

(2012) 09 AHC CK 0217

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45411 of 2002

Smt. Renu Dwivedi and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2012) 10 ADJ 327

Hon'ble Judges : Pankaj Naqvi, J

Bench : Single Bench

Advocate : Manish Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Pankaj Naqvi, J.—Heard Sri Manish Goyal, learned counsel for the petitioner, learned standing counsel for the respondents. The National Education Policy was formulated in 1986 and a working plan was prepared in 1992. The National Literacy Mission was constituted as a part of the working plan by the Central Government, which embraced within its fold the Adult Education Programme (for short the "Programme"). The Programme was delegated to the State Governments, with specified objectives (Annexure-2 to the petition).

2. The thrust of the Programme was to achieve a certain level of adult literacy. It also specified the procedure for achieving the desired objectives, building a right environment, co-ordination amongst various Departments to obtain academic and technical support, to develop potential research and a constant assessment and evaluation of the targets achieved under the Programme. The literacy campaign was to be executed in 3 stages-

(a) Pre-literacy campaign,

(b) Post-literacy campaign, and

(c) Continuous literacy campaign. The first stage led to the second stage and so

on. The stage is completed when reports of completion are furnished and evaluated by the authority concerned and only after the evaluation at a particular stage, it could be treated as completed. The Programme was made time bound in order to achieve the results within the stipulated period.

3. The programme was to be executed through Society at the district level, which were to act as an autonomous body. A Society was created for implementation of the Programme in district Allahabad i.e. respondent No. 3.

4. Respondent No. 3 nominated petitioners (excluding petitioner No. 1) as Block Assistants on 8.8.2001, on the basis of interviews held on 18.7.2001. The order of nomination provides that it was a temporary engagement which was liable to be terminated prior to six months, without notice. It further provided that the Block Assistants will have to be present at the Vikas Khand concerned and those of the urban areas at the Literacy Cell of the Vikas Bhawan, Allahabad; will have to submit reports for exchange of information at the Literacy Cell once a week and would have to comply the directions/orders of the Literacy Cell. An honorarium of Rs. 2000/- per month was to be paid to the Block Assistants by respondent No. 3.

5. However, Respondent No. 3 cancelled the nominations of petitioners on 6.8.2002 pursuant to the orders of the District Magistrate, which is impugned in the present petition, on the ground that the literacy programme was a time bound programme, period of which has expired.

6. It is urged by Sri Manish Goyal, learned counsel for the petitioners, that the order of cancellation of nomination of the petitioners as Block Assistants, is based on a non-existent ground, inasmuch as there was no time limit prescribed and the same was to continue till desired levels are achieved. He further submits that the order of cancellation has been passed by an authority i.e. the District Magistrate/Chairman of the Society, who was not competent and in support thereof has relied upon the judgment of the Apex Court in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, . He further submitted on the strength of the judgment in the case of *Rayala Corporation (P) Ltd. v. Rayala Corporation Employees' Union*, 1972 (2) LLJ 389, that the contract of service entered between the petitioners and the respondents, could not have come to an end, till such time the post-literacy campaign was not evaluated. He also submitted that the Adult Literacy Programme was of immense public importance as with the insertion of Article 21-A in the Constitution of India and the enforcement of Right to Free and Compulsory Education Act, 2005, the Programme had now acquired a new dimension in the form of a fundamental right.

7. Refuting the aforesaid submissions, learned standing counsel submitted that the engagements of the petitioners were under a Scheme/Programme, which was of limited duration and their engagements were co-terminus with the life of the Scheme/Programme and once the period of the Scheme/Programme had not only come to an end, but the budgetary allocations were no longer forthcoming,

then there was no justification for extending the services of the petitioners, in the absence of the continuance of the Scheme.

8. Before advertng to the contentions raised by learned counsel for the parties, it would be apposite to give a resume of the vision document pertaining to Adult Education Programme and the working plan (Annexure 2 to the petition).

9. A perusal of the aforesaid (Annexure 2 to the petition) would indicate that the National Literacy Mission as a part of the National Education Policy, 1986, was introduced in 1988. The object of the Mission was to provide literacy to 8 crores adults in the age group 15-35. The same was to be achieved with the involvement of the Government (Centre and State), District Administration, NGOs and Voluntary Organisations, to achieve complete adult literacy. The involvements of MPs/MLAs/MLCs/Zila Panchayat Samiti/Nagar Palika, etc. was also considered desirable. Women were to play pivotal role in achieving the desired objects. The scheme estimated that on the commencement of the Eighth Five Year Plan (for short the "Plan"), there were 10.4 adult illiterates in the age group 15-35, whereas after the introduction of the Programme in 350 districts of the country, 8 crores adult literates would be produced at the end of the Plan and the remaining 2.4 crores would be covered through the agencies of voluntary organisations, educational institutions and programmes conducted through Nehru Yuva Kendras. It also visualized that in each year of the Plan, at least 2.1 crores people would be covered in the age group 15-35. It also provided that although, initially the period of National Literacy Mission was to commence from 1995, so that it may rim with the end of the Plan (1990-95), but as the Plan could not commence from 1990-91 as contemplated, hence the time limit of the National Literacy Mission was extended upto 1997, which was to come to an end with the Eighth Plan in 1992-97. The Scheme was to be subjected to periodical assessments and evaluation.

10. The State Government approved model bye laws of the Society i.e. the Zila Saksharta Samiti, which was to be the executing agency for achieving the aforesaid objects of the Programme, to be headed by the District Magistrate alongwith other Officers. The Society was to comprise of a general body and a managing committee with specified functions. The Samiti had the power to enter into a contract. As per Clause 20(1)(3), a power was conferred upon the District Magistrate to take any decision in anticipation of the approval of the general body of the Society, if the matter is of such immense importance. Similarly, Clause 20(4) conferred powers upon the Secretary of the Society for carrying out the day to day functions, to sign on behalf of the Society and possessed the right to sue and to be sued; to prepare the budget with the approval of the Samiti and to place the same before the General Body. As per Clause 21, the source of fund of the Society were to be the grants available from the Central/State Government and from the National Literacy Mission.

11. The first challenge of the learned counsel for the petitioner is that the impugned order of cancellation of nomination of the petitioners as Block

Assistants, is liable to be set aside, as the same is based on a non-existent ground.

12. The order of cancellation of nomination dated 6.8.2002 recites that the Literacy Programme was a time bound programme, time limit of which has expired and therefore, pursuant to the orders of the District Magistrate/Chairman dated 3.8.2002, appointments are being cancelled. Pursuant to the directions of this Court dated 26.8.2002 and 30.8.2002, respondents have brought on record the order of the District Magistrate dated 3.8.2002 (Annexure 1 to the counter-affidavit), which formed the basis of the cancellation of the engagement of the petitioners.

13. A perusal of the order of the District Magistrate dated 3.8.2002 (Annexure 1 to the counter-affidavit), indicates that a report was prepared by respondent No. 3 on 31.7.2002, to the effect that as the time limit of the Scheme had come to an end and that grants are not forthcoming and even the extended period has expired on 30.6.2002, therefore, there was no justification to extend the period of the Scheme, in the absence of the grants, as financial burden of 12 Block Assistants is increasing day by day, therefore, the District Magistrate/Chairman of the Society was requested to approve the cancellation of the nominations of the petitioners as Block Assistants, lest an audit objection may be raised. The said proposal submitted by respondent No. 3 was duly approved by the Chief Development Officer and the District Magistrate on 1.8.2002 and 3.8.2002 respectively.

14. This Court is of the view that reading Annexure 1 to the writ petition and Annexure 1 to the counter-affidavit, in juxtaposition the inevitable conclusion is that there were relevant considerations/materials which formed the basis for cancelling the nominations of the petitioners as Block Assistants, such as the expiry of the time limit of the Programme and non-release of the grants. This Court has a limited role in examining the correctness of such a decision as the same is only confined to examining the correctness of the decision making process. On the facts as stated in the impugned order, read with Annexure 1 to the counter-affidavit, it cannot be said that the impugned order is based on a non-existent ground.

15. Even otherwise, it is well-settled that an engagement in a Project or a Scheme is co-terminus with the life of the scheme. The Apex Court in *Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others*, , held in paragraph 3 as under :

It is not in dispute that the scheme is sponsored by the Indian Council of Agricultural Research and, therefore, permanent posts cannot be created. The posts are co-terminus with the Scheme. On abolition of the Scheme, the posts also necessarily stand abolished. We are informed that the Scheme may continue to be in force; but it depends upon the Scheme being sponsored and the post made available by the Indian Council of Agricultural Research. Therefore, the

direction to regularise the services is violative of their right to posts. The order of the High Court to that extent is modified. On whatever posts the respondents are working and discharging their duty, the scale of pay of the said post is directed to be paid.

16. Similarly, the Apex Court in the case of Surendra Kumar Sharma Vs. Vikas Adhikari and Another, , observed that the appellant thereunder was a daily wager in a Scheme and knew it well that his employment was co-terminus with the Scheme. The post against which appellant's work, has been abolished for want of funds and it ceased to be existed, and therefore, the Apex Court refused to grant any relief to the appellant. The Apex Court in paragraph 5 of the said judgment observed as under :

A matter as to termination of employment caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds came up for the consideration of this Court in Rajendra and others v. State of Rajasthan and others. It was held that when posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the purpose.

17. Viewed from the aforesaid perspective, the petitioner were appointed under a Scheme where even the extended time period had come to an end in June, 2006 and as no funds were forthcoming, the discontinuance of the petitioners cannot be faulted.

18. The next submission of the learned counsel for the petitioner, is that as the services of the petitioners were brought to an end under the orders of respondent No. 4, who was not competent to cancel the nominations, hence their disengagement is bad in law.

19. A perusal of the order of nomination dated 8.8.2001 (Annexure 6) would indicate that the same was issued by respondent No. 3 i.e. Zila Saksharta Samiti, Allahabad. The order of cancellation dated 6.8.2012 (Annexure 1) too has been issued by respondent No. 3 itself. Merely because the order of cancellation dated 6.8.2002 places reliance upon the order of the District Magistrate/President of Zila Saksharta Samiti, dated 3.8.2002, would not mean that the order of cancellation is based upon the orders of the District Magistrate, inasmuch as a perusal of Annexure 1 to the counter-affidavit would manifest that the District Magistrate has only approved the cancellation of the nomination, which originated on a proposal for cancellation mooted by respondent No. 3 itself. In this view of the matter, this Court is of the view that no illegality can be

attributed to the cancellation of nomination on the ground that the same was issued by an incompetent authority i.e. the District Magistrate and not the respondent No. 3.

20. Reliance placed by Sri Goyal, learned counsel for the petitioner, on a decision of the Apex Court in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, , wherein it was held after examining the statutory enactment that in exercise of the statutory powers, the power to initiate disciplinary action could not have been delegated by the Executive Council to the Vice-Chancellor, in contravention of the statutory provision, therefore, the action taken by the Vice-Chancellor, against the officer, even though ratified by the Executive Council, rendered the action of the Vice-Chancellor void ab initio would not apply both on law and on facts, inasmuch as this Court has already held (*supra*) that the nomination of the petitioners were cancelled by respondent No. 3 itself, i.e. the appointing authority.

21. The next submission of learned counsel for the petitioners, is that their engagement was not limited to a particular period and therefore, their services ought to have continued till evaluation was done of the Mission at the second stage i.e. the post-Literacy campaign, is too liable to be repelled, as this Court is of the view that although the petitioners were offered temporary engagements as Block Assistants and their services were liable to be cancelled any time, without notice but this fact alone would not confer any permanence in the tenure and the same would always remain subject to the feasibility, viability and continuance of the Scheme/Programme and the availability of the financial resources. Once the respondents have taken a decision that the period of the Scheme/Programme has expired and no grants are forthcoming, there was no justification to continue the engagements of the petitioners.

22. Reliance placed by Sri Manish Goyal, on a decision in the case of *Rayala Corporation (P) Ltd. v. Rayala Corporation Employees' Union*, 1972(2) LLJ 389, is also misconceived. In order to appreciate the ratio of the said decision, it would be pertinent to have brief facts of the case. A contract of service was entered between the workman and the employer for 5 years in 1963. On expiry of the period in 1968, the contract was sought to be terminated. On an industrial reference, the Labour Court held that the contract did not provide discontinuance after 5 years as it provided that the workman should be in service for a minimum period of 5 years. In a writ petition, filed by the employer, the High Court held that as the contract provided that the workman was to serve the company for a minimum period of 5 years, therefore, the said period does not automatically come to an end on the expiry of 5 years. On the facts of the present case, the engagement of the petitioner was a temporary one and under a Scheme/Programme. As the appointments were temporary in nature, their continuance was subject to the continuance of the Scheme/Programme and also dependent upon the flow of funds. Once the impugned order indicates that even the extended period of the Scheme/Programme has come to an end on 30.6.2002 and no funds are forthcoming, as is evident from the order of the

District Magistrate (Annexure 1 to the counter-affidavit), this Court would loathe to interfere against such an order.

23. The next submission of learned counsel for the petitioner, is that with the insertion of Article 21A in the Constitution of India and also after the enforcement of the provisions the Right of Children to Free and Compulsory Education Act, 2009, this Court in view of the laudable object of the Scheme/ Programme can give an appropriate direction to the respondents to consider the continuance of the Scheme/Programme and/or that of the petitioners and also to ensure the availability of the funds, in larger public interest, is also liable to be rejected. It cannot be gainsaid that the scheme had a salutary and a laudable object. But this Court is conscious of its limitations in service jurisdiction and it would refrain itself in indulging in such an exercise.

24. No other plea is raised. The writ petition is dismissed. Interim order, if any, stands vacated. No order as to costs.