
(2002) 12 AHC CK 0112
In the Allahabad High Court

Case No : Writ Petition No. 954 (S/B) of 2002 with three other writ petitions

Rishi Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2003) 3 AWC 1770 : (2003) 97 FLR 750 : (2003) 3 LLJ 317

Hon'ble Judges : P.K. Chatterjee, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : B. Godiyal, for the Appellant; Ajit Kumar, C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Jagdish Bhalla, J.—The above mentioned first three writ petitions, namely, Writ Petition Nos. 954 (SB) of 2002, 956 (SB) of 2002 and 953 (SB) of 2002 are identical in nature, hence they were connected and heard altogether. Later on Writ Petition No. 1372 (SB) of 2002 was filed. Learned counsel for both the parties stated that this writ petition may also be connected with Writ Petition No. 954 (SB) of 2002 as the controversy involved in this writ petition is similar to that involved in Writ Petition No. 954 (SB) of 2002. Accordingly, learned counsel for the respondents Sri Ajit Kumar made a statement that the counter-affidavit filed in earlier writ petitions be read as counter-affidavit to this writ petition, i.e.. Writ Petition No. 1372 (SB) of 2002 as well. Accordingly, the judgment was reserved also in fourth writ petition.

2. Writ Petition Nos. 954 (SB) of 2002, 956 (SB) of 2002 and 953 (SB) of 2002 are directed against the order dated 19th July, 2002, challenging the impending termination of the petitioners which had come into force and according to the terms of the contract entered between the parties, petitioner's terms of employment as Junior Manager (System) had come to an end automatically after expiry of a period of three years from the date the contract was entered upon. Similarly, term of the petitioner of Writ Petition No. 1372 (SB) of 2002, Arvind

Kumar, had also come to an end on 15th September, 2002.

3. In brief, the facts of the case are as under :

(1) Petitioner of Writ Petition No. 954 Rishi Kumar after completing his Master of Computer Applications from HBTI, Kanpur, joined the respondent - organisation, opposite party No. 2 as Junior Manager (Systems) on 19th July, 1999.

(2) Petitioner of Writ Petition No. 956 (SB) of 2002, Kiran Pal Singh, after completing his Master of Computer Applications in the year 1999 joined as Junior Manager (Systems) on 19th July, 1999.

(3) Petitioner of Writ Petition No. 953 (SB) of 2002, Yatendra Bhushan after completing his B.Tech. in Computer Science and Engineering was selected for the post of Programmer under opposite party-organisation and he joined as Junior Manager (Systems) as Internal candidate on 17.7.1999.

(4) Similarly, Arvind Kumar, petitioner of Writ Petition No. 1372 (SB) of 2002 after completing his B.Tech. in Computer Sciences and Engineering also joined as Junior Manager (Systems) under opposite party-organisation.

4. Learned counsel for the petitioners submits that although the petitioners were appointed on the fixed salary of Rs. 7,000, subsequently it was increased to Rs. 9,000, the Contributory Provident Fund was also deducted from the salary of the petitioners since January, 2002. In continuation, it has been submitted that earlier there was a ban on making regular appointment. However, by Government order dated 17th June, 2002, the ban imposed was withdrawn. In light of the above lifting of ban, petitioners made several representations from time to time for their regularisation and further prayed that they be appointed on the regular basis. Great emphasis has been given on behalf of the petitioner that several other officers who were appointed on the contract basis by opposite party No. 2 have already been regularised, therefore, the petitioners also claims regularisation. The details of such representations have been indicated in all the respective writ petitions.

5. It has been emphatically submitted on behalf of the petitioners that opposite party No. 2 being the instrumentality of the State under Article 12 of the Constitution of India has violated Article 19 of the Constitution of India by offering unconscionable terms in contract of employment which are unfair, unreasonable, arbitrary and in opposition of public policy. So, petitioners having no alternative had to accept such terms. One of such terms is automatic termination after the expiry of a period of three years. Such terms amount to bargain on the part of the instrumentality of the State, which is to be deprecated and in the process, learned counsel for the petitioners have prayed that unconscionable term in the contract of employment dated 6th July, 1999, be quashed and a direction be issued for regularisation/for giving regular appointment to the petitioners.

6. Further petitioners' case is that at the time of their appointment, a ban

regarding appointment was in operation, therefore, they were appointed on contract basis against regular vacancy. The State Government by the Government order dated 17th June, 2002, removed the ban imposed earlier.

7. In support of their cases, reliance has been placed by the learned counsel for the petitioner Ms. Bulbul Godiyal upon the case in Central Inland Water Transport Corporation v. Brojo Nath Ganguly 1986 (3) SCC 157, which reads as under :

"We would like to observe here that as the definition of "the State" in Article 12 is for the purposes of both Part III and Part IV of the Constitution, State actions, including actions of the instrumentalities and agencies of the State, must not only be in conformity with the fundamental rights guaranteed by Part III but must also be in accordance with the Directive Principles of State Policy prescribed by Part IV. Clause (a) of Article 39 provides that the State shall, in particular, direct its policy towards "securing that the citizens, men and women, equally have the rights to adequate means of livelihood". Article 41 requires the State, within the limits of its economic capacity and development, to "make effective provision for securing the right to work". An adequate means of livelihood cannot be secured to the citizens by taking away without any reason the means of livelihood. The mode of making "effective provision for securing the right to work" cannot be by giving employment to a person and then without any reason throwing him out of employment. The action of an instrumentality or agency of the State, if it frames a service rule such as Clause (i) of Rule 9 or a rule analogous thereto would, therefore, not only be violative of Article 14 but would also be contrary to the Directive Principles of State Policy contained in Clause (a) of Article 39 and in Article 41."

8. Learned counsel for the petitioner has further relied upon a case in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, which reads as under :

"The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

There is need to minimize the scope of arbitrary use of power in all walks of life.

It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of individual whims and fancies. Individual are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however, high they may be. There is only a complacent presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law. Hence the absence of guidelines cannot be defended on the ground that the discretion is vested in high authorities."

9. In *D.K. Yadav Vs. J.M.A. Industries Ltd.*, the Supreme Court, while laying emphasis on affording opportunity by the authority which has the power to take punitive or damaging action, held that orders affecting the civil rights or resulting civil consequences would have to answer the requirement of Article 14. Paras 11 and 12 of Constitution of India. In furtherance Apex Court concluded as under :

"The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive."

10. In this background, learned counsel for the petitioner stated that the petitioners are also entitled for regularisation because the respondents have regularised the services of identically placed S/Sri Arvind Agarwal, G. S. Panth and G. P. Maurya.

11. Sri Ajit Kumar learned counsel appearing in Writ Petition No. 243 (SB) of 2002 filed a detailed counter-affidavit in Writ Petition No. 953 (SB) of 2002 and stated that the same may be read in all the connected writ petitions.

12. According to him, petitioners were appointed on the basis of campus requirement. Their appointment was purely on contract basis for a period of three years and they accepted agreement bond after giving their consent and knowing very well that they have been appointed for a fixed term on a consolidated/fixed pay. It was never binding on the petitioners to have agreed the terms of appointment if in their view contract was unconscionable.

13. Adding further, learned counsel for the answering opposite parties stated that the deduction of contributory provident fund after certain period of services is statutory but it does not mean that the employee has become regularised. Detailing the nature and working of the Corporation, he submitted that the work of the Corporation is executed on project basis and the staff is engaged

temporarily on contractual basis for a particular project and on completion of project requirement of staff diminishes. Since the work of the project was over and no substantial work has been received requiring deployment of manpower other than the regular staff available as such there was no need to retain the petitioners in service and as such no illegality has been committed by the answering opposite" parties.

14. Relying upon the decision of the Supreme Court in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, and of this Court in Santosh Kumar Vs. State of U.P. and Another, learned counsel contended that the petitioners have no right to continue on the post the moment it comes to an end as the appointment of the petitioners was purely contractual for a limited period.

15. No doubt, petitioners were appointed on contractual basis for a fixed term but in the writ petition, they have taken a stand that 12 regular and sanctioned posts of Junior Manager (Systems) are available in the establishment and as such, they having experience and unblemished record have a right of regularisation against the said vacant posts. The respondents in their counter-affidavit have not denied that the said 12 posts are not available. In reply to the averments made in the writ petition, it has been stated in paragraph 23 of the counter-affidavit that contractual employees have no right to claim for regularisation. It is the availability of the work that necessitates extension of appointment or need for regular appointment to be given on the post. Mere availability of the post does not in any way and under any rule entitles an employee for extension/ regularisation.

16. A perusal of paragraph 23 shows that the posts on which petitioners were working are available. It also emerges out that only on account of the ban imposed by the State Government, they were appointed on contract. In para 21 of the counter-affidavit it has been indicated that since no substantial work has been received, the staff engaged for the purposes have become surplus and have work as such their retention in service was detrimental to the interest of Corporation. Annexures-RA 4 and 5 of rejoinder-affidavit belies the above allegations and stand of the respondents. On the contrary, it goes to show that sufficient work is available and the establishment is in need of manpower.

17. We, therefore, are of the considered opinion that the posts were available but because of the ban, petitioners could not be appointed on regular basis and given appointment on contractual basis. In view of the judgments relied upon by the petitioner, the petitioners have a right to be considered for regularisation. Needless to say that prior to filing of this writ petition, even the Managing Director of the establishment has recommended their case and several persons have been regularised. It would be relevant to mention here that the establishment has made a campus selection and selected the best of the lots. Following the principle of certainty, the rights of the petitioner cannot be brushed aside because right to work has been declared a fundamental right by the Apex Court in Delhi Transport Corporation's case (supra).

18. We are unable to understand as to why a different stand has been taken in the counter-affidavit whereas in the letter written by Sri S. P. Goel, Managing Director to the Special Secretary, Bureau of Enterprises, Secretariat, it has been clearly mentioned that the work of the establishment will have increased manifolds and after expiry of term of petitioners' contract, the establishment will face serious trouble and there is significant need and role of the petitioners for the establishment. Hence, the Managing Director has sought necessary instructions for extension of their term. We, however, restrain ourselves from recording any finding against the officer who has sworn the counter-affidavit.

19. In premise, the law laid down by the Apex Court is that the instrumentality of the State should ensure the service security to its employees and there should be an end to arbitrary termination of services of such employees. Further, Articles 14 and 21 of the Constitution of India conferred upon a citizen right to work and dignity of person with means of livelihood. In view of the above discussions, the cases relied upon by the respondents' counsel referred to above, are not applicable in this case.

20. Having examined the material on record and the submissions made by the learned counsel for the parties, we direct the opposite party Nos. 1 and 3 to examine the matter afresh within six weeks in light of the materials and letters on record showing need for extension of the term of the petitioners on the post on which they were working and consider their claim for regularisation in the light of the observations made hereinabove and the fact that the petitioners have preferential rights, experience and unblemished record.

21. All the writ petitions stand disposed of finally.