

Neutral Citation No. - 2024:AHC-LKO:54749-DB

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 394 of 2024

Appellant :- Sunil Kumar Tripathi And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Housing And Urban Planning Lko. And Others

Counsel for Appellant :- Varun Pandey

Counsel for Respondent :- C.S.C., Shobhit Mohan Shukla

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

C.M.A. No.1 of 2024 (Application for Condonation of Delay)

1. Heard Shri S.B. Pandey, learned Senior Counsel/Deputy Solicitor General of India for the appellants, Shri V.P. Nag, learned Additional Chief Standing Counsel for the State-respondents and Shri Shireesh Kumar, learned Counsel for respondents no.2 and 3.
2. Learned Counsel for the respondents do not have any objection to the application for condonation of delay in filing the appeal. Even otherwise, after going through the affidavit in support of the instant application, we find that reasons given therein are satisfactory.
3. In view of the above, the application is allowed and delay in filing the instant appeal is hereby condoned.

Order on Appeal

4. By means of this appeal, the appellants have challenged the judgment and order dated 27.05.2024 passed in Writ-A No.4232 of 2024. The appellants herein filed a writ petition before the Writ Court seeking the following reliefs :-

"(i) issue a writ, order or direction in the nature of certiorari quashing the order dated 10.02.2024, contained in Annexure

no.8, proposing to fill-up the post of Computer Operator through outsourcing in so far as the petitioners are concerned.

(ii) issue a writ, order or direction in the nature of certiorari quashing the condition which bars the extension beyond two times.

(iii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to allow the petitioners to continue on the post on which they are working and restrained the opposite parties not to replace the petitioners from new faces which are being recruited from open market by adopting the procedure of outsourcing.

(iv) issue a writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(v) award cost of this petition to the petitioner."

5. The facts of the case, in brief, are that vide Government Order dated 17.07.2018 certain posts were created in the Uttar Pradesh Real Estate Regulatory Authority including the post of Computer Operator. It is relevant to note that the post of Computer Operator was to be filled on contractual basis. The source of recruitment of other posts were also given in the said order and some of the posts such as Class IV posts were to be filled by outsourcing.
6. The appellant no.1 herein was appointed as Computer Operator on contractual basis vide order dated 10.07.2019 in the pay scale of Rs.5200-20200/- Grade Pay Rs.2800/-. This appointment was made after due and proper selection by a selection committee albeit on contractual basis. As per the terms and conditions of the appointment letter, the appointment was for three years which was extendable by one year, twice, i.e. a maximum of five years tenure. One of the stipulations therein was that the contract could be rescinded/cancelled either way by giving 30 days' notice or pay in lieu thereof. The contractual service of appellant no.1 was extended twice and

ultimately he completed five years on 15.07.2024 and since then it has not been extended. As regards appellants no.2 and 3, they were engaged on the post of Computer Operator on contract basis on the same terms as appellant no.1, but vide order dated 14.01.2020 their contractual service were extended twice, firstly on 18.01.2023 and then on 20.01.2024. As per the extension order dated 20.01.2024 they are entitled to continue on contractual basis till 19.01.2025. Their contract has not been rescinded or cancelled in terms of the contract as per the terms mentioned in the initial order dated 14.01.2020.

7. On being confronted, learned Counsel for respondent nos.2 and 3 submitted that nobody stopped them from working till the end of their contract, which is January 2025. This takes care of relief no.3 as the appellants herein do not have any right to continue beyond the period mentioned in the term of their contract, even after the extension. As regards relief no.2, having accepted the appointment letter and the terms of the contract, it is not now open for them to challenge the condition which bars the extension of their contract beyond two times. Having acted upon and accepted the contract they cannot now resile to challenge the same, therefore, this relief is rejected.
8. As regards relief no.1, we have gone through the grounds on which the writ petition was filed and we do not find any valid ground for interfering with the judgment of the Writ Court which has not granted the said relief and has dismissed the writ petition. The fact of the matter is that a new Government Order, i.e. 10.02.2024 has been issued by the State Government restructuring the cadres/posts created in the U.P. Real Estate Regulatory Authority and creating one additional post as also mentioning the source of their recruitment. Most of the posts are to be filled by deputation or re-engagement except the post of Computer Operator and System Analyst for which the State

Government in its wisdom has taken a decision that they shall be filled by outsourcing.

9. As regards the contention of the appellants' counsel that one contractual employee cannot be substituted by another contractual employee, no doubt the legal position is settled in this regard. The facts of this case are different. Here it is a case where there is a change in policy as regards the source of engagement of personnels that too Computer Operators and System Analysts. It is not as if the contract of the appellants has been cancelled midway. That is not the case. The appellant no.2 and 3 whose contract is still subsisting may continue to work till the end of their contract which is till 19.01.2025. The State Government is entitled to change its policy and determine the source from which it wants to engage persons to work on the post of Computer Operators and System Analysts. There is no such law that persons cannot be engaged on the basis of outsourcing. Reliance has been placed by learned Counsel for the appellants upon a Single Judge Bench decision of this Court in Writ - A No.3451 of 2022 and connected matters dated 27.03.2023. We have gone through the said judgment and we find that in para 94 it has been observed in the context of the circular which was being relied thereon that though the circular provides for engagement of manpower through outsourcing which could be done through GeM Portal by inviting bids from service providers. The Court observed that there is nothing in the circular which prohibits the engagement of personnel on contractual employee and that such persons cannot be continued by signing a fresh contract. The facts of this case are very different, here the new policy comes into force after the expiry of the contract of the appellants and the new policy very categorically provides that the engagement on the post in question be filled through outsourcing only, meaning thereby, not on contractual basis.

10. The other judgment relied upon by learned Counsel for the appellants is dated 30.01.2024 having been rendered in SLP (C) Nos.22241-42 of 2016 after leave being granted and the same being converted into Civil Appeal. This was a case where the persons have been working for more than 25 years, therefore, the Supreme Court opined that their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merited a reconsideration of their employment status. Relying upon the decision of Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Umadevi reported in 2006 (4) SCC 1**, the Court, in the facts of the said case, opined that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness and the intent behind employment regulations. These observations themselves distinguish the said case from the facts of this case and make the said judgment inapplicable.
11. We have also gone through the judgment of the Writ Court and do not find any error therein. This is subject to the stipulation/observation made hereinabove that appellant nos.2 and 3 shall continue till the expiry of their contract in January, 2025 on the same terms on which they were continuing earlier.
12. As regards the contention of the appellants' Counsel that outsourcing cannot be made a source of engagement in view of Section 28 of the Real Estate (Regulation and Development) Act, 2016, we have perused the same and do not find anything therein which prohibits such engagement. In this context he has also relied upon of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016. We have gone

through the same and sub-rule (1) of Rule 20 merely provides that the conditions of service of the officers and employees of the authority and any other category of employees in the matter of pay, allowances, leave, joining time, joining time pay, age of superannuation and other conditions of service, shall be regulated in accordance with such rules and regulations as are, from time to time, applicable to officers and employees of the Government and drawing the corresponding scales of pay. However, in sub-rule (3) it is said that the Government shall have power to relax the provisions of any of these rules in respect of any class or category of officers or employees or consultants and experts, as the case may be. State Government has consciously issued the Government order dated 10.02.2024 and it is not the case of the appellants nor there is any material on record to show that none of the departments of the State Government Computer Operators or System Analysts are engaged on the basis of outsourcing. In any case the State Government has power under sub-rule (3) of Rule 20 to relax the said provisions in the context of outsourcing.

13. Subject to above, the appeal is **dismissed**. The dismissal of this appeal shall not come in the way of engagement of the appellants herein through the service provider if their work and conduct has been good and satisfactory. It is also open for the Real Estate Regulatory Authority, as far as it may be permissible, to consider the continuance of the appellants herein till fresh engagements are made through outsourcing on the posts in question.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 08.08.2024

Anand Sri./-