

Union of India Vs. K.Devaraj

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice Thottathil B.Radhakrishnan

Appellant : Union of India

Respondent : K.Devaraj

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 OP (CAT).No. 2073 of 2013 (Z) ----- AGAINST THE ORDER IN OA 725/2011 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH ----- PETITIONER(S)/RESPONDENTS: ----- 1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, M/O YOUTH AFFAIRS, SHASTRI BHAVAN, NEW DELHI-110001.

2. THE DIRECTOR GENERAL, NEHRU YUVA KENDRA SANGATHAN, CORE-4, 2ND FLOOR, NEW DELHI.

3. THE ZONAL DIRECTOR, NEHRU YUVA KENDRA SANGATHAN, MANACAUD.P.O THIRUVANANTHAPURAM-695009. BY ADV. SRI.GEORGE JOSEPH, CGC RESPONDENT(S)/APPLICANT: -----

K.DEVARAJ, RETD.DISTRICT YOUTH COORDINATOR(IN CHARGE), NEHRU YUVA KENDRA, KAVARATHI, LAKSHADWEEP, RESIDING AT TC.28/2704, CHETTIKULANGARA, THIRUVANATHAPURAM-695001. R1 BY ADVS. SRI.K.BABU RAJAN SRI.DIPU.R SRI.K.JALADHARAN THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 31-07-2013, ALONG WITH OP(CAT) NO.2253/2013 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ OP (CAT).No. 2073 of 2013 (Z) -----
APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT-P1 TRUE COPY OF THE ORDER 13 08-2012 OF THE CAT,ERNAKULAM BENCH IN O.A.725/2011 EXHIBIT-P2 TRUE COPY OF THE O.A.725/2011 FILED BEFORE THE HON' LE CAT,ERNAKULAM BENCH. RESPONDENT(S)' EXHIBITS ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ THOTTATHIL B.RADHAKRISHNAN & BABU MATHEW P.JOSEPH, JJ.

----- O.P. (CAT) Nos.2073 &2253 of 2013 -----
Dated this the 31st day of July, 2013

JUDGMENT

Thottathil B.Radhakrishnan,J.

Respondents, while permanently employed as Accounts Clerk cum Typist under the Nehru Yuva Kendra Sangathan were transferred and posted at different places to work as Youth Coordinator- in-charge. In one of the office orders, it is stated that such transfer and posting is purely on temporary basis. All orders proceed as if they are made to take immediate effect. The incumbents were directed to hold the charge of District Youth Coordinator and were ordered to be designated as Youth Coordinator in charge. We have seen the orders dated 29-01-2007, 6-7-2007 and 27-7-2007, among the papers in these original petitions. They are orders which can never be treated as putting a Government servant, who is already holding a post in a substantive or officiating capacity, to officiate on a temporary measure, to hold current charge of the routine O.P. (CAT) Nos.2073 &2253 o

2. duties of another post or posts. We see this in the context of F.R.49 (5) among the Fundamental Rules -Part I referred to on behalf of the establishment. We

noticed this, particularly, in the context of the submission on behalf of the establishment that there were no order to pay additional pay to the respondents as they were only holding current charge or routine duties of another post. For one thing, the orders under which they were moved to the new seats were orders of transfer and posting. It can never be held that any of the respondents officiated as against any post on mere current or simultaneous charge, to perform routine duties, contemporaneous, while holding another post in a substantive or officiating capacity.

2. On being transferred and posted in terms of the office orders noted above, they were ordered to be re- allocated duties of persons holding those posts earlier, so that the work may not suffer. Respondents herein were directed to join duties at the respective new place of posting and submit their joining report. It was also ordered that they are entitled to transfer TA/DA and joining time as per O.P. (CAT) Nos.2073 &2253 o

3. rules. Under such office orders, the respondents were required to exercise all powers as conferred on regular Youth Coordinators. Therefore, they are eligible to be treated as regular Youth Coordinators for the purpose of salary and all other financial benefits. Otherwise it would be merely a camouflage and an arbitrary compulsion on the respondents to tread in pursuit of a mirage.

3. In the aforesaid view of the matter, we do not find any legal infirmity or jurisdictional error in the Tribunal having concluded that the respondents were eligible to be treated as District Youth Coordinators under the Nehru Yuva Kendra Sangathan and were, as a consequence, eligible for the monetary benefits as ordered by the Tribunal.

4. We also see sufficient support for the aforesaid view from the judgment rendered by the Hon'ble Supreme Court in Arindam Chattopadhyay and others Vs. State of West Bengal and Others (Civil Appeal No.2521 of 2013) which dealt with persons who were recruited as ACDPOs and were later transferred and posted by the State Government to work as CDPOs in ICDS Projects. O.P. (CAT) Nos.2073 &2253 o

4. 5. The learned Central Government Standing Counsel attempted to argue that respondents before us moved to different posts as Youth Coordinators-in-Charge, essentially, as part of a contract under which they had accepted to work without any right for their regularisation in the post of District Youth Coordinator. Having examined the office orders in question, we do not see even a syllable therein to conclude that there is any such contract to the detriment of the respondents. Even if they were one, that would fail on the touch stone of Articles 14 and 16 of the Constitution as held by the Hon'ble Supreme Court in Secretary-cum-Chief Engineer Vs. Hari Om Sharma [AIR (1998) 2909] apart from internationally recognised doctrines in re human rights.

6. For the aforesaid reasons, these original petitions fail and they are liable to be dismissed.

7. This takes to the question as to whether we should impose an order of exemplary costs since we are of the firm view that the stand continuously taken by the establishment that they cannot grant the reliefs to the respondents is, the least said, draconian, inhuman, pedantic and oppressive in O.P. (CAT) Nos.2073 &2253
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5. approach. The establishment ought not to have pushed the employees to this extent. However, we are persuaded by the learned Central Government Standing Counsel to dissuade ourselves from imposing any order of costs against the Union.. In the result, these original petitions are dismissed, however, without any order as to costs. Sd/-Thottathil B.Radhakrishnan, Judge Sd/-Babu Mathew P.Joseph, Judge ma /True copy/ P.A to Judge

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