

(2010) 08 DEL CK 0044

In the Delhi High Court

Case No : Writ Petition (C) No. 1542 of 2010

Union of India (UOI)

APPELLANT

Vs

Ram Pal Singh and Others

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

All India Institute of Medical Sciences Act, 1956 — Section 11, 13, 14

All India Institute of Medical Sciences Rules, 1958 — Rule 7, 7(1)

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 08 DEL CK 0044

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; K. Venkatraman, for R-4 to 6 and Sunil Farnandes, for AIIMS, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Central Government floated a scheme in the year 1975, known as "Integrated Child Development Scheme" (hereinafter referred to as "ICDS"). The object of the Scheme was integrated delivery of certain services such as supplementary nutrition, immunization, health check-up, referral service, non-formal education to pre-school children, pregnant and lactating women. The Scheme aimed to improve the health and nutritional status of children and women and to reduce the incidence of school drop outs and to promote the physical and social development and welfare of the child. The Scheme was funded by the Central Government and different voluntary organizations and local bodies were entrusted with the work of implementing the Scheme.

2. In or around the year 1976, Ministry of Education and Social Welfare, Government of India, entrusted the work pertaining to monitoring of health and nutrition aspects to various medical colleges under the overall coordination and guidance of All India Institute of Medical Sciences (hereinafter referred to as the "AIIMS"). On 30.06.1976 a Central Technical Committee was constituted by the

Ministry of Education and Social Welfare, Government of India, to review the progress of the work and Dr. B.N. Tandon, Professor of Medicine and Head of Department of Gastroenterology and Human Nutrition, AIIMS was appointed as the Chairman of the said Committee.

3. Between the years 1976 to 1989, the Director of AIIMS appointed respondents Nos. 1 to 6 on various posts to carry out the work pertaining to ICDS entrusted to AIIMS by the Central Government. Significant is it to note that the terms and conditions contained in the appointment letter(s) issued by AIIMS to respondents Nos. 1 to 6 clearly stated that the post against which they were appointed was purely temporary and was likely to continue till the ICDS Scheme lasted.

4. The relevant portion of the appointment letter issued by AIIMS to respondent No. 1 reads as under:

1. The post is purely temporary but is likely to continue till the scheme continues.

2. The appointment may be terminated at any time by a month's notice given by either side viz. the appointee or the Director without assigning any reason. It will be open to the Institute to pay in lieu of notice pay for the period with which the notice falls short of one month. Similarly, if the appointee gives to resign his/her post, he/she may do so by depositing with the institute pay and allowances in lieu of the notice period to period by which it falls short of one month.

3. His/her appointment will be terminated without notice on the termination of the scheme.

....

11. In case the Institute/Director decides at the end of the project to take over the whole or a part of the scheme and to absorb some of the employees on this scheme in the regular service of the Institute, Ram Pal Singh will have no claim whatsoever for a position on the regular set up of the Institute. The Institute/Director of the Institute, therefore, reserves the right to dispense with the services of all or any of the staff employed on the aforesaid scheme including Ram Pal Singh. No appeal will be entertained against the orders of the Institute/Director....

5. The relevant portion of the terms and conditions contained in the appointment letter issued by the AIIMS to respondent No. 5 reads as under:

...3. His/her appointment will be on a purely temporary basis for the tenure of project three months only. This appointment does not entitle him/her to any regular appointment unless meanwhile hence is selected for appointment on a regular basis and his/her appointment is approved by the competent authority. His/her appointment may be terminated at any time without any prior notice and without assigning reasons....

6. The relevant portion of the terms and conditions contained in the appointment letter issued by the AIIMS to respondent Nos. 2,3,4 and 6 reads as under:

...2. The post is purely temporary as sanctioned for the above cited project/scheme.

3. The appointment may be terminated at any time by a month's notice given by either side viz. the appointee or the Director without assigning any reason. It will be open to the Institute to pay in lieu of notice pay for the period with which the notice falls short of one month. Similarly, if the appointee gives to resign his/her post, he/she may do so by depositing with the institute pay and allowances in lieu of the notice period to period by which it falls short of one month.

4. His/her appointment will stand terminated without notice on the termination or at the end of the scheme for any reason whatsoever....

12. The post is outside the Institute's regular cadre and will not carry the benefits of seniority/fixation of pay etc. in case of her/her reversion/absorption in the Institute's regular set up at any cadre....

7. In view of the retirement of Dr. B.N. Tandon who was the In-charge of ICDS project run by AIIMS, it was decided to discontinue the said project. However, the Central Technical Committee which was constituted to monitor the progress of ICDS project run by AIIMS was not disbanded and it was decided that the said committee, which will henceforth be known as Central Technical Committee - Integrated Child and Mother Development (hereinafter referred to as "CTC-IMCD"), shall continue to carry on the said project. It was further decided that the Department of Women and Child Development, Ministry of Welfare, Government of India shall provide funds to CTC - IMCD for carrying on the said project.

8. As regards the services of the respondents Nos. 1 to 6, an option was given to the respondents Nos. 1 to 6 to either work under CTC-IMCD on the same terms or conditions as contained in the appointment letters issued to them by the AIIMS or resign from their jobs. Vide circular dated 09.12.1995 issued by CTC-IMCD, respondents Nos. 1 to 6 were informed that CTC-IMCD is a Non-Governmental Organization (NGO) and not an organization of Government of India.

9. Aggrieved by the aforesaid option given to them, respondents Nos. 1 to 6 filed a writ petition, being W.P.(C) No. 6527/1998 under Articles 226 and 227 of Constitution of India against the Central Government, AIIMS, CTC-IMCD in this Court, which writ petition was ultimately transferred to the Central Administrative Tribunal (hereinafter referred to as the "CAT"), Principal Bench, New Delhi.

10. Relevant would it be to note that by way of interim orders passed in W.P.(C) No. 6527/1998 it was directed that during the pendency of the writ petition respondents Nos. 1 to 6 would work under CTC-IMCD without prejudice to the contentions advanced by them in the writ petition.

11. On 10.10.1998, the governing body of CTC-IMCD passed a resolution dissolving CTC-IMCD due to non-receipt of funds from the Department of Women

and Child Development, Ministry of Welfare, Government of India. As a result thereof, the services of the respondents Nos. 1 to 6 with CTC-IMCD stood terminated.

12. The case of respondents 1 to 6 is that they are employees of All India Institute of Medical Sciences having been appointed on various dates between the years 1976 to 1989 and having worked for periods ranging between 11 years to 15 years as temporary employees were entitled to their services being regularized. They pleaded that AIIMS is a statutory authority created under an act of Parliament and is fully funded by the Central Government and hence was a State to which a direction could be issued by this Court under Article 226 of the Constitution of India.

13. Holding that the services of the employees who work in reference to, or in connection with a project run by the Government for a long duration cannot be lightly terminated, vide impugned judgment and order dated 12.05.2009, the Central Administrative Tribunal has directed the Central Government, AIIMS and CTC-IMCD to consider the reinstatement of respondents Nos. 1 to 6 in case respondents Nos. 1 to 6 are able to justify and establish through well-reasoned representations that the "CTC-IMCD is still continuing"

14. After the judgment and order dated 12.05.2009 was pronounced, respondents No. 1 to 6 filed an application stating therein that a typographical error has crept in the said judgment and order dated 12.05.2009. The error sought to be corrected by respondents No. 1 to 6 was that the expression "CTC-IMCD is still continuing" be read as "ICDS is still continuing". Vide order dated 25.09.2009, CAT allowed the aforesaid application filed by respondents No. 1 to 6. As a result thereof, the final direction issued by CAT is to the effect that the Central Government shall consider the reinstatement of the respondents Nos. 1 to 6 in case respondents Nos. 1 to 6 are able to justify and establish through well-reasoned representations that ICDS is still continuing.

15. Aggrieved by the judgment and order dated 12.05.2009 read with the order dated 25.09.2009 passed by the Central Administrative Tribunal, the Union of India has filed the present petition under Articles 226 and 227 of Constitution of India.

16. It was urged by learned Counsel for the Union of India that while passing the impugned judgment and order, the Tribunal has proceeded on the premise that respondents Nos. 1 to 6 are the employees of the Union of India and thus the Union of India is under a bounden duty to provide employment to them in the projects relating to ICDS being run by the Government. According to the learned Counsel, the aforesaid premise is wrong inasmuch as the Tribunal failed to realize that respondents Nos. 1 to 6 are not the employees of the Union of India and thus they cannot claim employment in any of the projects relating to the ICDS being run by the Government. Counsel urged that the project in question i.e. ICDS Project is being funded by the Union of India and various Non-

Governmental Organizations are executing the scheme and are directly employing persons. Counsel highlighted that the Union of India cannot direct any Non-Governmental Organization which is running a particular ICDS project to appoint any employee and thus the directions issued by the Tribunal are completely non-workable, apart from being without jurisdiction.

17. Per contra, learned Counsel for respondents Nos. 1 to 6 contended that the Tribunal has rightly treated the respondents Nos. 1 to 6 as the employees of the Union of India for they were employed in connection with ICDS Scheme initiated by the Union of India. Learned Counsel was at pains to demonstrate that the Union of India is running various projects in respect of ICDS. Alternatively, it was contended by respondents Nos. 1 to 6 that they were appointed by the Director of AIIMS and that in view of significant length of service put in by them under AIIMS, their services are required to be regularized under AIIMS.

18. In response to the contentions advanced by the learned Counsel for respondents Nos. 1 to 6, learned Counsel for AIIMS, respondent No. 7, urged that AIIMS was only functioning as a nodal agency to implement ICDS initiated by the Union of India; that respondents Nos. 1 to 6 were work-charge employees pertaining to a project undertaken by AIIMS and that their services were co-terminus with the project pertaining to ICDS undertaken by AIIMS and that the services of respondents Nos. 1 to 6 automatically came to end on discontinuance of the said project by AIIMS. It was further contended that the services of respondents Nos. 1 to 6 cannot be regularized in view of the settled legal position that the work-charge employees cannot claim regularization of their services.

19. In the backdrop of aforesaid contentions advanced by the learned Counsel for the parties, we proceed to adjudicate upon the present matter.

20. Are respondents Nos. 1 to 6 employees of the Union of India?

21. To be an employee it is necessary that the relationship of master and servant must exist between an employer and employee. The existence of master and servant relationship is indicated by the employer's right to select and appoint an employee, his right to suspend and dismiss him, his right to control the manner and method of his doing work and the payment by him of his wages and remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with some other circumstances and it is a question of fact in each case whether there is such a relation between an employer and employee.

22. In the instant case, the Union of India entrusted the work pertaining to monitoring of health and nutrition aspects of ICDS to AIIMS. In order to carry out the said work, AIIMS employed respondents Nos. 1 to 6 clearly indicating to them that they were employees in a project and the post was temporary. The Union of India played no role whatsoever in the appointment of respondents Nos. 1 to 6. Respondents Nos. 1 and 6 were working under the control and

supervision of Dr. B.N. Tandon, not in his capacity as the Professor of Medicine and Head of Department of Gastroenterology and Human Nutrition, AIIMS, but as the Chairman of the Central Technical Committee constituted by the Ministry of Education and Social Welfare, Government of India. The Union of India had no control over the manner and method of working of respondents Nos. 1 to 6 and had no right to terminate their services.

23. From the aforesaid facts, it is crystal clear that no master-servant relationship existed between the Union of India and respondents Nos. 1 to 6 and thus said respondents cannot be considered as the employees of the Union of India. As a necessary corollary thereof, it is apparent that the Tribunal totally misdirected itself in directing the Union of India to consider reinstating respondents No. 1 to 6 in any ICDS Project.

24. It may be noted here that the Union of India is simply a funding agency and the ICDS Scheme is being implemented at the ground level by various NGOs who have the freedom to employ persons and in said employment the Union of India has no say. Thus, under no circumstances could any direction be issued against the Union of India.

25. Is the learned Counsel for AIIMS right in contending that respondents Nos. 1 to 6 were work-charge employees pertaining to the ICDS project and that their services came to end on discontinuance of ICDS project by AIIMS?

26. The work-charge employees are engaged on a temporary basis and their appointments are made for execution/implementation of a specified work. From the very nature of their employment, their services come to an end on the completion/cessation/discontinuance of the work for the sole purpose of which they are employed. (See the decision of Supreme Court reported as *Jaswant Singh and Others Vs. Union of India (UOI) and Others*,

27. The appointment letter(s) issued to respondents Nos. 1 to 6 by AIIMS, contents whereof have been noted in foregoing paras, throws considerable light upon the said aspect of the matter. The said appointment letter(s) makes it abundantly clear that respondents Nos. 1 to 6 were employed by AIIMS on a temporary basis; that their appointments were made to carry out the work pertaining to ICDS project undertaken by AIIMS and that their services were co-terminus with the said project. In that view of the matter, the services of respondents No. 1 to 6 automatically came to an end on the discontinuance of ICDS project by AIIMS. Respondents Nos. 1 to 6 were duly conscious of the fact that they have been employed with AIIMS on a temporary basis and that their services are co-terminus with the ICDS project undertaken by AIIMS for the same was categorically stated in the appointment letter(s) issued to them by AIIMS. Having accepted the terms and conditions contained in the appointment letter(s) issued to them by AIIMS with their eyes wide open and the fact that ICDS project have been discontinued by AIIMS, respondents Nos. 1 to 6 cannot cla *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and*

Others, wherein it was observed as under:

14. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularisation. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts coterminous with the Scheme and not of permanent posts.

15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation in some other project or service. [See *Bhagwan Dass v. State of Haryana*, *Delhi Development Horticulture Employees' Union v. Delhi Admn.*, *Hindustan Steel Works Construction Ltd. v. Employees' Union*, *U.P. Land Development Corporation v. Amar Singh*, *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra*, *State of Karnataka v. Umadevi* (3), *Indian Council of Medical Research v. K. Rajyalakshmi and Lal Mohammad v. Indian Railway Construction Co. Ltd.*] In view of this settled position, the appellants will not be entitled to regularisation.

29. The matter can also be looked at from another angle.

30. Sections 11, 13 and 14 of AIIMS Act, 1956 read as under:

11. Staff of the Institute - 1) There shall be a chief executive officer of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be made by the Central Government in this behalf, be appointed by the Institute:

Provided that the first Director of the Institute shall be appointed by the Central Government.

(2) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(3) The Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body.

(4) Subject to such rules as may be made by the Central Government in this behalf, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may determine the designations and grades of such other officers and employees.

(5) The Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed by regulations made in this behalf."

(Emphasis Supplied)

13. Objects of the Institute - The objects of the Institute shall be--

- (a) to develop patterns of teaching in undergraduate and postgraduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India;
- (b) to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and
- (c) to attain self-sufficiency in postgraduate medical education.

14. Functions of the Institute - With a view to the promotion of the objects specified in Section 13, the Institute may--

- (a) provide for undergraduate and postgraduate teaching in the science of modern medicines and other allied sciences, including physical and biological sciences;
- (b) provide facilities for research in the various branches of such sciences;
- (c) provide for the teaching of humanities in the undergraduate courses;
- (d) conduct experiments in new methods of medical education, both undergraduate and postgraduate, in order to arrive at satisfactory standards of such education;
- (e) prescribe courses and curricula for both undergraduate and postgraduate studies;
- (f) notwithstanding anything contained in any other law for the time being in force, establish and maintain--
 - (i) one or more medical colleges with different departments, including a department of preventive and social medicine, sufficiently staffed and equipped to undertake not only undergraduate medical education but also postgraduate medical education in different subjects;
 - (ii) one or more well-equipped hospitals;
 - (iii) a dental college with such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary;
 - (iv) a nursing college sufficiently staffed and equipped for the training of nurses;
 - (v) rural and urban health organisations which will form centers for the field training of the medical, dental and nursing students of the Institute as well as for research into community health problems; and
 - (vi) other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists and medical technicians of various kinds;

- (g) train teachers for the different medical colleges in India;
- (h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in undergraduate and postgraduate medical education as may be laid down in the regulations;
- (i) institute, and appoint persons to, professorships, readerships, lectureships and posts of any description in accordance with regulations;
- (j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors testators or transferors, as the case may be;
- (k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in Section 13;
- (l) demand and receive such fees and other charges as may be prescribed by regulations;
- (m) construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf;
- (n) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute;
- (o) do all such other acts and things as may be necessary to further the objects specified in Section 13.

31. It is also important to note Rule 7(1) of AIIMS Rules 1958, which reads as under:

7. Creation of posts and appointment thereon:

(1) The Institute may create posts, subject to specific provision in the budget, on scales of pay applicable to similar post under the Govt. or on scales of pay approved by the Government classify them into grades and specify their designations:

Provided that no post above the Associate Professor's level shall be created except with the prior approval of the Government.

32. It be noted here that a perusal of the Sections 13 and 14 of AIIMS Act, 1956 shows that it is not a function of AIIMS to implement the welfare schemes initiated by the Central Government.

33. Rule 7 of AIIMS Rules, 1958 authorizes AIIMS to create posts. Needless to state, posts can be created only for the purposes of fulfilling the objects and/or discharging the functions prescribed under the AIIMS Act, 1956. Respondents Nos. 1 to 6 were appointed by AIIMS in connection with the work pertaining to ICDS project undertaken by AIIMS. As already stated hereinabove, it is not a function of AIIMS to implement the welfare schemes initiated by the Central

Government. Thus, respondents Nos. 1 to 6 were appointed on non-sanctioned posts. Recruitment rules ordinarily applicable to the employees of AIIMS were not applied in the case of respondents Nos. 1 to 6. In the decision reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others, it was held by the Supreme Court that the employees who are appointed in violation of Constitutional/statutory scheme cannot claim regularization of their services. In such circumstances, the respondents Nos. 1 to 6 cannot claim regularization of their services under AIIMS.

34. The upshot of the entire discussion is that:

- (i) respondents Nos. 1 to 6 are not the employees of the Union of India;
- (ii) the Tribunal misdirected itself in directing the Union of India to consider reinstating respondents Nos. 1 and 6 in any of the projects relating to ICDS being run by the government;
- (iii) respondents Nos. 1 to 6 were work-charge employees of AIIMS and their services came to an end on the discontinuance of ICDS project by AIIMS;
- (iv) respondents Nos. 1 to 6 cannot claim regularization of their services under AIIMS; and
- (v) since respondents Nos. 1 to 6 were appointed in the CTC-IMCD on the same terms and conditions as contained in the appointment letter(s) issued by AIIMS the services of respondents Nos. 1 to 6 with CTC-ICMD also automatically came to end with the dissolution of CTC-ICMD.

35. In view of the above discussion, the impugned judgment dated 12.05.2009 read with the order dated 29.05.2009 passed by the Tribunal is hereby set aside.

36. The instant petition is accordingly allowed. There shall be no order as to costs.