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Court : Rajasthan

Decided On : Feb-17-1992

Reported in : 1992(1)WLN399

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Writ Petition No. 2580 of 1989

Appellant : Pawan Kumar and anr.

Respondent : The State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

Rajesh Balia, J.

1. In all the writ petitions, list of which is annexed as Schedule 'A', have arisen in almost similar circumstances and the petitioners have sought common reliefs.

2. For the present purpose, it may be submitted that petitioners in all the above-mentioned cases were appointed Junior Engineers under various Schemes floated by the respondents to provide better rural employment from time to time under different nomenclatures, ultimately merging into Jawahar Rozgar Yojna. All the petitioners were appointed under different employment agencies, may be Panchayat Samiti or District Rural Development Agency, directly. The

appointments were given for a fixed term and were not extended after the relevant date on which their employment came to an end. The termination of their employment is challenged on various grounds, particularly with reference to the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947') and on the ground that while the Scheme continued, their services have been terminated, In some cases return have been filed. However, now it is common ground between the parties that all the 254 posts of Jr. Engineers created under Jawahar Rozgar Yojna, at various Panchayat Samities/D.R.D.As., were abolished with effect from 28th February, 1991 by order dated 24th April, 1991 and the posts now do not exist under the Jawahar Rozgar Yojna at various employing agencies in question.

3. In the wake of order dated 24th April, 1991, as a result of non-extension of 254 posts created under Jawahar Rozgar Yojna beyond 28th February, 1991, the persons whose services were being utilised as Junior Engineer in various Panchayat Samities/D.R.D.As., either as a result of being appointed directly by the Panchayat Samiti/D.R.D.A or by allowing a person to occupy the post under Jawahar Rozgar Yojna as a result of deputation from other department where they were initially appointed, came to an end. 36 of such cases were considered in a bunch of writ petitions in S.B. Civil Writ Petition No. 5368 of 1990- Riyaz Ali v. State of Rajasthan and Ors. and connected cases, decided on October 7, 1991 by learned Single Judge of this Court at Jaipur. In said cases, the following questions were raised:

- (1) Whether the abolition of posts under Jawahar Rozgar Yojna was malafide exercise of powers ?
- (2) Whether the termination of services as a consequence of malafide abolition of posts is invalid and the petitioners are entitled to be reinstated ?
- (3) Whether the termination of services was otherwise invalid being violative of the provisions of Industrial Disputes Act, relating to valid retrenchment?
- (4) Whether persons who were appointed with various Panchayat Samities/D.R.D.As. as a result of deputation after being appointed by the

Agriculture Department of the State, is invalid because postings on deputation was purely a fortuitous circumstance and the termination of service of those sent on deputation is not in accordance with the seniority of the persons appointed by the concerned State Department, which has resulted in retaining junior persons appointed by the same process of selection while service of senior persons have been terminated ?

4. The Court answered these questions as detailed hereinafter.

5. Regarding first two questions, the Court repelled the contention of abolition being malafide and consequential reinstatement of petitioners for termination being invalid. The Court observed as under:

So far as the present case is concerned, the facts which have come on record clearly shows that the decision of non- extension of the term of the posts has not been taken by an individual officer on account of personal opinion, nor has the decision been taken on account of extraneous considerations. The decision is rather founded on the decision of the Central Govt. to impose cut in the administrative expenses. The petitions do not disclose any allegation of malafide against any particular individual officer Although the petitioners have suggested that this decision has been taken in order to overcome difficulties created by the various decisions of this Court in the matters of Junior Engineers appointed under J.R. Y., in my opinion, it is not possible to draw an inference of malafide on the basis of the material which has been placed on record. Thus, I do not find any merit in the contention advanced on behalf of the petitioners that the action of the Respondents in bringing about termination of the services of the petitioners on account of non-continuation of the post/non-extension of the posts of Junior Engineers is malafide vitiated on account of colourable exercise of power.

6. Regarding the relief claimed by the persons employed under Jawahar Rozgar Yojna on the anvil of the provisions of the Act of 1947, the Court was of the opinion that the question relating to the rights under Industrial Disputes Act as far as the present case is concerned, may be left to the forum under Industrial Disputes Act. It opined as under:..It is a matter in which detailed investigation on the question of fact as to whether the petitioner had completed 240 days of service

in a period of 12 months and as to whether they are entitled to the relief of reinstatement on account of violation of the provisions of Industrial Disputes Act, can be decided more appropriately by the adjudicatory machinery provided under Industrial Disputes Act, 1947 and the petitioners are free to avail the alternative remedy available to them.

7. Regarding the termination of services under Jawahar Rozgar Yojna, as a result of non-extension/abolition of posts of those who were working not as a direct appointee of the concerned employing agencies but on deputation, the Court has held as under: Thus, it is clear that no specific formula or a rationale criteria was adopted by the Director, Agriculture in sending the persons on deputation to D.R.D.A. and retaining some others in the Department. When the Government decided not to extend the tenure of the posts in D.R.D.As., the persons who were brought on deputation from Directorate of Agriculture had to be sent back to their parent Department. After return, all these persons if the Directorate found that Junior Engineers were excess than the number of posts then he should have prepared seniority list according to the merit assigned to the candidates at the time of issue of the order of appointment and should have then retrenched those who were found to be junior-most irrespective of the fact that some were earlier sent on deputation to D.R.D.A. while others were retained in the Department. This has admittedly not been done. The criteria of seniority which has been spelt out in the reply is the date of joining of the candidate. This criteria clearly depended on a purely fortuitous factor, namely, the date of joining of appointed persons. All candidates were appointed according to their merit and all were allowed 15 days' time for joining. The competent authority could even extend the period of joining on the basis of facts of a particular case. A less meritorious candidate residing in Jaipur or near about may have joined earlier than a more meritorious candidate who may have received the order later than former candidate. The place of residence of the candidate is a factum of one having received order earlier qua another candidate who received it late, are purely fortuitous and chance factors. These facts cannot afford or become rationale of determination of seniority. Only rationale criteria for determination of seniority can be the merit or order of preference determined at the time of appointment. This has admittedly not been done. The criteria adopted by the Director, Agriculture is clearly irrationale and is,

therefore, violative of Articles 14 and 16 of the Constitution of India. In my opinion, the petitioners in Writ Petitions No. 2281/91, 2293/91, 2294/91, 2403/91, 2404/91, 2619/91 and 2586/91 have not been treated fairly and their right of equal treatment before law has been violated.

The net result of the above discussion is that Writ Petitions No. 2281/91, 2293/91, 2294/91, 2403/91, 2404/91, 2619/91 and 2586/91 are allowed. The order of termination of services of the petitioners in these Writ Petitions are quashed. The Respondents are directed to reinstate them In service with all consequential benefits including grant of pay in the pay scale of Junior Engineer. The Directorate of Agriculture may afresh take action for retrenchment of the junior-most persons after preparing a seniority list according to the order of merit assigned to the candidates at the time of initial appointment....

8. In view of the aforesaid conclusion, the petitions of persons who were appointed under the D.R.D.As. or the Panchayat Samities, were dismissed by holding that they are not entitled to relief under Article 226 of the Constitution of India for reinstatement,

9. As I have already stated hereinabove, all the petitioners, in the petitions which are being disposed of by this order, who were directly appointed by the D.R.D.As. or the Panchayat Samities, as the case may be, and, their services were not extended on the expiry of their term of service. In view of the aforesaid decision with which (am in agreement. It is apparent that the relief of reinstatement to the petitioners for the posts under Jawahar Rozgar Yojna in the present case cannot be granted as a consequence of abolition of posts under Jawahar Rozgar Yojna, which has been held to be bonafide. So far as the question of determination of their rights under Industrial Disputes Act, 1947 is concerned, the same has been left open to be decided by an appropriate forum under the Industrial Disputes Act, as it was rightly observed that it involves disputed question of facts and very many facets of the Scheme and other aspects. Therefore, in the these cases, I too am not inclined to examine all these issues. The petitioners are free to pursue their remedy under the Act of 1947, if any, where it will be open to them to raise any question which they want to raise before this Court .

10. However, the learned Counsel appearing for the petitioners have raised a contention that the aforesaid decision does not deprive them from claiming relief of regularisation, reinstatement and equal pay for equal work, on the anvil of Articles 14, 16 and 21 of the Constitution of India, without reference to the Industrial Disputes Act.

11. The question of regularisation and grant of equal pay for equal work in the context of appointments made under Jawahar Rozgar Yojna by D.R.D.As., on the anvil of right to livelihood and guarantee of employment under Article 41 of the Constitution of India came before their Lordships of Supreme Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Ors. : (1992)IILLJ452SC . The Apex Court rejected the plea of regularisation and equal pay for equal work based on generalised principle. It was held as under-.in the context of Article 21 which seeks to protect persons against the deprivation of their life except according to procedure established by law. This country has so far not found it feasible to incorporate the right to livelihood as a fundamental right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because It considers if any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles Article 41 of which enjoins upon the State to make effective provision for securing the same 'within the limits of its economic capacity and development. Thus even while giving the direction to the State to ensure the right to work, the Constitution-makers though it prudent not to do so without qualifying it.

Viewed in the context of the facts of the present case it is apparent that the schemes under which the petitioners were given employment have been evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. The schemes were meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor- much less to the unemployed In general....

The Court further concluded;- Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up to existing schemes and forbid them from introducing new ones, for want of resources...

12. It has been contended that the petitioners who are continuing on the post for considerable long time, instead of being asked to go home, ought to have been declared surplus on abolition of the post as at this stage, it would cause great hardship to them. As a result of service under Jawahar Rozgar Yojna for considerable period, many of the petitioners might have become over-age and may not be eligible for fresh appointment under the State. In this view of the matter, the petitioners have prayed that the respondents may be directed to declare them surplus and offer them alternate employment.

13. In reply, the learned Addl. G.A. has invited my attention to a decision in Jaypal and Ors. v. State of Haryana and Ors. reported in 1988(3) SCC 354, wherein their Lordships of Supreme Court have observed that where the Government scheme under which appointments were made was itself temporary, no order for regularising the temporary services of such appointees can be made. Thus, the petitioners have no rightful claim for regular appointment under the Scheme and, therefore, this prayer cannot be granted.

14. Thus, the Supreme Court not only rejected the plea of regularisation on the anvil of Article 21 of the Constitution of India but also only the ground that a right of regularisation under such schemes would not be in the public interest as that

would destroy the very purpose of the scheme itself. In view of the aforesaid pronouncement from the Apex Court, the plea of regularisation raised by the petitioners cannot be accepted.

15. It has further been contended by the learned Counsel for the petitioners that posts were abolished with effect from 28.2.1991, that is to say, the posts at various employing agencies were continuing upto 28.2.1991 whereas in many cases where the termination of services has been brought about prior to 28.2.1991, the incumbent should at least be deemed to be continuing on the post upto 28.2.1991 and they should be allowed emoluments of the post upto 28.2.1991. However, in making this contention, one fact has been lost sight that appointment is not by one employer but is by different employers. The employment was offered upto a fixed date and the cases are such where appointments have not been extended beyond the particular date for want of sanction for extension of posts' term. May be, that in some cases some of the employers have continued the incumbents in expectation of extension of the term of the post but that does not confer employees of another employing agency right to be continued on the similar post on the ground that other employers have followed a different course. Even otherwise, the question whether such appointments are covered by the definition of removal within the exception to the definition of retrenchment, given under Section 2(oo) of the Act of 1947, is a question which properly fall to be decided by an appropriate forum under Industrial Disputes Act, by taking into consideration the relevant factors and material placed on record before them. As has already been stated above, the rights under the Act of 1947 have been left open to be agitated before a forum under the Industrial Disputes Act, this relief cannot be considered under the present circumstances.

16. My attention has been invited to Government orders dated 26.5.1989, 11.4.1990 and 1.8.1990 wherein a pay scale was prescribed for the 254 posts of Junior Engineer created under Jawahar Rozgar Yojna. My attention was also invited to certain orders of the Government. A later office-order of the Government dated 26.10.1990 was also brought to my notice by learned Addl. G.A. stating that the Junior Engineers under Jawahar Rozgar Yojna henceforth should be appointed on daily wages to assist the regularly appointed Junior Engineers and contended that

earlier orders of fixing pay scales of Junior Engineers under Jawahar Rozgar Yojna stand superseded by the said notification dated 26.10.1990.

17. The petitioners have contended that atleast for the period for which they worked as Junior Engineer, they are entitled to emoluments in the pay scale, as prescribed by the Government under its various orders dated 11.4.1990 and 1.8.1990 for the post of Junior Engineer. He places reliance on a decision of this Court in *Ram Paratap and Anr. v. State of Rajasthan and Anr.* S.B. Civil Writ Petition No. 327 of 1989 decided on 20th December, 1989; in which the Court stated as under:..So far as equal pay for equal work is concerned, the petitioners are entitled to get pay starting from the minimum of the regular pay scale of the Junior Engineers under the State of Rajasthan from the date of the writ petitions and they will further be entitled to D.A., Addl. DA. etc. permissible under the Rules for time to time on the minimum of pay scale of the aforesaid grade. The arrears of the salary, if any, will be paid to the petitioner within a period of three months from today.

18. The learned Addl. G.A. enters a caveat to this proposition while saying that the responsibility shared by Junior Engineers under D.R.D.As. under Jawahar Rozgar Yojna is different from the responsibility shouldered by regular Junior Engineers under Government departments and, secondly, the learned Addl. G.A. states that it was under the orders of the Government that the Junior Engineers under Jawahar Rozgar Yojna were being appointed on daily wages instead on under regular pay scale and, therefore, the petitioners cannot take advantage of the two orders referred to above. He places reliance on a Circular of the State Government dated 26.10.1990, superseding earlier orders of the Government in this regard. It is also contended that question of equal pay for equal work needs to be adjudicated under the proceedings under Industrial Disputes Act, 1947.

19. As far as the question of entitlement to payment of emoluments on the basis of equal pay for equal work for the period they have actually worked under schemes like Jawahar Rozgar Yojna, is concerned, the matter now squarely stands concluded by a decision of Hon'ble Supreme Court in *Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Ors.* :

(1992)IILLJ452SC (supra), wherein their Lordships of the Supreme Court have observed as under: Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them

(emphasis supplied).

20. In view of the clear pronouncement of the Hon'ble Supreme Court that the persons employed under specified schemes like Jawahar Rozgar Yojna meant for specified purposes, must strictly be covered by the provisions of the Scheme keeping in view the main aim and object of the scheme; the petitioners appointed in the scheme are entitled only to what much of benefit which has been envisaged as a part of the whole scheme, keeping in view the resources available with the institution/agency implementing the Scheme. However, the question does not end there, by laying down the principle. The question that beg for answer is what are emoluments available to the Junior Engineers appointed under the Scheme. This requires a detailed investigation into various orders issued by the Government from time to time under the Scheme in this regard. Since entire material is not placed before the Court, I do not think it proper to issue specific directions quantifying the amount of emoluments to be paid on the basis of material available. However, I leave the matter by stating that the persons employed under the Jawahar Rozgar Yojna are entitled to such emoluments under the Scheme as are in accordance with the Government's orders issued thereunder from time to time for the period covered by such orders. It will be the responsibility of respondents to determine such amount payable in accordance with their own orders issued from time to time and to make good the payment of arrears, if any, found due as a result of such entitlement. However, if there is any dispute about the quantification of emoluments which any particular employee is entitled for, the matter can be adequately resolved by approaching an appropriate forum under Section 33C of the Act of 1947 for quantification by placing all the relevant material before the authority concerned.

21. Lastly, it was urged by the petitioners who have served for considerable period under the Scheme and has acquired good experience, if cannot be reinstated and regularised, atleast must be considered for preferential treatment in regular

employment opportunities which arise in future. My attention is invited to the ultimate recommendations made by their Lordships of the Supreme Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Ors.'s case [supra], wherein the Apex Court held: The most that can be done for them is to direct the respondent - Delhi Administration to keep them on a panel and if they are registered with the Employment Exchange and are qualified to be appointed on the relevant posts, give them a preference in employment whenever there occurs a vacancy in the regular posts, which direction we give hereby.

With the above recommendation, we dismiss the petition with no orders as to costs.

22. The petitioners contend that the similar directive should be given to the Man-power Department of the Government of Rajasthan who is responsible for implementing such schemes to consider employment of petitioners' cases in future on preferential basis in new employment opportunities which are to be offered under this very scheme or under any such new scheme which may be floated hereinafter in this regard. It is expected that when new employment opportunities in such schemes in future occur, the department in implementing such scheme, providing new employment opportunities will keep in mind the directions issued by Hon'ble Supreme Court in giving preferential treatment in new employment to such persons.

The petitions are accordingly dismissed.

There will be no order as to costs.