

Sanjeev Kumar Jain Vs State of M.P. and Others

Court: Madhya Pradesh High Court

Date of Decision: Jan. 8, 2013

Citation: (2013) ILR (MP) 1015 : (2013) 2 MPHT 143 : (2013) 1 MPLJ 320

Hon'ble Judges: Alok Aradhe, J

Bench: Single Bench

Advocate: Sanjay Agrawal, for the Appellant; Prashant Singh, Additional Advocate General along with V.P. Tiwari, Panel Lawyer for Respondent Nos. 1 to 4, Om Namdeo for Respondent No. 5 and Mohan Sausarkar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Alok Aradhe, J.

In this writ petition, the petitioner who was appointed as assistant project officer in Integrated Child Development

Scheme Project (ICDS), Tendukheda by Janpad Panchayat, Tendukheda inter alia seeks a direction to the respondents to absorb his services in

Women and Child Development Department of Government of Madhya Pradesh, The facts, necessary for adjudication of the controversy

involved in the writ petition are narrated hereunder. The ICDS project was introduced by the Government of India through the Department of

Human Resources Development for integrated delivery of certain services of pre-school children, pregnant and lactating women. The object of the

scheme was to improve the health and nutritional status of children and women and to reduce the incidences of school dropouts and physical and

social welfare and development of the child. Paragraph 47 of the scheme provides that even though funds will be provided by the Central

Government, the staff will be borne on the appropriate cadres of the State and therefore, the State should sanction the posts (as per appendix) in

the appropriate corresponding State pay scale. The anganwadi workers and their helpers will be honorary workers.

2. The State Government by order dated 2-6-1995 handed over the ICDS project at Tendukheda, district - Daman to Janapad Panchayat,

Tendukheda and sanctioned the staffing pattern. An advertisement dated 15-12-1995 was issued by the Janpad Panchayat, Tendukheda. The

petitioner in response to the aforesaid advertisement submitted an application. By communication dated 6-1-1996, the petitioner was asked to

appear for interview on 17-1-1996. Thereafter by order dated 15-3-1996, the petitioner was appointed temporarily on the post of Assistant

Project Officer. The order of appointment contained a stipulation that the petitioner would be required to complete the period of probation of two

years and the post on which the petitioner is appointed is temporary and the petitioner shall not be treated as government servant. The order of

appointment further contained a stipulation that services of the, petitioner can be terminated any time without assigning any reason.

3. Thereafter vide resolution dated 23-7-1998 passed by the Janpad Panchayat, Tendukheda the services of the petitioner were regularised on

successful completion of the period of probation in anticipation of approval by the State Government. It has been averred in the writ petition that

from time to time, the petitioner not only performed the duties of the post of Assistant Project Officer but he was assigned various duties which are

performed by the employees of the State Government. The petitioner, in support of the aforesaid submission has annexed copies of such orders as

Annexures P-12 to P-22.

4. A meeting of the District Level Departmental Advisory Committee was held on 17-3-1999 in which the resolution was passed to confer the

status of government servants on the employees working in ICDS project, Tendukheda and the same was forwarded for approval to the State

Government. Similarly Janpad Panchayat, Tendukheda and Zila Panchayat, Damoh passed the resolutions dated 22-6-2000 and 31-1-2004

respectively for treating the employees in ICDS project as government servants and the same were forwarded for approval to the State

Government. It has further been averred in the writ petition that services of the employees in Denida Health and Family Welfare Scheme and the

Tilhan Sangh as well as the services of the employees working in Overseas Development Administration Project were absorbed in the State

Government. In support of the aforesaid stand, the petitioner has annexed copies of the orders dated 4-8-2005, 25-1-2006 and 17-11-998 as

Annexures P-30, P-7 and P-6 respectively. It is also asserted that all the ICDS projects in the State Government are run by the State Government

except in the Janpad Panchayat, Tendukheda and Sihawal. It is stated in the rejoinder that on 18-4-2010 the project has been taken over by the

State Government and by an order dated 4-8-2010 passed by the State Government the ICDS project in Tendukheda has been transferred to

Women and Child Development Department. In pursuance of the aforesaid order, vide order dated 5-8-2010, the project was taken over by the

Project Officer, Women and Child Development Department Tendukheda. It is also averred that vide order dated 27-5-2009 in district - Damoh,

eight ICDS projects have been launched including one in Tendukheda and number of posts are lying vacant in new projects. In the aforesaid

factual backdrop, the petitioner has approached this Court.

5. Learned counsel for the petitioner submitted that though the petitioner was appointed under a particular project against the vacant sanctioned

post after going through the process of selection, yet over a period of time he has been treated as employee of the State Government inasmuch as

various duties which are performed by the employees of the State Government were entrusted to the petitioner. In this connection, learned counsel

for the petitioner has invited the attention of this Court to Annexures P-12 to P-22: It is also submitted that resolutions have been passed by the

District Level Departmental Advisory Committee, Janpad Panchayat, Tendukheda and Zila Panchayat, Damoh to confer the status of government

servants on the employees working in ICDS project, Tendukheda. It is further submitted that the project is perennial in nature and the petitioner

has been performing the duties in the project for past 17 years. It is further submitted that the ICDS project was launched in the year 1975 by the

Central Government and the same is continuing and in future also the same would continue. It is also contended that since the project has already

been taken over by the State Government, therefore, action of the State Government in treating the petitioner as project employee is absolutely

unjustified. In support of his submissions, learned counsel for the petitioner has placed reliance on the decisions in Parimal Chandra and Others Vs.

Life Insurance Corporation of India and Others, , National Federation of Railways Porters, Vendors and Bearers Vs. Union of India and others,

Government of Tamil Nadu and Another Vs. G. Mohammed Ammenudeen and Others, and State of West Bengal and Others Vs. Kaberi

Khastagir and Others, as well as order dated 13-4-2010 passed, by learned single Judge of High Court of Judicature for Rajasthan in W.P. No.

2584/2005, Dr. Premlata Purohit and others vs. State of Rajasthan and others,

6. On the other hand, learned Additional Advocate General submitted that the petitioner was appointed on contract basis as is evident from the

order of appointment. It is urged that no service rules have been framed governing the service conditions of the petitioner. The petitioner has been

appointed on contract basis and a project employee has no right to seek regularisation. It is further submitted that in pursuance of the directions

issued by the Central Government to change the staffing pattern in the year 2003, the strength of the employees working in ICDS project has been

reduced. It is also contended that reliance placed by the learned counsel for the petitioner on decision in Kaberi Khastagir (supra) is of no

assistance to the petitioner in the facts of the case, as the order of appointment of the employees in the aforesaid case contained a stipulation that

their service conditions will be the same as that of the government employees whereas in the instant case, the order of appointment of the petitioner

clearly stipulates that the services of the petitioner are temporary and the petitioner shall not be treated as government servant. In support of his

submissions, learned Additional Advocate General has placed reliance on the decisions in Delhi Development Horticulture Employees' Union Vs.

Delhi Administration, Delhi and others, Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others, and Vijay Kumar

Bajpayee Vs. M.P. Urja Vikas Nigam Limited and Another,

7. Learned counsel for the respondent No. 5 supported the stand of the petitioner.

8. On the other hand, learned counsel for the respondent No. 6 has submitted that ICDS project is a centrally sponsored scheme which has been

implemented by the States all across the country on a sharing pattern of 90:10 for all components including supplementary nutrition programme. It

has further been submitted that 90% of the operating cost for implementation of ICDS project is borne by the Central Government and the salary

and allowances of the staff appointed for implementation of the project is borne on appropriate cadre of the State and in the appropriate

corresponding State pay scales sanctioned by the State Government. It is also contended that guidelines on the staffing pattern and the recruitment

rules for appointment of the staff under ICDS project are framed by the State Government and the State Government is responsible for recruitment

of officers and staff and their service conditions under the ICDS scheme.

9. I have considered respective submissions made by learned counsel for the parties. Admittedly the ICDS scheme was promulgated by the

Central Government on 2-10-1975 through the Department of Human Resource Development with the object of integrated delivery of certain

services such as supplementary nutrition, immunisation, health check-up, referral service, non-formal education and health and nutrition education

to preschool children and pregnant and nursing women. The Scheme was aimed at reduction of the incidence of school drop outs and laying the

foundation for proper psychological, physical and social development of the child. Paragraph 47 of the Scheme reads under:

Even though funds will be provided by the Central Government, the staff will be borne on the appropriate cadres of the State and therefore, the

State should sanction the posts (as per appendix) in the appropriate corresponding State pay scale. The Anganwadi workers and their helpers will

be honorary workers.

10. Paragraph 47 of the Scheme was considered by the Supreme Court in Kaberi Khastagir (supra) and in paragraph 31 of the decision, the

Supreme Court by taking into account paragraph 47 of the Scheme, held that it is difficult to accept the case of the State Government that

employees of the project were project employees and not the employees of the State Government. The relevant extract of paragraph 31 of the

aforesaid decision reads as under:

In fact Para 47 of the Scheme, which has been extracted hereinabove, in no uncertain terms makes it very clear that even though funds for the

Scheme would be provided by the Central Government, the staff would be borne on the appropriate cadres of the States which would sanction the

posts in the appropriate corresponding State pay scale. In the face of such provision it is difficult to accept that the writ petitioners were project

workers and not the employees of the State Government.

11. Initially the petitioner was employed by the Janpad Panchayat. However, subsequently, by an order dated 18-4-2010 passed by the State

Government, the ICDS project in Tendukheda has been taken over by the State Government and by an order dated 4-8-2010 the same has been

transferred to Women and Child Development Department, In compliance of the aforesaid order, the project has been taken over by the Project

Officer of the Women and Child Development Department. In view of the stand taken by the Central Government in paragraph 4 of its reply,

which has not been controverted by the State Government, the State Government was under an obligation to frame Rules for appointment of the

functionaries in respect of the posts in the Project. The State Government, therefore, ought to have framed the rules in respect of the service

conditions of the employees working in the Project, Merely because the State Government has not framed the Rules under the Scheme, the

contention made by learned Additional Advocate General that the decision in Kaberi Khastagir (supra) is distinguishable, cannot be accepted.

12. The petitioner in this writ "petition has prayed for a direction to the respondents to absorb his services in Women and Child Development

Department of Government of Madhya Pradesh. It is well settled that where an order or an action of State Authority is" found to be illegal or in

contravention of prescribed procedure or is arbitrary, unreasonable or irrational, the same is open to judicial review. In such a case, when the High

Court finds that the action requires interference in exercise of power of judicial review, the High Court will not proceed to substitute its own

decision in the matter as that would amount to exercise of power of the authority itself, but shall require the authority to consider the matter. It is

equally well settled that the Court to direct an authority to "consider" only requires the authority to apply its mind to the facts and circumstances of

the case and to take decision in accordance with law. [See. A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, . In the light of aforesaid

well settled legal position, I am inclined to dispose of the writ petition with a direction to the State Government to consider the claim of the

petitioner for absorption in Women and Child Development Department taking into account all the aspects of the matter more particularly in the

light of the findings recorded by the Supreme Court in paragraph 31 of decision in Kaberi Khastagir (supra). The State Government, while

deciding the claim of the petitioner, shall also bear in mind that petitioner has been working in the project for past more than 17 years and is

performing the duties which have been assigned to him by the State Government from time to time and the fact that the State Government has

already taken over the project and the same is being run by Women and Child Development Department. Needless to state, the claim of the

petitioner shall be decided by a speaking order within a period of three months from the date of production of certified copy of the order passed

today.