(2015) 03 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1924/2011, 3388, 3389, 3391, 3392, 3393, 3394, 3558, 3560, 3562, 3568, 4937, 4938, 4940, 5130, 5525, 5526, 5528, 5530, 5607, 5875, 5893, 5977, 5978, 13594, 13975, 13980, 14002, 14774/2013, 3607, 4042 and 4761/2014

Union of India and Others — APPELLANT

Vs

Jeevan Singh Gehlot and Others — RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0089

Hon'ble Judges : Prakash Gupta, J.;Govind Mathur, J.

Bench : Division Bench

Advocate : J.K. Kaushik, for the Appellant; K.K. Bissa and Sunil Bhandari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Being having same issue under adjudication, this batch of writ petitions is decided by this common order.

2. Succinctly, facts of the case are that the Department of Income Tax employed the respondent original applicants on different posts such as Peon, Chowkidar, Safai Karamchari and Data Entry Operator on casual basis. On 5.5.2010 the Member Secretary in the office of Director General of Income Tax (Investigation), Jodhpur, invited tenders from service providers to supply personnels to serve as Peon, Chowkidar, Safai Karamchari and Date Entry Operator in the office of Director General, Income Tax (Investigation) Jodhpur unit. Apprehending removal from service the respondent original applicants approached the Central Administrative Tribunal, Jodhpur Bench, Jodhpur by way of filing original applications to have a direction for petitioner respondent for not removing them from service and further to regularise their services. During the course of hearing of the original applications the claim for regularisation in service was not pressed. Learned Central Administrative Tribunal by judgments impugned

restrained the petitioner respondent from removing the respondent original applicants from service by other substituted employee under any guise and cover. Being aggrieved by the same these petitions for writ are preferred by the Department of Income Tax.

3. It is stated by learned counsel for the petitioners that the Government of India under an office memorandum dated 23rd November, 2005 (F. No. 7(2)/E-Coord/2005) decided to introduce certain measures relating to budget/ expenditure management. The office memorandum aforesaid stresses the need for avoiding ostentatious expenditure in operating expenses for maintenance of buildings and office equipments, lighting conservancy, stationary, postage, foreign transfers, overtime allowance/honorarium, hiring of vehicles, telephone charges, petrol, oil and lubricants, seminars/conferences etc. The memorandum also emphasises that there shall be a ban on creation of a new post in all Ministries/Departments/Autonomous Institutions till further orders. The intention for reducing unwarranted expenditure has further been emphasised by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance under a letter dated 4.7.2011 with assertion that in light of the judgment of Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , hiring of casual workers and thereafter regularisation of them in service is not proper. It is further submitted that as per Rule 178 of the General Finance Rules a ministry or department may outsource certain services in the interest of economy and efficiency. It is asserted that in light of the decision of the Government of India as per office memorandum dated 23.11.2005 and Rule 178 of the General Finance Rules the need of utilising services by outsourcing is in interest of the department, therefore, the tribunal erred while directing to continue the existing casual labourers in service. To substantiate the argument reliance is also placed upon a judgment of M.P. High Court in WP No. 1970/2014, decided on 7.10.2014 (Mahipal Singh v.; Union of India and Ors.). In the case aforesaid Hon''ble M.P. High Court while relying upon an earlier judgment given in the case of Laxmi Prasad Dubey and Ors. v. Union of India and Ors., decided on 11.2.2013 (WP No. 22083/2012) dismissed the writ petitions preferred by the casual labourers working with Income Tax Department claiming regularisation in service. According to learned counsel for the department of Income Tax the tribunal failed to appreciate that the mode of employing/utilising services through service providers is a valid mode as per Rule 178 of the General Finance Rules.

4. While opposing the petitions for writ it is submitted by Shri J.K. Kaushik appearing on behalf of the employees original applicants that no claim has been made by casual labourers for regularisation in service and the direction given by the tribunal is only for not removing them from service by employing other persons through service providers. It is asserted that the casual labourers are in employment of the petitioner respondent from last several years, therefore, their removal from service to employ other persons in the same capacity shall be unjust and arbitrary.

5. Heard learned counsels.

6. It is a fact admitted that the respondent original applicants are working with the department of Income Tax on casual basis from last several years. Though, by way filing original applications they claimed for regularisation of their services but that was not pressed during the course of hearing. The only claim, thus, made by the original applicants was with regard to their continuance in service. Learned Central Administrative Tribunal by taking into consideration different aspects of the matter arrived at the conclusion that no useful purpose shall be served by removing the original applicants from service to utilise service of the personnels supplied through service providers.

7. True it is, the Government of India under the office memorandum dated 23.11.2005 desired to curtail unwarranted expenses and further emphasised not to regularise casual labourers, but that cannot be a reason to terminate the original applicants from service who are working on casual basis only and not claiming for regularisation of their service. The continuance of such employees shall in no case put any extra economic burden upon the employer. The persons who shall be employed through service providers shall also be entitled for same remuneration and the service provider too shall claim its commission, therefore, that will in no manner satisfy desire of the petitioner respondent to curtail expenses. On the other hand, removal of the respondent original applicants who are in service of the petitioners from several years shall be quite arbitrary as they will be thrown out of employment without any wrong on their part. The position would have been different if the petitioner would have been going to have regular recruitment against the posts occupied by the original applicants but that is not the case of the petitioner. The petitioner want to remove the original applicants from service just to have labour through contractor with a view to reduce expenditure but that object, as already stated, cannot be served as the applicants too are working on casual basis only.

8. So far as Rule 178 of the General Finance Rules is concerned, suffice to mention that the mode of utilising services through outsourcing is always available to the petitioners but merely on that count services of the casual labourers already working are not required to be dispensed with. In our considered opinion, the Central Administrative Tribunal, thus, rightly directed the petitioner respondent not to remove the respondent original applicants from service by another substituted employees under any guise or cover.

9. The petitions for writ hence are dismissed. It is made clear that the directions given by the Central Administrative Tribunal shall be applicable only for those employees who were working with the petitioner on casual basis on the date of disposal of the original applications.

10. No order to costs.

