
(2011) 01 AHC CK 0080
In the Allahabad High Court
Case No : Special Appeal No. 61 of 2011

State of U.P. and Others

APPELLANT

Vs

Shiv Manorath Shukla and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 2 ADJ 215

Hon'ble Judges : Surendra Singh, J;Aiwta Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—This appeal is arising out of the judgment and order passed by the learned Single Judge on 07th December, 2010 in Civil Misc. Writ Petition No. 56644 of 2010 (Shiv Manorath Shukla and Ors. v. State of U.P. and Ors.), whereunder the policy of the State Government as contained in the Government Order dated 25th August, 2010 regarding holding of fresh selections for the appointment of Gram Rojgar Sewak (Village Employment Worker) after every three years was turned down, with a direction to renew such work after expiry of such period for one year at a time subject to satisfactory work.

2. According to us, condition of regular service either on permanent basis or on temporary basis or on ad hoc basis or in lien or in leave vacancy etc. arising out of contingency are required to be governed by one policy, which cannot be equated with the policy of contractual service where the tenure is fixed as against some emoluments to be paid. Learned Single Judge explained by the order impugned that the policy decision will not be interfered with normally but where the policy decision as reflected in a statutory rule pertains to subordinate legislation, indisputably the same would be amenable to judicial review relying upon a judgment of the Supreme Court in A. Satyanarayana and Others Vs. S. Purushotham and Others, In this regard learned Single Judge has also made reference to the judgments of the Supreme Court in M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, Union of India and Others Vs. Dinesh Engineering Corporation and Another etc., and Union of India (UOI) and Another

Vs. International Trading Co. and Another,

3. According to us, each and every case has its own factual strength to absolve applicability of law. In the instant case, under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (hereinafter in short called as the "Act") a scheme was formulated with the object to provide at least minimum number of employment to the maximum number of rural adults. The Act has been promulgated with effect from 05th September, 2005 to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto. In order to implement that employment guarantee scheme, the State Government by the pen of appropriate Secretary has issued a Government Order dated 25th August, 2010 providing a condition that the persons, who are to be deployed as Gram Rojgar Sewak as called thereunder, will be deployed maximum for a period of three years as per earlier Government Order dated 23th November, 2007 and thereafter new one will be selected and deployed to discharge similar work. However, at the time of fresh selection the authority concerned will also consider the nature of work discharged by the erstwhile Gram Rojgar Sewak to give preference, if any. In the similar circumstances, a Division Bench of this Court in the judgment in Smt. Geeta Devi v. Uma Shanker Yadav and Ors. 2010 (7) ADJ 169 (DB), has held that no legal right is vested to such Gram Rojgar Sewak to claim continuance. Once the contract of engagement has expired and admittedly there was no other extension possible or actually made under any law for the time being in force, there was no occasion to pass any interim order having impact of continuance of service as Gram Rojgar Sewak and thereby, such order, as was impugned in that matter, being unsustainable in nature was set aside by such judgment. We find that though such reference was made before the learned Single Judge on the part of the State by saying that the Respondents-writ Petitioners have no vested right to continue but the learned Single Judge distinguished such Division Bench judgment only on the factual premise that in such case tenure was already expired, therefore, the question of removal lost significance. According to us, learned Single Judge instead of proceeding with the ratio of such judgment with regard to right of an incumbent about the fixed period of contractual service, wrongly entered into the factual premise of the same. Moreover, when the Government Order follows the objects and reasons of the Act to provide at least minimum number of employment to the maximum number of rural adults, any contrary decision in connection thereto will give perpetuity of service of an individual depriving the others, thereby making the scheme propounded under the Act mockery. The basic question hereunder is whether the nature of work required to be discharged by the Respondents-writ Petitioners is contractual or regular in nature. If it is contractual in nature and if there is no fixed period as provided in the Act leaving aside guarantee of at least 100 days of work, providing three years" deployment

as Gram Rojgar Sewak and thereby directing such worker to contest with others to have priority on the basis of his satisfactory work for the future is correct application of equity by the State. Unless and until such restriction is imposed, only a group of adult members of households will be beneficiary in the place and instead of entire households of the locality.

4. According to us, before going into the question whether the subordinate legislation is amenable to the judicial review or not, it is required to be seen whether that subordinate legislation is backed by any law or not. If it is backed by any law which preambles to provide at least 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work, how Governmental authority will be allowed to renew work of Gram Rojgar Sewak giving shape of perpetuity, is not known to us. We can interpret the law but not legislate. That power is lying with the legislative body.

5. So far as the reference made to the order of the learned Single Judge in Chandra Kishore and Ors. v. State of U.P. and Ors. 2003 (21) LCD 1383 , is concerned, it stands of an absolute different footing. It relates to some persons, . Petitioners therein, working as "Subject Expert" in different subjects appointed by the Government in aided educational institutions where the regular teachers could not be appointed and the education was suffering. In such case, the initial policy of the State Government in making appointment to the teachers on the post of Subject Expert indicates that the Government desires to give preference to the teachers having experience. Thereafter, the Director of Education debarred those experienced teachers, who had obtained experience before joining on the post of Subject Experts and those who have further increased their experience by teaching the students in three academic sessions. Therefore, this restriction that the maximum limit for giving appointment to a Subject Expert will be three years, was declared most arbitrary and unreasonable and contrary to the requirement as shown in the advertisement. As far as the judgment of the Supreme Court in Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others, , is concerned, ex-servicemen were employed in a scheme, which continued time to time following the selection process, therefore, the Court held that termination and re-appointment every year should be avoided and the Appellants should be continued as long as the scheme continues, but purely on ad hoc and temporary basis, coterminous with the scheme. Present case is totally different altogether. Here, the adult villagers volunteer to do certain unskilled manual works are called upon to provide them some money which period will be prolonged at least for 100 guaranteed days. Beyond the period of 100 days, there is no guarantee as the object of the scheme is to provide at least minimum number of employment to the maximum number of rural adults. In spite of the same, Gram Rojgar Sewaks were directed to be continued for three years and thereafter a fresh selection was directed to be made, in which erstwhile Gram Rojgar Sewak will be able to participate. In the referred case, selection process was followed to give appointment to the ex-servicemen till the

existence of such scheme but here the scheme is to give at least minimum number of employment to the maximum number of rural adults which cannot be called as a service but privilege. As regards Dr. Dinesh Kumar Rajpoot and Ors. v. State of U.P. and Ors. etc. 2008 (7) ADJ 188 (DB), again the same relates to different type of appointments. In such case, some of the Lecturers were temporarily engaged on contract basis and after their completion of three years, the State Government invited applications for fresh appointment of Lecturers on vacant posts on contract basis. Further, the regular appointment was withheld and highly qualified Lecturers were employed on contractual basis, but the Government in the place and instead of filling up vacancies by the regularly selected candidates tried to replace them by other ad hoc or contractual appointees. Therefore, the Court following the principle that ad hoc or contractual appointees will not be replaced by other ad hoc or contractual appointees, until the vacancy is filled up by regularly selected Lecturers, discouraged such action of the Government. There is no difficulty in understanding such logic. In fact, many Division Benches of this Court has taken similar view and the Division Bench, presided over by one of us (Amitava Lala, J.) has also passed similar order on 24th July, 2009 in Civil Misc. Writ Petition No. 36851 of 2009, Dr. Mrs. Bhawna Singh v. State of U.P. and Ors. However, such type of appointments cannot be equated with the deployments herein. Deployment of adult members volunteer to do unskilled manual work in order to give them minimum guaranteed wage work of 100 days cannot, under any circumstance, be equated with the continuance of service of ad hoc or contractual appointee in the process of regular employment.

6. So far as the question of judicial review is concerned, a Division Bench of this Court, presided over by one of us (Amitava Lala, J.), has laid down certain parameters with regard to judicial review of the policy decision of the Government in the judgment in Rajesh Gupta v. State of Uttar Pradesh and Ors. 2009 (7) ADJ 628 (DB). According to us, the Court cannot strike down a policy decision taken by the Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The right which the Respondents-writ Petitioners has successfully established before the learned Single Judge and have tried to establish before us, is not at all a right, therefore, it is far to say that it is a vested right. This is a privilege subject to fulfilment of certain conditions. There is a distinction between the right acquired or accrued and privilege, hope and expectation. The ultimate test is whether on the touchstone Of reasonableness the policy decision comes out unscathed. Reasonableness of restrictions is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interested persons or upon abstract consideration. In the instant case, interest of the Respondents-writ Petitioners have been taken care of against the interest of the general public, therefore, decision of the learned Single Judge is unsustainable in nature. Some sort of relief has been given by the Government to the poorer section of the people of the rural area. The guarantee of 100 days

work is already there. If one is directed to continue by renewing his service then his service will be as good as regular service and contrary to the intention of the Legislature to provide 100 days work to others. There should be a check and balance. Therefore, under no circumstances, the condition, which has been imposed, under the relevant Government Order can be said to be wrong and the engagement of persons under such scheme can be equated with regular service holders.

7. According to us, there is a gap between implementation of the policy of the Act by the subordinates and the subordinate legislation. By no means the Government order can be said to be an independent subordinate legislation contrary to the object and reasons of the Act. Law includes ordinance, order, bye-law, rule, regulation, notification, custom or usage and the same is required to be understood on the factual basis of each case. A legislation can be struck down by the Court only on two grounds, viz. (i) lack of legislative competence, and (ii) violation of any fundamental rights guaranteed in Part-III of the Constitution or any other constitutional provision. There is no third ground. No enactment can be struck down by just saying that it is arbitrary or unreasonable. It cannot be struck down on the ground that the Court thinks it unjustified. Parliament and the Legislatures, composed as they are representative of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. Judicial review is limited only on three grounds, viz. (i) irrationality, (ii) illegality, and (iii) procedural impropriety. Nothing is available in this particular case to change the scope of Paragraph-4 of the Government Order dated 25th August, 2010 and if it is done, it will be an encouragement to the people inclined to have vested right. The Court cannot substitute their own view on supposition. The Court of law is not expected to propel into "the uncharted ocean" of Government policies. Therefore, we do not find any reason as to why the Court will substitute its view over the objects and reasons of the Act. The Respondents herein having no legal right cannot challenge the legal right of the Government.

8. Hence, in totality, we are of the view that the order impugned passed by the learned Single Judge is liable to be set aside and is hereby set aside.

9. Accordingly, the appeal is allowed, however, without imposing any cost.

Surendra Singh, J.

10. I agree.