

(2014) 05 RAJ CK 0118

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 20684, 20697, 21085, 21087, 21088, 21237, 21255, 21404, 21548, 21564 and 21634/2013 and 101, 255, 268, 365, 373, 382, 438, 446, 486, 537, 581, 617, 935, 1089, 1097, 1098, 1226, 1591, 1701, 1956, 3241, 3361, 3646, 3851 and 454

Vishnu Kant Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-05-2014

Acts Referred:

Citation : (2014) 4 CDR 1947

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Arvind Bhardwaj, Jaideep Singh Rathore, Ankur Srivastava, O.P. Mishra, Raj Kumar Goyal, R.B. Sharma (Gathola), Saugath Roy, Azad Ahmed, Sanjay Buri, Laxmi Kant Sharma, Vinod Gupta, Pallavi Mehta, Kailash Kalara, R.K. Kasana, V.S. Chauhan, Raj Kamal Gaur, Gajendra Sharma, D.D. Khandelwal, R.D. Meena, Munesh Bhardwaj and Sima Agarwal, Advocate for the Appellant; Sanjay Sharma, Government Counsel, Anurag Kalawatia on behalf of J.M. Saxena, Addl. Advocate General, Gaurav Tanwar on behalf of S.K. Gupta, Addl. Advocate General, R.B. Mathur and Nikhil Simlote, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—These writ petitions have been preferred by those whose services were hired by the State as Computers on package basis (man and machine) in Mukhya Mantri Nishulk Dava Yojana as per the guidelines contained in the Government Circulars dated 28.7.2008 and 25.7.2011. The Mukhya Mantri Nishulk Dava Yojana was started in the State of Rajasthan on 2.10.2011, which was implemented through the Rajasthan Medical Services Corporation Ltd., a government company incorporated under the Companies Act, 1956, popularly known as Rajasthan Medical Relief Society (for short-"RMRS"). Petitioners were engaged through placement agencies on different dates and in different districts in the year 2012 and in some cases in 2013. An agreement was entered into between the petitioners and such placement agencies to provide services of the computer along with trained personnel namely; the petitioners to the RMRS for

implementation of the said scheme. The Director, Medical and Health Services wrote a letter to all Chief Medical Officers that a Computer Operator with machine has to be engaged through placement agencies, the funds wherefor would be provided by RMRS at the local level. A sum of Rs. 10,000 was provided to each centre to incur the expenses for hiring computer operator with machine and for stationery. Originally the Finance Department of the Government of Rajasthan provided a ceiling of Rs. 6,000 for hiring Computer along with the trained person, which was by circular/order dated 25.7.2011 revised to Rs. 6,500 per month. In the circular of the Government dated 25.7.2011, it was provided that in future Computer along with trained personnel shall be hired through a service providing agency as per the instructions of the Government in Circular dated 17.6.2011. The Government issued guidelines on 3.8.2012 for computerisation of all the drug distribution centres and Sub Stores throughout the State so that pilferage and wastage of the medicines could be curtailed and accounts could be properly maintained. Provision of budget was made for hiring services of Computers along with trained operators as also for computer points, UPS, Data Card, Broad Band/inter net connection and the requisite stationery. The Director Medical Health Services Rajasthan, Jaipur on 29.10.2013 conveyed to all Chief Medical Health Officers and Chief Medical Officers of the State the sanction of the Government for extending contract services of 3266 Computer with trained personnel upto 30.11.2013, thereafter 2000 computers with trained personnel upto 31.12.2013 and then 1000 computers with trained personnel upto 31.1.2014. The intention was to reduce number of hired computers with trained personnel in phases and accordingly this was reflected in each of the districts.

2. In the meantime, the Additional Director (Admn.) Medical and Health Services, Rajasthan, Jaipur issued an advertisement on 10.7.2013 for appointment on different posts which also included 4309 posts of Clinical Record Assistant under the Rajasthan Medical Health Services Rules, 1965. According to the petitioners, these posts were originally designated as Data Entry Operators and were created under National Rural Health Mission. Earlier these posts were sought to be filled in on contract basis but the government took a decision to convert them into regular posts by re-designating as Clinical Record Assistants. Some of the petitioners who possessed the eligibility qualification for appointment on such post, applied in response to aforesaid advertisement. However, the said recruitment was embroiled in litigation and could not be finalised.

3. At this stage, it would be significant to note that the Government in view of budgetary declarations made on the floor of the Legislative Assembly decided to create 3617 posts of Informatics Assistants for effective implementation of Mukhya Mantri Nishulk Dava Yojana and the Mukhya Mantri Nishulk Janch Yojana in the pay band of Rs. 5200-20200. Subsequently, however by order dated 11.2.2013, it was clarified that grade pay of Rs. 2400 be read along with pay band of Rs. 5200-20200. The Rajasthan Computer State and Subordinate Service Rules, 1992 were amended by notification dated 28.6.2008 by which the post of

Data Entry Operator encadared therein was redesignated as Informatics Assistant. It is under those Rules that the advertisement was issued on 25.4.2013 for recruitment on the above referred to posts of Informatics Assistants. The advertisement was issued by Information Technology and Communication Department, Government of Rajasthan on 25.4.2013. The Government therefore by order dated 26.9.2013 directed that the CMHO and the CMO of the State to extend the services of Computers with Operators from 1.7.2013 upto 30.9.2013 or till the availability of regularly selected Informatics Assistants whichever is earlier. Apprehending their discontinuation, petitioners have approached this Court in this batch of writ petitions with the prayer that action of the respondents in seeking to terminate/dispense with their services be declared illegal and the orders dated 26.9.2013 and 29.10.2013 issued to the above fact be quashed and set aside and the post of Informatics Assistant should be declared as different and distinct post and respondent-State be directed to create post of Computer Operators in the Mukhya Mantri Nishulk Dava Yojana and Mukhya Mantri Nishulk Janch Yojana and be further directed to extend the services of the petitioners. In some of the writ petitions, prayer has been made that the respondent-State be directed to regularise the services of the petitioners, whereas in some other, prayer is made that the respondent-State be directed to continue the petitioners on the post till the regular recruitment takes place on creation of such posts, in which preference ought to be given to the petitioners.

4. According to the petitioners, the Informatics Assistants would be recruited by the Information Technology and Communication Department and, thereafter, would be taken on deputation with the Medical and Health Department. Submission made by learned counsel appearing on behalf of petitioners is that post of Computer Operator is a post of permanent nature and the State has only with a view to exploit the unemployed youths not created such post in the scheme in question, whereas there is perennial need for having the post of Computer Operator in each of the drug distribution centres. The posts of Data Entry Operator originally created in NRHM were sought to be filled in on contract basis and that very post has been redesignated as Clinical Record Assistant. Petitioners, therefore, have preferential claim for appointment on such posts, but since regular recruitment on such post will take time, therefore the petitioners ought to be continued in the existing arrangement. It is also argued that the respondents created the post of Informatics Assistants only with a view to depriving the petitioners of their right to continue in service and claim regularisation. When the post of Data Entry Operator has been redesignated as Clinical Record Assistant under the NRHM Scheme, the respondents ought to create the post on Computer Operators in the Mukhya Mantri Nishulk Dava Yojana and Mukhya Mantri Nishulk Janch Yojana under the Rajasthan Medical Health Services Rules, 1965. The action of the respondents in not doing so is discriminatory and arbitrary. The engagement of the petitioners through placement agency is a camouflage. In fact, they are rendering their services

directly to the States and their exists master and servant relationship between them.

5. The order of the Government dated 12.5.2014 has also been cited whereunder the services of the 423 Pharmacists under the Mukhya Mantri Nishulk Dava Yojana have been ordered to be continued till regular recruitment takes place. Reliance has been placed on division bench judgement of this Court in Satish Sharma & Ors. vs. State of Rajasthan & Ors., (2012) WLC (Raj.) UC 162, single bench judgement in Mooli Devi Choudhary & Ors. vs. State of Rajasthan & Ors., 2010 (4) WLC (Raj.) 334 and Harshad Singh Naruka and Dr. Nooren Mirza and Another Vs. State of Rajasthan and Another .

6. The claim of the petitioners has been resisted by the respondent-State contending that they were engaged only recently in later part of 2012 and some in 2013 and that too, on contract basis through placement agencies. They cannot therefore claim continuation and regularisation in service. The petitioners on their own showing had the number of opportunity to compete against the posts of Clinical Record Assistants as also the Informatics Assistants. They were not deprived of participation in the selection process in response to the advertisement issued for any of these two posts. The services of the petitioners have been hired as trained Operators with Computers not directly but through the placement agencies, who were required to provide computers with trained operators. Petitioners have entered into agreement with such placement agencies in different districts. There is no privity of contract between the petitioners and the respondent-State and, therefore, there is no relationship of master and servant between them.

7. Admittedly, most of the petitioners have been engaged only in the recent past in 2012 and some of them in 2013 through placement agencies. They have entered into contract/agreement with such placement agencies. The placement agencies were required to provide computers with trained personnel and therefore that it is not a direct contract of employment between the petitioners and the respondent-State or for that matter, RMSC or RMRS. If the respondents have created posts of Informatics Assistants in the Department of Information, Technology and Communication for availing their services in the scheme in question, which otherwise petitioners are providing presently, it is a policy decision of the State. Merely because the post has been created in the Information Technology and Communication Department and as per their arrangement with the Department of Medical and Health, the services of such Informatics Assistants are intended to be taken on deputation, the action of the respondents cannot be said to be illegal and arbitrary. If the State in the era of Information and Technology wishes to develop an independent department and for that purpose decided to create a specialised cadre of Informatics Assistants to cater to their need in different departments of the State for the work of computerisation, this policy of the State appears to be aimed at having cohesive, coordinated and comprehensive approach to the issue of gradual computerisation

of its offices. This Court does not find any fault in such an approach. The petitioners, as it is, having been appointed through placement agencies have a very weak nature of right. They can neither claim continuation, if the respondent-State decide not to continue them, nor can they claim regularisation.

8. Moreover, when the petitioners were engaged as trained personnel with Computers, they were required to possess the following qualification:

"The personnel should be graduate, should have knowledge to operate computer in Windows/Linux Environment, good knowledge, practice in Word Processor, Spread Sheets and Internet operations and other office related computer operations and should have sufficient speed of typing in Hindi and English."

9. In the advertisement dated 25.4.2013 issued for recruitment on the post of Informatics Assistants, the required qualification is as under:

"Educational Qualification:

(i) Graduate or higher degree in Computer Science/Computer Engineering/Computer Applications/Computer Science & Engineering or Electronics or Electronics & Communication or Information Technology or equivalent of a University established by law in India.

OR

Post Polytechnic Diploma in Computer Applications or 3 years Diploma in Computer Science & Engineering/Computer Applications/Information Technology or equivalent from a Polytechnic institution recognised by the Government.

OR

Graduate of a University established by law in India with Diploma in Computer Science/Computer Applications/Information Technology or equivalent of a University established by law in India or of an Institution recognised by the Government.

OR

Graduate of a University established by law in India with "O" or Higher Level Certificate course conducted by National Institute of Electronics and Information Technology (NIEIT)/DOEACC under the control of Department of Electronics, Government of India.

OR

Graduate of a University established by law in India with Computer Operator & Programming Assistant (COPA)/DATA Preparation and Computer Software (DPCS) Certificate Organised under National/State Council of Vocational Training Scheme.

AND

(ii) Speed of 20 Words Per Minute typing in Hindi and English both."

10. The petitioners thus have had ample opportunity to compete for recruitment on the posts of informatics Assistants. Besides, the State initiated around the same time the process of selection for recruitment to the post of Clinical Record Assistant wherefor the prescribed qualification is as under:

"BCA/PGDCA from any university recognised by Government.

OR

Graduate of a University established by law in India with "A" Level Certificate course conducted by DOEACC under the control of Department of Electronics, Government of India.

11. Petitioners, who were otherwise required to possess all or any of these qualifications thus had the opportunity to apply for appointment on either of the posts and if selected on merit, could secure appointment on regular basis.

12. The Supreme Court in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, has held that staff employed for a particular project or scheme, which is temporary in nature, though continued from time to time and even may be continued for longer durations, then they cannot claim regularisation and their selection is liable to come to an end as and when the project or scheme is complete. It was held that they also cannot claim regularisation in another project or scheme. In the case of *Harminder Kaur and Others Vs. Union of India (UOI) and Others*, in which contract of teachers appointed against the vacancies allowed to continue for a long time, were held not entitled to claim regularisation.

13. The cited judgements of this Court in *Satish Sharma & Ors., supra*, *Mooli Devi Choudhary & Ors., supra* and *Harshad Singh Naruka, supra* are distinguishable on facts and do not have any application to the facts of the present cases.

14. The upshot of the above discussion is that all the writ petitions fail and are hereby dismissed. However, the petitioners are held entitled to continue in service as per the present arrangement till the regularly selected Informatics Assistants became available to substitute them. Since this judgement disposes of a bunch of writ petitions, office to place a copy of this judgement in all the files.