
(2015) 04 RAJ CK 0137

In the Rajasthan High Court

Case No : Special Appeal (W) Nos. 1558, 1655, 1658, 1659 and 1729 of 2014

Regional Director National and Others

APPELLANT

Vs

Anurag Kumar Sharma and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 04 RAJ CK 0137

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Virendra Lodha, Senior Advocate and Devesh Chouhan, for the Appellant; S.S. Shekhawat and M.F. Baig, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Instant bunch of appeals have been filed against the self same common judgment of the Ld. Single Judge Dt. 21.8.2014, hence, with consent of the parties, are finally disposed of at motion stage.

2. The facts can be noticed from SBCWP-16221/2013 Anurag Kumar Sharma and Anr. v. Regional Director, National Institute of Open Schooling, Regional Centre and Anr.

3. The respondent-1 writ petitioner was initially engaged on contract with National Institute of Open Schooling, Regional Centre at Jaipur on the post of Executive Officer vide order Dt. 13.8.2008 on consolidated salary. He was initially appointed for one year and contract was extended from time to time. However, institute took a decision not to extend the period of contract and his name was not included in the list of employees engaged on contract basis Dt. 23.7.2013 by which contract was extended of other contractual employees.

4. When the institute issued an advertisement Dt. 30.8.2013 and at that stage he approached by filing of writ petition and it was prayed that mandamus be issued to the institute and order Dt. 23.7.2013 by which term of contractual

appointment of writ petitioner came to an end be quashed and set aside and to continue him on the post of Executive Officer (Non-Academic).

5. Initially, interim protection was granted on 18.9.2013 directing the appellant institute that if any person is appointed on the post of Executive Officer that will remain subject to final outcome of the writ petition, however, further interim order came to be passed on 5.2.2014 not to extend contractual employment of any other person, if made, however, left it open for the respondents to appoint the petitioner on the same terms as before. Thereafter, third interim order Dt. 9.5.2014 was passed in the other aforesaid four writ petitions which were later on filed to the effect that in the ongoing process for selection pursuant to advertisement (Ann. 3), the writ petitioners shall be given preference subject to their satisfying the eligibility criteria and may not engage fresh hands till writ petitioners and other contractual appointees who have rendered services with them for longer period are exhausted.

6. At the same time, another advertisement came to be notified by the appellant Dt. 6.5.2014 to fill the post of Senior Executive Officer (retired employee only) and at that stage respondent petitioner Anurag Kumar Sharma filed stay application with the grievance that the subsequent advertisement has been issued only with a view to frustrate his right of fair consideration for appointment, however, it has been given different nomenclature but the nature of duties are same and that has now been confined to retired employees.

7. The grievance of the respondent Anurag Kumar Sharma was that as he has been appointed on contract basis and the work discharged by him is still existing and there appears no justification for the appellant not to retain the respondent (writ petitioner) and this practice is violative of Art. 14 of the Constitution. In other four writ petitions, the grievance of the writ petitioners was that because of interim order passed by the Court Dt. 5.2.2014, appointment on contract basis has been halted by the appellant, however, according to the respondents they could have been engaged on the respective post held on contract basis but because of interim order of the Court Dt. 5.2.2014 passed in the case of Anurag Kumar Sharma, they too have been deprived from being considered for appointment. The fact is that each of them was appointed on contract basis and has served on agreed terms and conditions and which has not been later on extended by the appellants and their joint grievance was that the appellants have taken decision to fill the post on contract basis vide advertisement Dt. 6.5.2014 of Data Entry Operator and different nomenclature has been given to the post of Executive Officer as Senior Executive Officer (retired employee only).

8. The nature of duties of the writ petitioners like in admission branch to make general enrollment number and to type and dispatch the letters, make punching of admission forms, examination related and general work and this being ongoing process of the National Institute of Open Schooling admission norms but still took a decision not to extend to each of the employee which is unethical and action of the appellant is in violation of Art. 14 of the Constitution and one set of

contractual employee cannot be replaced by another set of contractual employee of the same kind and in support of submission, counsel placed reliance on the judgments reported in Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others, (2009) 8 SCALE 615 : (2009) 6 SCC 611 : (2009) 2 SCC(L&S) 227 : (2009) 9 SCR 611 : (2010) 1 SLJ 125 : (2009) 7 SLR 212 .

9. The Id. Single Judge relying on the judgment of Apex Court referred to supra and also the fact that they worked on contract basis and there appears no justification in dispensing with their services directed the appellants to allow each of them to continue till duration of the scheme without requiring them to apply afresh and their appointments shall remain co-terminus with the duration of scheme under order impugned Dt. 21.8.2014.

10. It will be relevant to note that in the appellant institute there is neither a scheme nor project in which appointments are made of the employees on contract basis and the sanctioned cadre strength at Regional Office of NIOS reads ad infra-

11. All these permanent posts have been filled by regular mode of recruitment and the post are being held by the regularly selected persons.

12. Main thrust of counsel for the appellant is that each of the writ petitioner was appointed on contract basis for a fixed term which is extended from time to time as and when their services are required, in absence of any legal right being conferred, the Id. Single Judge committed error in directing the appellant to allow each of the contractual employee to continue and which remain co-terminus with so called alleged scheme, however, the fact is that neither any project nor any scheme is run by the appellant and this being an apparent error on the face of record, the view of the Id. Single Judge certainly requires re-consideration by this Court.

13. Counsel further submits that advertisement came to be issued during pendency of the writ petition for making appointment on the post of Sr. Executive Officer (Retired employee only) and six posts of Data Entry Operator for which the qualifications were laid down in the advertisement Dt. 8.5.2014 and neither the advertisement was challenged nor any amendment was made to assail nor the process was questioned in holding contractual appointment and in absence of any legal right being conferred, no mandamus could have been issued for their continuance as contractual employee and to remain co-terminus with the scheme is against the settled principles of law and such findings deserve to be quashed.

14. Counsel further submits that out of five writ petitioners three writ petitioners Pravin Kumar Vyas, Sampat Sharma, Manish Kumar had applied for the post of Data Entry Operator in pursuance to advertisement Dt. 8.5.2014, however, none of these three could qualify in the type test for their appointment on the post of Data Entry Operator and according to the counsel after having participated in the selection and failed to qualify in the type test no right could be said to be conferred to seek continuation as contractual employee and to remain co-

terminus with the scheme, however, the fact is that there is no scheme which at all being run by the appellant in reference to which the contractual employee can be allowed to continue.

15. Per contra, counsel for respondent writ petitioner while supporting order of the Ld. Single Judge submits that they are appointed on contract basis and working for sufficient long time and their disengagement and to fill the post by another set of contractual employee is certainly violative of Art. 14 of the Constitution and this what the Hon'ble Supreme Court has observed in the judgment reported in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, (2009) 8 SCALE 615 : (2009) 6 SCC 611 : (2009) 2 SCC(L&S) 227 : (2009) 9 SCR 611 : (2010) 1 SLJ 125 : (2009) 7 SLR 212 and the Ld. Single Judge was conscious of the fact that each of the writ petitioners may not be entitled to get appointment on regular basis but while keeping them as a contractual employee certainly have an indefensible right to continue and remain co-terminus with the scheme and does not call for any interence by this Court.

16. We have heard counsel for the parties and with their assistance examined the material on record.

17. Indisputably, each of the writ petitioner was appointed on contract basis and their contract was extended by the appellant from time to time and in the case of each of the respondent writ petitioner contractual appointment has not been extended by the appellant. It is not the case of the respondent petitioner that their discontinuation of contract is either malafide or because of certain oblique motive. However, in the additional affidavit filed by the appellant, it has been deposed that in the Regional Office of N.I.O.S. there is a sanctioned cadre strength of permanent post of Regional Director, Assistant Director, Section Officer, Assistant and Junior Assistant and all the permanent sanctioned post at Regional Office, Jaipur are being filled by incumbents after their regular selection and the appellant took decision that so far work of Data Entry Operator is concerned it may be executed through outsource and be separately shown in UMC Technology and there remains no requirement either of Data Entry Operator, Executive Assistant or Sr. Executive Officer and according to the appellant regularly selected persons have been assigned the work which has been undertaken by each of them earlier and as regards direction of Ld. Single Judge that each of the writ petitioner be allowed to continue on contract basis and their contract shall remain co-terminus with the scheme, we find from the record that there is no scheme or project run by the appellant and no appointment has been made on either of the post held by the respondent petitioner after their discontinuance.

18. Indisputably, in the advertisement issued by the appellant there was a specific note that such appointments are purely on contract basis and that can be extended further as long their services are required and no right at all be conferred in favour of the contracted employee which could be said to be

defeated/infringed for which mandamus can be issued for their continuation in service, however, nothing has come on record which could substantiate that there is any scheme or project being run by the appellant in reference to which their contractual appointment has been made co-terminus with the scheme as observed by the Ld. Single Judge and we find justification in the submission made by the appellant that when no legal right has been conferred, the respondent petitioner is not entitled to seek mandamus for their continuance in service and has to remain co-terminus for the period and nature of work being discharged by him and what is being considered by the Ld. Single Judge for grant of indulgence for their continuance of contractual employment in the instant case, in our considered view, is not legally sustainable.

19. It is elementary/cardinal principle of law though it is to be restated that no one can ask for a mandamus without any legal right conferred. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when the person is denied of legal right by someone who has a legal duty to do something or to abstain from doing something. Indisputably, in the instant case, no right of any kind as prayed for has been conferred on either of respondent writ petitioner and in absence thereof mandamus issued by the Ld. Single Judge, in our considered view, is not legally sustainable.

20. The Division Bench of this Court in DB Special Appeal (W)-1727/2014 Principal Secretary, UDH and Ors. v. Pushplata Sharma and Ors decided on 18.2.2015 in almost similar case of contractual employee where services of contractual employee were not extended had an occasion to examine and observed that term of engagement of the employee after came to an end or has not been extended, no right could be said to be conferred to seek mandamus of their continuation in service. We are also of the considered view that no right could be said to be conferred on contractual employee and if employer takes a decision not to continue or renew the term, no right could be said to be conferred seeking mandamus which obviously could not have been claimed without a legal right which was neither considered and examined by the Ld. Single Judge nor it is a case of the respondent writ petitioners that their engagement on contract confer legal judicial enforceable right and that can be redressed by asking for mandamus to be issued by this Court u/Art. 226 of the Constitution for their continuance in service.

21. Even in the affidavit which has been filed by the appellant before this Court it has been specifically stated that sanctioned cadre strength of the Regional Office has been filled by regularly selected persons and after discontinuance of the respondent writ petitioners no appointment has been made on the post of Data Entry Operator, Executive Officer, Assistant Executive Officer, Sr. Executive Officer, however, NIOS Headquarters has sent two regular employees to take care of their work and decision has been taken by the Headquarters to outsource the work of data entry work and assigned to an agency namely UMC Technology

and rest of the work could be undertaken by the employees who are working on substantive basis in the Regional Office.

22. Thus, no engagement has been made on either of the post held by the appellant on contract basis. The very principle on which the Id. Single Judge has proceeded to hold that one set of contractual employee cannot be replaced by another set of contractual employee of the same kind is without any factual foundation. The judgment on which the respondent writ petitioners placed reliance and considered by the Id. Single Judge reported in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, (2009) 8 SCALE 615 : (2009) 6 SCC 611 : (2009) 2 SCC(L&S) 227 : (2009) 9 SCR 611 : (2010) 1 SLJ 125 : (2009) 7 SLR 212 *Mohd. Abdul Kadir and Anr. v. Director General of Police, Assam*, was a case where two ex-servicemen who were employed under the Prevention of Infiltration of Foreigners Additional Scheme, 1987. The Scheme was temporary but it was continued from time to time and they claimed for regularization and in this context it was observed by the Apex Court that temporary or ad hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad hoc or temporary service of persons employed under the project or scheme would come to an end, on completion/closure of the project or scheme and in that context Apex Court observed that employee cannot seek permanency or regularization and one cannot claim any right to continue in service but as there was periodical breaks and to overcome the artificial breaks, it was observed by the Apex Court that process of termination and re-appointment every year should be avoided as long as the Scheme continues.

23. In the instant case, there was neither any scheme nor project run by the appellant and in absence thereof, their continuance for indefinite period or their being artificial breaks in service which the Apex Court has taken note of discontinuance or non availability of contract could not confer any right in favour of respondent writ petitioners for seeking mandamus for their continuance in service. The judgment relied upon may not be of any assistance to the respondent writ petitioners and what the Division Bench of this Court examined at length in DB Special Appeal (W) 1727/2014 Dt. 18.2.2015 and after taking note of submission made, we do not find any illegality in the decision taken by the authorities for their non renewal of contract. Accordingly, there appears no reason for interference in the decision making process of the appellant not to extend the contract of employment which has come to an end and we are unable to subscribe the view expressed by the Id. Single Judge under order impugned for issuing mandamus to the appellant for continuance of service of the respondent writ petitioners and to remain co terminus with the so called alleged scheme which no where exists.

24. Consequently, the appeal succeeds and is allowed. Order of the Id. Single Judge Dt. 21.8.2014 is hereby quashed and set aside. No order to cost.