 114 SLJ 315 : (2013) AIRSCW 4919 : (2013) 5 Supreme 718 .

c) Amarkant Rai v. State of Bihar & Ors."

17. Per contra, Mr. Bhattacharyya, learned senior counsel appearing for the respondents submits that the petitioner's appointment was not against any permanent vacancy and the service rendered on temporary basis, upon extension of the contractual tenure, does not confer any right upon the petitioner to be regularised and absorbed.

18. He further submits that it would be explicit from the document at page 66 of the affidavit-in-opposition that the Director of the said Institute has instructed to extend the tenure of the petitioner for a final period of 3 (three) months and to start the process of advertisement for recruitment of the security personnel right away and on the basis of such decision, the advertisement was published and it would be explicit therefrom that the said Institute wanted to engage a Security Officer not below the rank of Colonel and the petitioner herein does not have such qualification.

19. According to him, the terms and conditions of contractual rights and obligations cannot be enforced and the Writ Court cannot extend a contractual tenure and that a writ application would not lie to enforce private law rights.

20. I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

21. It is well settled that if an appointment is made on temporary basis or on contractual basis, the appointee remains temporarily and mere continuance of the employee in the said post even for a substantive period does not confer any right of absorption to the said post. In the instant case, the petitioner was appointed on and from October, 2006 and he accepted such contractual engagement at his own volition, being aware about the nature of such

engagement and he has never made any prayer for permanent absorption till the advertisement was issued inviting applications from eligible candidates on 9th April, 2015. The concept of regularisation is unknown in the field of public employment. There is no law in our country to support such concept. Initially, applying the tool of social justice, the Apex Court in various decisions asked the public authority to consider those who spent their life for decades as a casual worker in a perennial post. Such concept has been given a go-bye by the Constitutional Bench judgment in the case of Uma Devi (Supra).

22. The petitioner did not complete ten years of continuous service against any sanctioned post and as such the ratio of the judgment delivered in the case of M.L. Kesari (Supra) is not applicable to the facts of the instant case.

23. In the case of Nihal Singh (Supra), the appointment was made resorting to the provisions of Section 17 of the Police Act, 1861 whereas in the instant case the initial appointment of petitioner was not in accordance with any statutory provision and that as such the judgment delivered in the case of Nihal Singh (Supra) is distinguishable on facts. This Court cannot compel the respondents to create post and to absorb the petitioner on a permanent basis.

24. The judgment delivered in the case of Amarkant Rai (Supra) is also distinguishable on facts inasmuch as in the same the appellant worked for 29 years and the Human Resources Development Department of the government agreed that the services of the employees, including the petitioner, working in the concerned educational institution, on the basis of the prescribed staffing pattern, is to be regularised.

25. The sequence of facts, however, reveals that the petitioner's appointment was not a backdoor appointment inasmuch as the petitioner had the requisite qualification and his name was duly sponsored as an Ex-Serviceman by the Fort William authorities pursuant to requisition of the said Institute and upon emerging to be successful in the selection process conducted by the said Institute, the petitioner was appointed as Security-in-Charge and there has been a continuing necessity to engage a Security Officer. Such contingency is still existent and is evident from the fact that the respondents are desirous of appointing a fresh incumbent on the basis of the advertisement impugned. When an ad hoc appointment is continued for a long time the Court presumes that there is a regular need for the petitioner's services. No document has been placed before this Court to show that the respondents were dissatisfied with the service rendered by the petitioner. Thus, the factors which impelled the respondents to deny extension of service are nothing but the mere whims of the employer and such action even in contractual engagements cannot be excluded from the purview of judicial review. Furthermore, arbitrariness is presumed since the petitioner engaged on purely temporary basis has been sought to be substituted by another person on temporary basis and that too without any reason. The continuance of the petitioner, who has gained experience will be more beneficial and useful to the respondents rather than to appoint the person

fresh on ad hoc basis and such process as adopted castigates the action of the competent authority to be punitive in nature and in the circumstances the petitioner has a very serious claim to continue in the concerned post till regular appointments are made. Regular vacancy would mean a vacancy which occurs in a post sanctioned by the competent authority.

26. Needless to observe that the respondents can always discontinue a temporary engagement in the event the service rendered by the concerned employee is unsatisfactory or in the event the employer loses confidence over the said employee.

27. The legal position in relation to termination of service of a temporary employee is to a substantial extent similar to that of discontinuance of an employee in probation. Discontinuance/termination in accordance with the procedure established by law is an integral facet of right to life and livelihood assured by Article 21 of the Constitution and any procedure to deprive such a right must be just, fair and reasonable. In the instant case, the procedure adopted by the respondents to discontinue the petitioner's contractual engagement is unreasonable and unjust inasmuch as the respondents want to disturb an ad hoc engagement by another ad hoc engagement through an advertisement to that effect. Though the petitioner may not be entitled to regular appointment, it cannot be said that he should not be continued till regular incumbents are appointed. Reference in this connection may be made to the decision of the Hon'ble Supreme Court in the case of Hargurpratap Singh v. State of Punjab and Others, reported in 2007 (13) SCC 292.

28. The advertisement was published prior to disengagement of the petitioner and a perusal of the document at page 66 in affidavit-in-opposition reveals that the Director's note dated 31st March, 2015 did not specify that applications for the post of Security Officer will be invited by way of an advertisement from persons "not below the rank of Colonel". The term "not below the rank of Colonel" was incorporated to avoid the allegation of arbitrariness.

29. Clause 9(b) of the Regulations and by-laws provides for extension of contractual engagement for a period not exceeding 5 years but in the instant case, the petitioner's contractual engagement was extended for more than 9 years. The document at page 64 of affidavit-in-opposition is a notification dated 21st March, 2013 pertaining to a "Scheme of Engagement of Consultant" which inter alia provides for engagement of a Consultant under categories A, B, C for a period of 1 year at a time subject to maximum age limit of 65 years and subject to approval of the Director. The document at page 61 of the writ application reveals that petitioner's extension was on the basis of such scheme as a Consultant under category "C" of the scheme and at a fixed remuneration of Rs. 25,000/-. There is no allegation to the effect that the petitioner's rendition of service was unsatisfactory and only with an intent to discontinue the petitioner after 9 years through a further ad hoc appointment the Clause "not below the rank of a Colonel" was inserted.

30. In such fact situation, it is explicit that the respondents have acted in a arbitrary manner and have exercised uncanalised and drastic powers to discharge the petitioner taking advantage of the lack of equal bargaining power of the petitioner while entering into a service contract with the respondents and this Court cannot approve such unconscionable action. Reference in this connection may be made to the decision of the Hon''ble Supreme Court in the case of Balmer Lawrie and Co. Ltd. and Others Vs. Partha Sarathi Sen Roy and Others, (2013) 3 AD 197 : (2013) 114 CLA 312 : (2013) 178 CompCas 297 : (2013) 4 CompLJ 51 : (2013) 3 JT 129 : (2013) 3 JT 111 : (2013) LLR 337 : (2013) 2 SCALE 696 : (2013) 8 SCC 345 : (2014) 1 SCC(L&S) 114 : (2013) 119 SCL 143 : (2013) 2 SCT 232 . The course adopted by the respondents to displace one ad hoc arrangement by another ad hoc arrangement is not at all appropriate.

31. Accordingly, this Court directs the respondents to allow the petitioner to continue to serve as Security Officer of the said Institute and to grant all consequential benefits thereto till a permanent post of Security Officer is created and sanctioned and till permanent appointment is made in such post through a regular selection process.

32. With such observations and directions, the writ application is disposed of.

33. In the facts of the present case, there will be no order as to costs.

34. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.