

(2019) 05 GAU CK 0112

In the Gauhati High Court

Case No : Writ Petition (C) No. 3491 Of 2019

Santosh Kumar Thakur And 71 Ors

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 29-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21, 309

Citation : (2019) 05 GAU CK 0112

Hon'ble Judges : Manash Ranjan Pathak, J

Bench : Single Bench

Advocate : B Barman

Final Decision : Dismissed

Judgement

1) Heard Mr. D. Barman, learned counsel for the petitioners and Mr. S.C. Keyal, learned ASGI for the respondent No. 1. Also heard Mr. N. Sarma, learned Standing Counsel, Education Department for the respondent Nos. 2 & 4, Mr. S. P. Bhattacharjee, learned Standing Counsel, SSA for the respondent No. 3.

2) The petitioners are Graduates and also obtained B.Ed. Degrees, where some of them have obtained Master Degree. They have also qualified Teachers Eligibility Test of Education Elementary Department of the State in 2012. The Axom Sarba Siksha Abhijan Mission (SSA, in short) respondent No. 3,

3) With a view to support, strengthen and improve the quality of elementary education in the State of Assam in compliance with the Right of Children to Free and Compulsory Education Act, 2009, the SSA on 14.02.2012, issued an advertisement (Annexure-3 to the writ petition) seeking online applications from the eligible candidates having requisite qualifications for the posts of Assistant Teachers for Lower Primary Schools, Assistant Teachers for Science/Math in Upper Primary Schools and Assistant Teachers for Social Science in Upper Primary Schools, as per the district wise positions so advertised under the SSA, on contractual basis in a fixed pay of salary.

4) In the said advertisement, the respondent No. 3, SSA, categorically observed that those contractual teachers so engaged by the SSA authority, will get all facilities including leave and other allowances as per State Government norms issued from time to time, where instead of GPF, they will be entitled for CPF and that those contractual teachers will have no claim for any appointment whatsoever against any regular vacancy in the school or in the education department of the State and further, those selected candidates shall enter into an Agreement with the concerned School Management Committee regarding their engagement as Contractual Assistant Teacher in the concerned subject on contractual basis at a fixed remuneration specified in the said advertisement, subject to satisfactory periodical review of performance of those engaged contractual teachers and that the selected candidates will be posted in schools located in rural areas only.

5) Moreover, the respondent SSA in the said advertisement dated 14.02.2012, also clarified that Assistant Teachers for Lower Primary and Upper Primary Schools shall be paid a fixed pay of Rs. 14,000/- and amongst them those candidates who have passed Bachelor of Education (B.Ed.) / Diploma in Elementary Education (D.Ed.), they shall be paid fixed pay of Rs. 14,200/- per month. Similarly, for Assistant Teachers for Science/Math in Upper Primary Schools shall be paid fixed pay of Rs. 15,000/- and amongst them those candidates who have passed B.Ed./D.Ed. they shall be paid fixed pay of Rs. 15,200/ per month.

6) The petitioners, being eligible, participated in the selection process and thereafter, appointed as Assistant Teachers on contractual basis and between the period from 08.06.2012 to 01.03.2014 all of them have entered into an agreement with their respective School Management Committees (SMC) regarding their engagement as Contractual Assistant Teacher in the elementary Schools concerned. As per their engagement, agreement and contract with the concerned SMCs of their respective schools, the petitioners have joined as Contractual Assistant Teachers under the SSA, Assam, where they served for a term of five years from the date of their appointment made by the SSA.

7) It is submitted by the petitioners that after completion of their said period of contract, some of them have been re-engaged for a further period of 11 (eleven) months on contractual basis and some of them are serving on the basis of verbal instructions of the respective SMCs.

8) Relying upon the provisions of the Right to Children to Free and Compulsory Education Act, 2009, its State Rules, i.e., the Assam Right of Children to Free and Compulsory Education Rules, 2011, stating that the Sarba Siksha Abhijan Scheme is still in operation in the State, which is a continuous process and as they have the requisite pre service qualification, i.e., qualified B.Ed./D.Ed. and since they are eligible and were appointed through a selection process, pursuant to advertisements and therefore, the petitioners submitted that the State respondents should consider their cases for regularization in service as Assistant

Teachers in the schools, where they served.

9) It is also contended by the petitioners that the State Government is well aware of the policy of Sarba Siksha Abhijan Mission of the Central Government and therefore, it cannot keep their services as contractual or temporary for an uncertain period, depriving them from being regularised and that such action of the State respondents being violative of Article 14, 16 and 21 of the Constitution of India, the same is liable to be interfered by the Court.

10) Hence this writ petition by the petitioner praying to issue suitable Writ and/or direction to the respondent authorities to formulate a scheme to regularize the services of the petitioners and also to issue Writ of Mandamus to the State respondent to regularize their services.

11) It is further submitted that as in WP(C) No. 8824/2018, involving similar issue, an interim order has been passed directing the State respondents to keep vacant appropriate numbers of posts, in Elementary Education (Upper Primary Schools) of the State Government, proportionate to the numbers of writ petitioners in that writ petition, which shall not be filled without the leave of the Court and therefore, the petitioners have also prayed for similar order.

12) Both Mr. N. Sarma and Mr. S. P. Bhattacharjee submitted that as in pursuance to an advertisement made by authorities of Axom Sarba Siksha Abhijan Mission, the petitioners were appointed on contractual basis by the said authority, therefore, the State Government cannot regularise the services of the petitioners as Upper Primary School Teachers in the Elementary Education Department of the State.

13) In the advertisement dated 14.02.2012 (Annexure-3 to the writ petition) issued by the respondent SSA authority, it clearly reflects that the posts that were advertised, were on contractual basis and that the contractual teachers, so engaged in pursuance to the said advertisement and selection, will have no claim for any appointment, whatsoever against any regular vacancy in the school, in which said candidate is so engaged or in the department of the State.

14) Moreover, from the Annexure-6 to the writ petition it is seen that each of the petitioners have entered into an agreement with the respective School Management Committee (SMC) regarding their engagement as Contractual Assistant Teacher in the schools concerned, wherein they were appointed by the respondent SSA, at a fixed salary, for a period of 5 (five) years from the date of their signing such contracts, in pursuance to its advertisement dated 14.02.2012 and selection, where continuation of their service beyond the period of 5 (five) years was conditional, subject to availability of fund and fulfillment of good performance record and regular attendance.

15) The State Government in the Elementary Education Department formulated a Rule regulating the recruitment and condition of service of teachers of the elementary schools, which have been provincialised under the Assam Elementary

Education (Provincialisation) Act, 1974, namely, the Assam Elementary Education (Provincialisation) Rules, 1977, which is a statutory recruitment Rules under Article 309 of the Constitution of India. After the Right of Children to Free and compulsory Education Act, 2009 came in to force w.e.f. 26.08.2009, said 1977 Rules was duly amended w.e.f. 25.10.2012 incorporating the requisite educational qualification for the post of Assistant Teachers in provincialised Lower Primary Schools as well Assistant Teacher and Science Graduate Teachers in Upper Primary Schools under the Elementary Education Department of the State. As per the provisions of said 1977 Rules, amended in October, 2012, the vacant sanctioned posts of teachers in Elementary Education Department of the State Government are to be filled up by way of due advertisement and selection as specified in said 1977 Rules.

16) A three Judge Bench of the Hon'ble Supreme Court in the case of Institute of Management Development, U.P. -Vs- Pushpa Srivastava, reported in (1992) 4 SCC 33 have held that -

To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularisation? The answer should be in the negative in the absence of any rule providing for regularisation after a specific period.

17) The Hon'ble Supreme Court in the case of Mehar Chand Polytechnic -Vs- Anu Lamba, reported in (2006) 7 SCC 161 have held that -

Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time-bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturalists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus.

18) In a case of employees working under a scheme or project, the Hon'ble Supreme Court in M.D., U.P. Land Development Corpn. -Vs- Amar Singh, reported in (2003) 5 SCC 388, have held that -

From these documents it is clear that the respondents were never recruited as against regularly sanctioned posts on a regular basis. Reading of these documents and the contentions raised on either side go to show that the appointments of the respondents were temporary under the "Million Wells Scheme" aforementioned. When the work of the Scheme had come to an end, the respondents were not entitled to claim regularisation of their services. Even though their services were continued after 31-3-1994 by virtue of an interim order passed in the writ petition, they cannot claim benefit of regularisation of their services as a matter of right.

In clear and certain terms it is stated that when the project comes to a close, the employees who are working in the project will not get any vested right. In other words, once the project comes to an end, services of the employees also come to an end.

19) In a case of employees working on contractual basis, the Hon'ble Supreme Court in State of Orissa -Vs- Chandra Sekhar Mishra, reported in (2002) 10 SCC 583 have held that -

The respondent was appointed on 1-2-1972 on contract basis for a period of three years. This period of contract was extended up to 31-1-1978. When the respondent was only a contractual employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee.

20) The Hon'ble Supreme Court in the case of State of Himachal Pradesh -Vs- Ashwani Kumar, reported in (1996) 1 SCC 773 have held that -

It is seen that when the project is completed and closed due to non-availability of funds, consequently, the employees have to go along with the closed project. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to create posts by the State to a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them in spite of non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is set aside.

21) In a case of employee working under a scheme, the Hon'ble Supreme Court in Sandeep Kumar -Vs- State of U.P., reported in 1993 Supp (1) SCC 525, have held that -

From the facts placed before us, it appears that the scheme under which the petitioners are working is of a very specific nature. There is no permanent need for the work and since it is a project for a particular purpose, it will not be possible to direct that the petitioners may be regularised in service.

22) In another case of employee working under a scheme, the Hon'ble Supreme Court in Mohd. Abdul Kadir -Vs- Director General of Police, reported in (2009) 6 SCC 611, have held that -

13. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of the PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said Scheme is being extended from time to time and is being continued. If the 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 the persons employed under the project or scheme would

come to an end, on completion/closure/cessation of the project or the scheme.

14. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularisation. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts coterminous with the Scheme and not of permanent posts.

15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation in some other project or service. [See *Bhagwan Dass v. State of Haryana*, *Delhi Development Horticulture Employees' Union v. Delhi Admn.*, *Hindustan Steel Works Construction Ltd. v. Employees' Union*, *U.P. Land Development Corpn. v. Amar Singh*, *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra*, *State of Karnataka v. Umadevi (3)*, *Indian Council of Medical Research v. K. Rajyalakshmi and Lal Mohammad v. Indian Railway Construction Co. Ltd.*]

In view of this settled position, the appellants will not be entitled to regularisation.

23) In the present case, from the perusal of the petition itself, it can be seen that petitioners are fully aware that the Sarba Siksha Abhijan is a Scheme and the financial norms is shared by the Central Government and State Government in the ratio of 85:15%. The petitioners are also aware that they were engaged as contractual teachers in a fixed pay as per the advertisement dated 14.02.2012 made by the Axom Sarba Siksha Abhijan Mission, respondent No. 3, to support, strengthen and improve the quality of elementary education in the State of Assam in compliance with the Right of Children to Free and Compulsory Education Act, 2009, for which the SSA also conducted the selection and on being selected in the said selection process, the SSA, Assam appointed them under it, in respective elementary schools, where the petitioners entered in to an agreement with the SMC of the concerned school, to serve in same as a contractual teacher for a period five years with fixed salary on certain terms and conditions.

24) The entire process of advertisement, selection and appointment were made by the respondent SSA for fixed period on contractual basis under it and the appointments of the petitioners, made by respondent SSA were not made against any vacant sanctioned post under the Elementary Education Department of the State Government. It is not the case of the petitioners that their appointments were made by the State Government in the Elementary Education Department against vacant sanctioned post on contractual basis with fixed pay of salary following the statutory 1977 Recruitment Rules of appointment as such they are entitled for regularisation of their contractual service in such provincialised elementary schools, where they were engaged.

25) The 1977 Statutory Recruitment Rules, as amended, for appointment to such

Assistant Teachers in provincialised elementary schools of the State, does not attract any such contractual appointee and such contractual appointment of the petitioners made by the authorities of the SSA or any other authority is outside the purview of said 1977 Statutory Rules.

26) Law is well settled that appointments, which have been purely on contractual basis and carries with a rider with such contractual appointment, so engaged, will have no claim against any vacancy of the school or in Education Department pursuant to which the petitioners entered into a contract for a specific period, such term of contractual appointment comes to an end after serving the maximum period of their contractual service specified in the contract itself. The conditions of contractual appointment of the petitioners were governed by the term of the said agreement, which they have entered into and after having accepted the contractual appointment, the petitioners are estopped from challenging their terms of appointment and they are precluded from seeking any regularization of their services in any Government sanctioned post on the basis of their such contractual appointment in terms of advertisement made by the SSA on 14.02.2012. A contractual appointment of the petitioners herein under the scheme of the SSA is coterminous with the said scheme. Further, the petitioners are not holder of any civil post under the State government

27) Though petitioner have stated about a pending writ petition wherein notice have been issued and interim order has been passed, but in the present case, matter has been considered in the motion statge itself.

28) For the reasons above, this Court is of the view that the petitioners do not have any vested and legal right for entitlement of regularization of their contractual services under Sarba Siksha Abhijan Mission, Assam in terms of its advertisement dated 14.02.2012 against any vacant sanctioned posts under the State Government in the Elementary Education Department as well as Directorate of Elementary Education Department, Assam, respondent Nos. 2 and 4, as their contractual services have ended under the SSA, Assam.

29) Accordingly, this writ petition, being devoid of merit, stands dismissed.