

(2018) 06 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8405, 8420 of 2018

Sandeep Parmer @APPELLANT@Hash State Bank of India & Ors.

Date of Decision : 18-06-2018

Acts Referred:

Banking Regulation Act, 1949 — Section 23
Constitution of India, 1950 — Article 12, 14, 16, 21

Citation : (2018) 06 RAJ CK 0006

Hon'ble Judges : DR.PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Suresh Kumar Sharma

Final Decision : Allowed

Judgement

1. The lawyers are not appearing due to abstention from judicial work.

2. On an examination of the pleadings and the averments made in the writ petition, as also looking into the materials available on record and after hearing the parties present in person, this Court finds that the controversy is covered by the judgment of this Court in Ashish Kumar & Ors. Vs. The State Bank of India & Ors. (S.B. Civil Writ Petition No. 4304 / 2018 decided on 31.05.2018), relevant portion of which reads as under:-

57. This Court finds that the order dated 16.11.2017 passed by this Hon'ble Court in S.B.Civil Writ Petition No.6462/2017 (Nitin Kumar Agrawal & Ors. Vs. The State Bank of India & Ors.), whereby the writ petitions were dismissed as having become infructuous, however, with liberty to the petitioners to take appropriate remedies against the future action, putting their arrangement to peril, in accordance with law, as also the fact that the adjudication in the earlier writ petition was not done on merits of the case, the same cannot be said to operate as res judicata in the present case.

denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in

accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it

possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to

livelihood and you shall have deprived him of his life. . . . So unimpeachable is the evidence of the nexus between life and the means of

livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of

livelihood. That is the context in which it was said by Douglas, J. in *Baksey* [347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most

precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious

freedom. "Life", as observed by Field, J. in *Munn v. Illinois* [(1877) 94 US 113] means something more than mere animal existence and the

inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by

this Court in *Kharak Singh v. State of U.P.* [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329].

61. In the present case, the respondents have denied the employer-employee relationship; but by way of Scheme, the RBI, which is the Apex

Institution of Banking in this country, under a common policy approach regarding banking services, has taken an initiative, in the related exercise, for

increasing the banking outreach and ensuring greater financial inclusions, which has to be followed by all Nationalized and Private Banks of the

country.

62. The significant policy decisions were also taken and the Banks were accordingly permitted to engage Business Correspondents on certain terms

and conditions, after adopting a regular selection process, which includes an advertisement and also laying down of the eligibility conditions therefor.

63. The Business Correspondents were of two types, namely, (i) Corporate Business Correspondents and (ii) Individual Business Correspondents, and

the aim of having Individual Business Correspondents was to reach to the far flung areas where a branch or regular employee of the Bank may not

prove to be financially viable. The Individual Business Correspondents were engaged by the Banks so as to target the rural folk and the companies

were permitted with the intention of further intensifying the process of outreaching the banking services to the remotest and unbankable areas.Â The

terms and conditions for engaging the petitioners clearly reveals employer-employee relationship between the Business Correspondents and the

Banks.

64. The eligibility of individuals like retired persons, owners of kirana store/ medical/Fair Price shops would not have any affect on the nature of work

performed by the petitioners being the contractual appointees, as the various relevant documents indicate that the petitioners have been given

appointment on the conditions, which have been stipulated by the Bank itself.

65. As far as entitlement of the Business Correspondents to work in that capacity is concerned, the same is part of the contractual condition to

strengthen their hands for completing the tasks of making inroads through the rung of citizens, who are otherwise not accessible to the mainstream

banking.

66. On a careful reading of the RBI Guidelines, it is revealed that the same have been issued under Section 23 of the Banking Regulation Act, 1949,

and such Guidelines are supposed to be a guiding factor to the Banks of this country, and thus, were to be applied by the Banks without any violation

thereof.

67. The national spectrum of Banking, which has a statutory influence of the RBI, clearly reflects that the Business Correspondents were required, in

terms of the policy of Banking, to reach the last line of the citizens, who may be inaccessible due to rural existence, geographical conditions,

economically under developed clusters, far flung areas and other difficult to banking zones.

68. The rising trend/pattern of the State functionaries hiring and using contractual/ad hoc employees for carrying out perennial jobs for years

altogether and dispensing with their services like completely disposable commodities, amounts to an unfair dilution and negation of the precious

constitutional guarantees. No State can be allowed to violate inviolable fundamental rights guaranteed by the Constitution of India.

69. The precedent laws cited by learned counsel for the petitioners clearly

indicate the settled legal proposition that one set of contractual employees cannot be replaced by another set of contractual employees, unless their conduct and performance is under the cloud. Such contractual employees could be replaced by regularly selected employees by the employer, and further, if the scheme or project, in which such employees are working itself comes to an end.

70. The precedent law laid down by the Division Bench of this Honâ??ble Court in State of Rajasthan Vs. Kusum Devi & Ors. [D.B.Civil Special

Appeal (Writ) No.1231/2017 decided on 20.03.2018], which has been referred by this Court in the judgment rendered in Mahendra Kumar & Anr.

Vs. Union of India & Ors. (supra) cited by learned counsel for the petitioners and as reproduced hereinabove, throw much weight behind the petitioners.

71. In the instant case, the employers falling under the definition of â??Stateâ?? under Article 12 of the Constitution of India have clearly deployed a

mechanism to exploit the masses of this country by undermining their right to livelihood by imposing conditions, which admittedly, do not provide for the

protection and strength of a regular appointment, but even take away the basic protection available to contractual employees. The law is now well

settled that until the contractual appointment continues to fulfill the task, for which such contractual appointees have been appointed and the work is

being done satisfactorily, the rights of such contractual appointees normally need to be protected to this extent, unless they are being sought to be

replaced by regularly selected employees, or the project/scheme under which they are working itself comes to an end.

72. The present case in hand is not a case where the work being discharged by the Business Correspondents has to come an end, but the only thing is

that they are being placed under the corporates, which would only render them exposed to the exploitative tendencies of a corporate entity, particularly

in light of the fact that the corporate entity itself would not have any stake in the institution, and thus, the institutional welfare of its employees would

never be its prerogative.

73. The impugned action of the respondents also runs contrary to the very purpose, for which the Business Correspondents were employed.

Admittedly, the accessibility and reach of banking services is far from adequate

in the rural and remote areas. The push of government policies to expand the net of banking services and dispensing benefits/grants/subsidies through the banking channel, has given a new impetus to the purpose and role of Business Correspondents. The reality and challenges of rural/remote areas have not diminished in any manner. The Corporates, who as a model operate on considerations of profitability and commercial viability, cannot even be expected to further the cause of banking access to all in remote/rural areas. The States functionaries cannot be allowed to shun their constitutional responsibilities and goals, while continuing to operate as biggest players in a particular segment.

74. This Court also finds that the judgments cited by learned Senior Counsel for the respondents do not apply in the present facts and circumstances, as the writ jurisdiction is a wide jurisdiction and cannot be ousted merely on the ground that conditions, which have been laid down in respect of the contractual appointment, were such that the employer Banks can wash away their hands from their responsibility to take work from the Business Correspondents in their direct supervision. Even if there is a risk factor, then also the Banks have to find ways to minimize those risks; however, they cannot ride over the shoulders of the poor Business Correspondents to bring them in the corporate arena, as the recent examples have shown that the corporate houses are not fully risk proof and they have caused fabric damage to the banking system of this country, more than the one caused by the individuals.

75. Thus, the argument of learned Senior Counsel for the respondents that to plug the loopholes and risks in the individual Business Correspondents, the corporatization of the same is being permitted, does not hold good, as it is common knowledge that some of the corporate houses have caused huge damages to the fabric of the banking structure of this country at the cost of a poor man and the society at large.

76. The argument of learned Senior Counsel for the respondents regarding non-existence of the employer-employee relationship, in the precedent law so cited, would not hold good in the present set of facts and circumstances, as in these cases the Banks have admittedly issued advertisement and invited the petitioners to work as Business Correspondents with the Banks on particular terms and conditions, which include eligibility criteria as well.

77. The petitioners in this case are not seeking regularization in the public employment. The petitioners are merely seeking that their services may not be transferred to the corporate entities, as it would defeat the purpose of their employment, create scope for exploitation and would render the petitioners very weak and their right to livelihood would also be denuded of fundamental protections.

78. Learned Senior Counsel for the respondents has harped upon the alternative remedy, but this Court has seen that there is consistency in the law laid down by the Honâ??ble Apex Court from time to time that every case where right to livelihood is at stake, the same calls for intervention in the writ jurisdiction.

79. The judgment rendered by the Honâ??ble Gujarat High Court in Prabal Kumar Kulshrestha and 58 Others Vs. Bank of India and 3 Others

(supra), although reproduced hereinabove, but reiteration of the relevant portion thereof would be apposite, and the same reads as under:-

â?? From the materials which have been brought on record before this Court, it is apparent that the respondent bank has not examined functioning of

the petitioners, individually, with reference to the work performed in the context of the provisions contained in the guidelines. No reasons have been

assigned, and therefore, the conclusion drawn in the instructions that petitioners' working was not in accordance with the guidelines, is not liable to be

sustained. Petitioners' contention that only in Agra Region such order has been passed, has also not been taken into consideration.

Learned counsel for the respondent bank faced with the aforesaid situation submits that instead of keeping the matter pending, it would be appropriate

to dispose off the writ petition with liberty to respondents to act in accordance with law.

In the absence of any reasons and findings returned in the order, holding petitioners' working not to be in accordance with the guidelines framed, the

action of respondents, terminating their engagement, cannot be sustained. Consequently, the writ petition is allowed. The order dated 16.3.2016 and

18.3.2016 are set aside. It shall, however, be open for the respondent bank to proceed, afresh, in accordance with law.â??

80. It would also be apt to reiterate the relevant portion of the judgment rendered by the Honâ??ble Gujarat High Court in Gulamrasul Habibhai Badi

& Ors. Vs. State Bank of India (SBI) & Ors. (supra), and the same reads as under:

15. From the aforesaid decisions, it can be said that if the appointments which have not been made according to the constitutional scheme are

regularised, that would amount to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme

adopted by the people of this country. If the person is not appointed in terms of the relevant rules or in adherence to Articles 14 and 16 of the

Constitution of India, such appointment cannot be regularized.

16. However, at this stage, we would like to clarify that in fact the present petitioners are not at all employees of the respondent-bank. As discussed

hereinabove, they have entered into an agreement with the respondent-bank as a service provider for running business on the commission basis. There

is no employer-employee relationship between the petitioners and respondent-bank and therefore there is no question of claiming regularization or

similar pay scale which the regular employees of the respondent-bank are getting.

The said judgments cannot be read against the present petitioners, as it is clear that the petitioners do not fall under the class of 'Service

Provider', but have been specifically brought into the contractual regime of employees to profess the banking amongst the underprivileged and

inaccessible class of economy, and thus, they cannot be denied their right to continue as Business Correspondents - until the project continues and until

their performance is found to be satisfactory or unless they are being sought to be replaced by regular selected employees - simply on the ground that

they were only service providers.

17. We are in agreement with the learned counsel for the petitioners to this extent that the Service Provider is a person, who provide requisite services

- lock, stock and barrel - on being paid, whereas in this case, the employer is paying an amount to the petitioners for getting several works done, which

include opening the accounts, financial transaction, getting FDRs, RDs payment under the Atal Pension Yojana, recovery of loan amount, payment

with regard to the government project, opening of Jan Dhan Accounts, etc., and thus, the same are the banking jobs, which on behalf of the Banks, are

being conducted by the petitioners as Business Correspondents, and thus, it cannot be said that the petitioners are merely service providers to the

Bank, as in fact, they are providing banking services to the customers on behalf of the Banks.

82. The respondents have failed to show even a single reason as to why the petitioners are being placed in the hands of the corporate companies and as to what was the need of taking such action so as to bring them under such arena, more particularly, when the petitioners are providing satisfactory services to the respondents.

83. It is not the case of the respondents that the petitioners' services are not satisfactory and they are not able to perform the tasks, which have been assigned to them by the respondents.

84. The respondents have further failed to satisfy this Court, on the strength of the relevant RBI Guidelines, as to the function of the Business

Correspondents, like the present petitioners, which could be performed by the corporate entities in a better way.

85. The individuals having the requisite skills and vast experience in the related field were required to utilize their skills and experience to outreach the

banking services to those areas, where the banking system would ordinarily not even be existing, which is a daunting task, and the same is being

performed by the petitioners to the utmost satisfaction of the respondents, and thus, when the petitioners are providing satisfactory services to the

respondents, they should not be saddled with the unfair practice of putting them in the hands of corporates, which could be exploiting these employees,

as the corporates do not have direct stakes in these employees, which would encourage them to provide satisfactory remuneration and working

conditions to them.

86. The network of Business Correspondents has been created by the RBI Guidelines and circulars issued from time to time. This Court finds that the

constitutional mandate requires the relevance of the various communications and the policy in vogue as reflected in the RBI circulars need to be

strengthened, lessening the gap between have and have nots, so as to achieve the desired goals to outreach the banking services to the areas, where

the banking services do not even exist.

87. In light of the aforesaid observations and the aforementioned precedential backdrop, the present petitioners need to be protected, and therefore,

the present writ petitions are allowed to the extent that while quashing and

setting aside the action of the respondents of corporatization of the present petitioners as Individual Business Correspondents, the respondents are directed to continue the petitioners as Business Correspondents directly with them, as they are continuing for last many years and the respondents are also directed not to terminate the services of the petitioners so as to replace them by another set of contractual employees or Corporate Business Correspondents, unless there is a performance deficit on the part of the petitioners.â??

3. In light of the aforequoted judgment, the present writ petition stands allowed in the same terms.