
(2010) 02 AHC CK 0270

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49 of 2010

Rashmi Sinha (Smt.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0270

Hon'ble Judges : Sunil ambwani, J and Satish chandra, J

Final Decision : Disposed Of

Judgement

Dr. Satish Chandra,J.

Heard Sri Prashant Chandra, learned Senior Advocate assisted by Sri Ram Raj for the petitioner, Sri I.H. Farooqui, Assistant Solicitor General of India for Union of India respondent No.1, Sri Sanjai Bhasin, learned Additional Chief Standing Counsel for State respondent No.2 and Sri A.M. Tripathi, learned counsel for respondent No.3.

By this writ petition, Dr. (Smt.) Rashmi Sinha has prayed for quashing the undated impugned Order No. 18/791409/200(40)/2002 passed by the Secretary, Basic Education Department, U.P. Lucknow respondent No.2 informing her that in view of the completion of her tenure as State Project Director, Maila Samakhya on 8.1.2010, Sushree Lalita Pradeep, Principal, District Education and Institute of Training (DIET), Lucknow is authorized to perform the functions of the State Project Director, Mahila Samakhya on a local arrangement in addition to her work, and that she will not be paid any pay and allowances for the post. The petitioner has also prayed for a direction commanding the respondents not to give effect to the above order, and also to direct the opposite parties to allow the petitioner to continue to work on the post of State Programme Director, Mahila Samakhya, Lucknow.

On 28.1.2010, we passed the following order:

"We have heard Shri Prashant Chandra, Senior Advocate assisted Shri Ram Raj for Dr. (Smt.) Rashmi Sinhathe petitioner. Shri I.H. Farooqi, Assistant Solicitor General of India appears for Union of India and represents Ministry of Human Resources Development, Government of India, New Delhi. Shri Sanjai Bhasin, Additional Chief Standing Counsel represents State respondents.

The petitioner has prayed for quashing the order, by which she was informed by the Secretary, Shiksha Anubhag¹⁴, Government of Uttar Pradesh, that the period of her extended term as "Mahila Samakhya" will come to an end on January 8, 2010 after which by way of temporary arrangement Sushree Lalita Pradeep, Principal, District Education and Institute of Training, Lucknow will look after the work as State Project Director, Mahila Samakhya.

It is submitted on behalf of the petitioner, that the Director (MHRD) had intimated to the State Project Director cum Secretary on 11.12.2009, that the Government of India has no objections to the extension of her contract for a further period of one year upto 9.1.2011, keeping in view of her satisfactory performance, and that by a subsequent letter dated 23.12.2009, a Committee was constituted by the MHRD for review of Mahila Samakhya Programme. By subsequent letters dated 5.1.2010 and 13.1.2010, Ms. Anita Kaul, Joint Secretary (EE.U) MHRD had informed the State Government that the guidelines circulated with the letter dated 23.12.2009 require formation of Appraisal Committee having representatives of Government of India; State Government and National Resources Group (NRG) for Mahila Samakhya. The guidelines specify that the Appraisal Committee will submit its report to the Government of India within 1530 days. She also recommended that the letter dated 5.1.2010 be withdrawn and until the Appraisal Committee reaches a decision and communicates the same to the Government of India, the petitioner may continue as SPD, Mahila Samakhya, Uttar Pradesh and no fresh advertisement should be issued.

The Assistant Solicitor General of India submits that the Mahila Samakhya Project has been continued subject to the conditions, that concurrence of Government of India will be necessary for the appointment, continuance and removal of the State Project Director, and that the advice of the Government of India on all matters relating to State society are final and binding. He seeks further time for getting complete instructions in the matter.

Shri Sanjai Bhasin, Additional Standing Counsel submits that the petitioner's extended term as State Project Director, Mahila Samakhya has come to an end and that under the Rules of the society made in consultation with the Central Government an advertisement was issued in newspapers on 5.1.2010 inviting applications for appointment as State Programme Director on contractual basis with the qualifications prescribed in the bye laws of Mahila Samakhya Society. He submits that the process was initiated strictly in terms with the bye laws of the society.

Prima facie, we find that the petitioner, after having completed her term, does not have a legally enforceable right for extension until the Society "Mahila Samakhya" U.P. takes a decision in that regard in consultation with the Central Government.

During the course of hearing, we find that instead of a dialogue between the Ministry of Human Resources Development, Central Government and the State Government to review the appraisal of the ambitious programme for empowerment and upliftment of rural women through education, a conflict has arisen. The MHRD, Central Government is insisting on an appraisal in terms of the guidelines formulated by it and has required the State Government to allow Dr. Rashmi Sinha the petitioner to continue as SPD, Mahila Samakhya, U.P. to maintain programmable continuity. The State Government, on the other hand, is not agreeable to renew the contract and is insisting upon fresh advertisement for recruitment of SPD, Mahila Samakhya in terms of the earlier guidelines and the bye laws of the society.

We are of the opinion that taking into account the larger public interest serves by the Mahila Samakhya Programme and the important projects undertaking in the programme a conflict like situation between the Central Government and the State Government, is not advisable. In such matters, it is always appropriate to issue directions to the parties to open a dialogue and to resolve the issues. We therefore direct the Secretary, Ministry of Human Resources Development as well as State Government to depute senior and responsible officers of the concerned departments to convene a meeting to oversee the implementation of the programme and to resolve the issue with regard to the appointment/extension of the State Programme Director "Mahila Samakhya". The meeting shall be called within a week.

The matter shall be listed again on 8.2.2010. On that day, we expect the counsels for the parties to produce the minutes of the meeting and to inform the Court with the positive steps taken to resolve the issues.

A copy of the order shall be given to the Assistant Solicitor General of India and Chief Standing Counsel today free of costs for compliance."

Today, when the matter was taken up, a counter affidavit of Sri Arun Kumar Sharma, Under Secretary, Department of School Education & Literacy, MHRD, sworn today i.e. on 8.2.2010 was filed by Sri I.H. Farooqui. He has also placed before us a sealed envelop enclosing minutes of the meeting held on 6.2.2010 at 3.30 P.M. in pursuance to the our directions. We reserved the orders.

In the counter affidavit sworn today on 8.2.2010 Sri Arun Kumar, Under Secretary, Department of School Education & Literacy, MHRD has not noticed the minutes of meeting and has reiterated the contents of the letter issued by the Government of India earlier on 11.12.2009 conveying its no objection to the extension of petitioner's contract, for a further period of one year i.e. upto 9.1.2011, and further in communicating to the State Government that as per XI

th Plan document of Mahila Samakhya, concurrence of the Government of India is necessary for appointment, continuance and removal of the State Programme Director. The Central Government requested the Chairman, Executive Committee of the Society to first constitute a Appraisal Committee as per approved guidelines and until the Appraisal Committee reaches a decisive and communicates to the Government of India through the channel intimated in the guidelines, the incumbent State Project Director may continue with the Mahila Samakhya Programme, to maintain continuity in implementing the programme.

The original signed copy of the minutes of the meeting dated 6.2.2010 produced before us shall be made part of the record of the writ petition.

The meeting dated 6.2.2010 was presided by the Hon"ble Minister for the Basic Education, U.P. Lucknow as Chairman "Mahila Samakhya" was attended by, : (1) Sri Anup Chandra Pandey, Principal Secretary, Basic Education, Government of U.P.; (2) Dr. Suparna S. Pachauri, Deputy Secretary, School Education & Literary, MHRD., New Delhi; (3) Sri Mehboob Ali, Additional Legal Remembrancer, Government of U.P; (4) Sushri Nishi Mehrotra, a representative of Government of India, NRG Member; (5) Sri B.K. Dubey, Special Secretary, Government of U.P; and (6) Sri Ashok Ganguli, Additional State Project Director, Sarva Shiksha Abhiyan, U.P. Lucknow.

The meeting discussed the issue on the appointment/extension of the services of the Director, Mahila Samakhya. It was noticed that Dr. Rashmi Sinha was first appointed as Director, Mahila Samakhya U.P., on 9.1.2006 for a period of two years. The period was extended by two years from 9.1.2008 to 8.1.2010. She has thus worked for four years (total 48 months) after her appointment and extension. It was observed that in the guidelines forwarded by the Government of India, there is no provision under which the period of appointment of the State Programme Director can be extended beyond 48 months. The period of appointment of Dr. Rashmi Sinha under the terms of her contract has come to an end after 48 months on 8.1.2010 and thus there is no justification to give her any further extension.

The representative of the Government of India clarified that Rule 2.2. (ii) of the guidelines does not mean that no further extension can be granted after the extension of the period by 24 months. After some discussion, the members present in the meeting were of the opinion that the provisions under the guidelines should be clarified to the effect that extension can be given even after 48 months.

On the issue of concurrence, it was stated by the officers of the State Government that the matter does not relate to the appointment, removal or continuity and that the the proceedings initiated for fresh appointment shall be held in accordance with the rules after placing it before the Screening Committee. It was resolved that the proceedings for fresh appointment should be completed on priority after ensuring that advertisement is given in national

dailies in its All India editions, and should be placed on "DAVENET" website. If necessary, the period may be extended by 15 days. The short listing of the applications should be made from the applications received within time by constituting a Screening Committee in accordance with the Government of India guidelines and the selection committee should be constituted in accordance with the rules. The proceedings should be concluded without any delay. The Government of India should be given timely information of these dates. It was unanimously resolved that the proceedings for the new appointment shall be in accordance with Annexure1(i) of the XI th Plan Document.

The minutes of the meeting do not show that the representative of the Central Government insisted or even requested for the continuance of Dr. Rashmi Sinha until fresh appointment is made. We may record our appreciation for timely complying with orders for convening a meeting and in resolving the issue.

The request of the counsel for the petitioner to file a rejoinder affidavit to bring on record the circumstances in which the decisions were taken, is not accepted. In public interest the continuance and success of the programme is more important than the insistence of continuance of the petitioner and to find out the circumstances as to who was responsible for not giving extension, or for not allowing the petitioner to continue as State Programme Director. After completing her tenure with an extension of two years, on contract, the petitioner does not have a right to continue, and to ask for examining the circumstances in which the Central Government did not insist on giving her further extension.

The Mahila Samakhya Scheme was started in the year 1989 to translate the goals enshrined in the National Programme of Education into concrete programme for the education and empowerment of women in rural areas, particularly those from socially and economically marginalized groups. At present, the scheme is being implemented in 10 States including Uttar Pradesh. It is a Central Sector Scheme (CSC) fully funded by the Government of India as per provisions contained in XI th Plan Document which provides that personnel for this programme should be selected with special care in order to ensure high degree of commitment towards its object. Special guidelines have been issued by the Government of India in this regard. The programme enshrines that to achieve constitutional goal of universalization of education to eradicating poverty. The individual interest, must yield to larger public purpose. The achievements of the petitioner in last four years in successful implementation of programme, may become bench mark for her successor, she cannot insist on renewal of contract, on that ground. She may apply again to be considered for fresh appointment.

We are conscious that any interference by the Court will disturbs the coordination between the Central Government and the State Government in implementing the scheme in U.P. The Officers and nominees of the Central Government and the State Government have met together and resolved to make fresh appointment expeditiously and strictly in accordance with the scheme. No intervention is required in the matter.

The writ petition is accordingly disposed of.

Order Date : 11.2.2010

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