
(2012) 03 CAL CK 0078
In the Calcutta High Court
Case No : F.M.A. No. 001 of 2012

Smti. R. Geetha Raj

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 03 CAL CK 0078

Hon'ble Judges : Subhro Kamal Mukherjee, J; Dipankar Datta, J

Bench : Division Bench

Advocate : Anjili Nag, for the Appellant; M. Tabraiz for the respondents 2 to 4 and Mr. N.A. Khan for the respondent no. 8, for the Respondent

Judgement

Dipankar Datta, J.—The appellant was engaged on July 10, 1990 as a counsellor, Voluntary Action Bureau (hereafter VAB) by the State Social Welfare Advisory Board, Andaman and Nicobar Islands (hereafter the State Board), respondent no. 2. Such engagement was in respect of a project on contract and for a fixed duration. After expiry of the initial duration, the appellant was engaged on year to year basis. At the material time, her engagement was to continue till March 31, 2002. Prior to expiry of the duration of her engagement, her service was terminated. She had the occasion to approach the writ Court by filing W.P. No. 091 of 2002. By an order dated February 4, 2003, the writ petition was disposed of by Hon'ble P.C. Ghose, J. with a direction upon the respondents "to take necessary steps in this matter to allow the petitioner to continue as she was in service on a contract basis with immediate effect". It was further directed that the petitioner's claim for regularization "is also to be taken into account by the said respondents through the Administration with their respective authorities", preferably within eight weeks from the date of communication of such order. It is not in dispute that in compliance with the said order, the appellant was reinstated in service. However, no final decision on her claim for regularization was taken. This resulted in a contempt application (CPAN 002 of 2004) being filed by her. The contempt application was considered by Hon'ble G.C. Gupta, J. on March 16,

2004. His Lordship upon consideration of the rival submissions disposed of the contempt application by an order of even date expressing that "the authorities should be more vigilant in carrying out the order dated 4th February, 2003 according to its letter and spirit" but at the same time it was observed "that there has been no deliberate violation of the order".

2. Thereafter, from time to time, fresh orders were issued by the State Board annually engaging the appellant for a fixed duration. The appellant filed a further contempt application (CPAN 015 of 2009), alleging that the order dated February 4, 2003 had not been complied with. Upon consideration of the affidavits that were filed by the parties, Hon"ble Indira Banerjee, J. disposed of the contempt application by an order dated February 1, 2010 observing that none of the respondents could be held "guilty of contempt having regard to the averments made in the affidavits filed in court".

3. Having failed to obtain favourable orders in respect of regularization of her service by initiating contempt proceedings, the appellant thereafter invoked the writ jurisdiction of this Court once again by filing a writ petition dated November 9, 2010, registered as W.P. 1310 of 2010. She sought for the following reliefs:-

(A) A writ/writs/order/orders/direction/directions in the nature of Mandamus directing the State Social Welfare Advisory Board or the Central Social Welfare Advisory Board to regularize the services of the petitioner or in other words to declare that the petitioner is a permanent worker in the Social Welfare Board by taking steps in accordance with the decision of the Hon"ble High Court dated 04.02.2003.

(B) A writ/writs/order/orders/direction/directions in the nature of Mandamus directing the Directorate of Social Welfare Board to grant all the consequential and monitory benefits to the petitioner after regularizing her services.

(C) A writ in the nature of Mandamus directing the Respondent authorities to act in accordance with law.

(D) A writ in the nature of certiorari directing the respondent authority to transmit the case record before this Hon"ble Court so that after perusing the same conscionable justice may be administered to your petitioner.

4. The respondent nos. 2 to 4 and the respondent no. 8 contested the writ petition by filing separate affidavits-inopposition. According to them, the establishment charges of the State Board is met by the Central Social Welfare Advisory Board (hereafter the Central Board), respondent no.5, and the State Administration on 50:50 basis but the service conditions of the VAB counsellor is governed by the Central Board; that, VAB is a temporary project sponsored by the Central Board and continuance of VAB and payment of salary depends on the sanction received from the Central Board; that, appointment of VAB counsellor is contractual in nature and not against any sanctioned post or vacancy; that, the issue of regularization of service of the VAB staff was taken up with the State

Administration whereupon a reply dated May 19, 2010 was received that power for creation of posts vests with the Central Government and presently there being a ban on creation of posts except in certain exceptional situation, services of the contractual employees cannot be regularized; and that, the VAB project was not carried forward after March 31, 2011 and, therefore, there is no scope for regularizing the service of the appellant.

5. The writ petition was finally heard by Hon''ble Ashim Kumar Banerjee, J. and stands disposed of by His Lordship's order dated November 14, 2011. His Lordship upon considering the materials on record and on hearing the parties arrived at the conclusion that the appellant was not entitled to regularization of her service since (i) she had not been working on any sanctioned post and (ii) that her service "was nothing but a voluntary service provided on honorarium basis that too, paid on contractual basis, provided the Board gets appropriate aid from its Central Organization". It was further observed that the State Board is free to decide as to whether a counsellor is required to be engaged or not and if such a decision is taken, the claim of the appellant may be considered sympathetically.

6. It is this order dated November 14, 2011 that has been carried in appeal before us.

7. Mrs. Nag, learned advocate representing the appellant did not seriously press her prayer for regularization of service having regard to the settled principle of law in this respect. However, it has been contended by her that the appellant was disallowed to serve as counsellor on the specious ground that the VAB project was not carried forward after March 31, 2011 despite letter dated June 9, 2011 issued by the Central Board. She contended that the stand of the State Board that the appellant could not be engaged for a further period because of want of sanction by the Central Board is belied by the said letter, whereby sanction was accorded "for the VAB functioning in the State Board for the year 2011-12" as per budget mentioned therein and it was conveyed that since the VAB staff is engaged on annual contract basis, the State Board may renew their contract for the year 2011-12 keeping in view their satisfactory performance and after taking written consent from them for continuing the job. It is her further contention that the respondents have not yet, in the right earnest, taken a final decision for creation of the post of counsellor, the need for which exists and that the Court ought to issue necessary directions in this behalf with a further direction to engage the appellant on such post.

8. The claim of the appellant in her writ petition was that she is entitled to regularization of her service in view of the earlier order of the Court dated February 4, 2003. Although there is an averment in paragraph 6 of the writ petition that the appellant had been appointed after selection by a duly constituted Selection Board, there is nothing on record to substantiate such assertion. There was no sanctioned post on which the appellant could be appointed. The appellant was engaged for a particular project, on contract,

without competing with other candidates having similar or better qualifications than her. One of the orders engaging her (order no. 9 dated April 20, 2001) expressly records that the same shall not bestow any right for regular appointment and her service shall automatically stand terminated after expiry of the specified period. It appears from the letter dated May 19, 2010 issued by the Deputy Secretary (Law), Andaman and Nicobar Administration and addressed to the Chairperson of the State Board that power to create posts rests with the Central Government and presently due to a ban on creation of posts imposed by the Central Government, except in certain exceptional situation, the services of the employees working on contract basis cannot be regularized without having sanctioned post. The learned Judge was right in observing that there was no sanctioned post of counsellor and hence question of regularizing the service of the appellant does not arise. Law is well settled that continuous service rendered by an employee for years together without there being a sanctioned post is illegal, being a back door appointment. Engagement of the appellant was thus illegal, being contrary to the policy of extending equal opportunity to all in the matter of public employment. The issue of regularization of the appellant's service must, therefore, rest here.

9. However, since Mrs. Nag has relied on a particular document which came into existence after the writ petition was filed by the appellant, we have considered the same.

10. The plea of the State Board that due to want of sanction from the Central Board the VAB staff cannot be engaged does not appear to be without any basis. The last time the appellant was engaged, she was required to continue to render service on contract till March 31, 2011. Sanction for continuing the VAB project was received by the State Board not before June 9, 2011. The appellant could not have been engaged without there being certainty in respect of according of sanction by the Central Board. Funds are released by the Central Board to the State Board. Without adequate funds, the State Board is helpless. It could not have extracted work without payment of remuneration. In any event, March 31, 2012 is drawing to a close. It would not be prudent to direct the State Board to allow the appellant to render service during the remainder of the financial year for which sanction was accorded.

11. It is, however, made clear that if funds are sanctioned in future and the State Board is permitted to continue the VAB project and it is desirous of so continuing and resultantly to engage counsellor for a fresh period, it shall have full liberty to proceed in that behalf but the appellant shall not have any automatic right of being engaged. We may clarify that the State Board in such case would be under an obligation to publish advertisement inviting applications from eligible candidates for being engaged as counsellor, since it relates to public employment. That would be in conformity with Article 14 of the Constitution. The appellant would be entitled to apply and if an application is made by her, the same may be considered along with applications of other candidates. Since the

appellant has served as counsellor for more than last two decades, the respondents may, in their discretion, relax the age bar for her.

12. With the above observations, the appeal stands disposed of. There shall be no order as to costs. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant, on observing all requisite formalities at an early date.

Subhro Kamal Mukherjee, J.

I agree.