

(2014) 09 CAL CK 0122

In the Calcutta High Court

Case No : F.M.A. 1465 of 2013 and C.A.N. 5020 of 2013

Sara Bengla Prerak Prerika Kalyan Samitt

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2014) 4 CALLT 50 : (2015) 1 CHN 211 : (2015) LabIC 1185

Hon'ble Judges : Dr. Manjula Chellur, C.J.;Arijit Banerjee, J

Bench : Division Bench

Advocate : Jiban Ratan Chatterjee, Ashish Kr. Bhattacharyya, Partha Pratim Roy and Saikat Sen, Advocate for the Appellant; Joytosh Mazumdar, Tulsidas Ray, S.N. Bhattachayya and Saikat Chatterjee, Advocate for the Respondent

Judgement

Arijit Banerjee, J.—This is an appeal against the judgment and order dated 13th February, 2013 passed by the Learned Single Judge in WP No. 1164 (W) of 2011 whereby the learned Judge dismissed the writ petition filed by the appellants. The appellant No. 1 claims to be a society registered under the Societies Registration Act and the appellants Nos. 1 and 2 claim to be the President and Secretary respectively of the appellant No. 1. It is the appellant's case that initially for the purpose of development of the rural villagers in the field of Education, Culture and Health, the Government of West Bengal through panchayat formulated a scheme namely Iswar Chandra Jana Chetana Kendra in Medinipur and similar centres were, thereafter, set up under different names in other districts involving the local youths. The youths comprising male and female were initially designated as "Sanchalak" and subsequently since 1990 they were named as Prerak and Prerika.

2. The grievance of the appellants is that in spite of performing all types of works for the development of rural uneducated villagers, the members of the petitioner society have not been engaged permanently either in any vacant permanent post in the panchayat Department or in the Department of Education or Health

Department. In effect the petitioners seek regularization of the services of the members of the petitioner society.

3. It appears that the appellants had made a representation dated 2nd October, 2005 before the appropriate authority. Subsequently, the appellants approached this Court by way of filing WP No. 6527 (W) of 2006, inter alia, for a direction on the Director, panchayat and Rural Development Department, West Bengal to consider the said representation. On the said writ petition an order dated 2nd August, 2010 was passed, the operative portion whereof is as follows:--

"Having considered the submissions of the parties, as a representation has been made by the petitioners to the respondent No. 3, let such representation be considered after giving opportunity of hearing to all the parties and by passing a reasoned order within four weeks from the date of receipt of this order. The order to be passed be communicated to the parties within a week thereof."

4. Pursuant to such direction the Director, panchayat and Rural Development, West Bengal gave detailed hearing to the petitioners and also other interested parties and came to a finding by a reasoned order that the petitioners could not produce any engagement letter or any document to prove that they were engaged by the Mass Education Department. Rather, it was found that they were engaged by Zilla Shakharata Samity, a non-Government organization on a purely contractual and part-time basis. The engagement was project oriented. Further, the engagement of the petitioners were not done as per recruitment rules of recruiting employees of Mass Education Department. In that view of the matter and in view of the judgment of the Hon'ble Apex Court in Umadevi's case the prayer of the petitioners for regularization/absorption as permanent employees in Panchayats and Rural Development Department like panchayat Karmees or as employee of Mass Education Department, Government of West Bengal was rejected.

5. Being aggrieved by the order dated 12th October, 2010 passed by the Director, Panchayats and Rural Development, West Bengal, the writ petitioners approached this Court by filing WP No. 1164 (W) of 2011.

6. The Learned Single Judge held that the impugned order dated 12th October, 2010 is supported with cogent reasons and has been rendered in conformity with the directions of this Court as contained in the order dated 2nd August, 2010. The writ Court should not act as an appellate authority over a particular authority which has performed its obligation in accordance with the specific directions given by this Court. Discretionary jurisdiction of this Court under Article 226 of the Constitution of India ought not to be exercised in such cases, unless the decision rendered by the concerned authority was palpably wrong or arbitrary or perverse or smacked of mala fide motive or was rendered without adhering to the specific directions given by the Court. The Learned Judge held that none of the exceptions are present in the facts of the instant case. Accordingly the learned Judge dismissed the writ petition.

7. Being aggrieved, the writ petitioners are before us by way of the instant appeal.

8. Learned Counsel appearing for the appellants strenuously argued that the members of the writ petitioner society have been rendering valuable service in the panchayat Raj Administration for a long time. He urged that the Preraks/Prerikas are an integral part of the social structure in villages. He drew our attention to various circulations and notifications including memorandum issued by the District Magistrates certifying that the Preraks/Prerikas were doing a commendable job and they deserve regularization. Strong reliance was placed by Learned Counsel on certificates issued by the concerned Gram panchayat Pradhan appreciating the work done by the Preraks/Prerikas and wishing them all success, appearing at pages 228, 230 and 232 of the stay petition. However, such certificates do not show the mode of appointment of the Preraks/Prerikas. However, in spite of repeated queries made by us, learned Counsel for the appellants could not demonstrate or satisfy us that the Preraks/Prerikas were working against officially sanctioned posts. At best, learned Counsel submitted that since the Preraks/Prerikas were allowed to work for a long time they should be deemed to have been working against sanctioned posts akin to belonging to a cadre, Learned Counsel cited the decision in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the decision in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, . He also cited an unreported decision of the Hon'ble Supreme Court in the Case of Director, Printing and Stationary Department, UP Government Press v. Motilal & Ors. rendered in Civil Appeal No. 3341 of 2014. Learned Counsel contended that the tests laid down in Umadevi's case as explained in Kesari's case were satisfied in the facts of the present case and the Preraks/Prerikas were, thus, entitled to regularization. The decision in the unreported decision of the Hon'ble Supreme Court was rendered in the special facts of that case and in our opinion would have no application to the facts of the present case.

9. Per contra, learned Counsel for the respondents urged that the Preraks/Prerikas were engaged under a social scheme which was run by the Central Government but such scheme no more exists. With the cessation of such scheme the Preraks/Prerikas would have no further right to be regularized. He further submitted that in any event the Preraks/Prerikas were not working against any sanctioned posts. They were engaged in ad hoc posts created by the Panchayets on a temporary contractual basis. Learned counsel heavily relied on Umadevi's case, and Kesari's case and submitted that the tests laid down in those cases were not at all satisfied in the facts of the present case. Learned Counsel also relied on a Supreme Court decision in the case of B.T. Krishnamurthy v. Sri Basaveswara Education Society reported in (2013) 4 WBLR (SC) 814 in support of his contention that oral and ad hoc appointment does not give any right for regularization.

10. We have considered the rival contentions of the parties. In Umadevi's case,

a Constitution Bench of the Hon''ble Supreme Court held that appointments made without following due process or the rules relating to appointment did not confer any right on the appointees and Courts cannot direct their absorption/regularization or their engagement nor make their service permanent, and the High Court in exercise of writ jurisdiction should not ordinarily issue directions for absorption/regularization or permanent continuance unless the recruitment had been done in a regular manner in terms of the constitutional scheme. Further, "the Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentality, nor lend themselves to be instruments to facilitate the by-passing of the constitutional and statutory mandates. It was further held that a temporary, contractual, casual or a daily wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

11. Explaining the decision in Umadevi's case the Hon''ble Supreme Court in Kesari's case, in paragraph 5 of the judgment held as follows:--

"5. It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality, should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

12. Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.04.2006)." We have already noted that the engagement of Preraks/Prerikas was not against sanctioned posts nor in compliance with any rules and regulations. Their appointment is of contractual nature on ad hoc basis which would give them no right for regularization. No scrap of paper could be produced on behalf of the appellants showing as to how they were appointed as Preraks/Prerikas. Thus, although our sympathies may be

with the Preraks/Prerikas, our hands are tied and we are unable to grant any relief to the appellants. The appellants have no legal right to be regularized which can be enforced by issuance of any writ. This application, therefore fails and is hereby dismissed without, however, any order as to costs.

Dr. Manjula Chellur, C.J.

I agree.