HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CWP-10252-2020 (O&M)
Date of decision: 02.09.2023
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Meenu & Ors. ... Petitioners

VS.

State of Haryana & Ors. ... Respondents
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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
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Present: Mr. JP Dhull, Advocate for the petitioners

Mr. Gaurav Jindal, Addl. AG Haryana
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Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition, which was filed on 08.07.2020, invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the orders dated 30.03.2020 (Annexure P2) passed by respondent No.3 vide dispensing with their services and to direct the respondents to reinstate them with consequential benefits.

(2). The respondent No.3 – Registrar, Cooperative Societies, vide appointment letter dated 26.05.2014 (Annexure P1), appointed the petitioners on various posts in the Integrated Cooperative Development Project (ICDP) which were initially sanctioned in Hisar, Fatehabad & Sirsa district by National Cooperative Development Corporation (NCDC) vide letters dated 07.03.2013 and 28.06.2013 and the validity of ICDP was lastly extended upto 31.03.2020. The petitioners have been relieved of their duties w.e.f. 31.03.2020 (Annexure P2) in view of completion of ICDP prompting the petitioners to approach this Court.

(3). Mr. Dhull contended that the impugned action of dispensing with the services of the petitioner is illegal and against the terms and conditions of the appointment inasmuch as neither the project (ICDP) is completed nor there is any delinquency on the part of the petitioners. It is submitted that no notice was issued nor any compensation was paid to the petitioners and as such the right to livelihood, being a fundamental right, cannot be snatched away in a casual manner as has been held by the Constitution Bench of the Supreme Court in ***Olga Tellis & Ors. Vs. Bombay Municipal Corporation & Ors., (1985) 3 SCC 545.***

(4). It is contended that there is no lack of budget with the respondents as is evident from the order dated 29.05.2020 which shows that junior persons to the petitioners are still allowed to continue in the ICDP while only axing their appointment. He further vehemently contended that the impugned orders have been passed without jurisdiction as respondent No.4-General Manager, ICDP is not competent to pass such order rather the same can only be passed by respondent No.3-Registrar, Cooperative Societies, Haryana.

(5). He further averred that the petitioners have continued in service for almost 7 years and, therefore, their discontinuation from service is unjust as they have now become overage and *ipso facto* they have been rendered disentitled for getting further appropriate job and as such, the respondents were under a legal obligation to let the petitioners continue in services with pay proper salary without being replaced by another set of employees.

(6). Learned counsel for the petitioners submits that even otherwise, since the petitioners had completed 240 days during their employment under the aegis of Cooperation Department, no compensation or mandatory notice was given to the petitioners as per the mandate of Section 25(F) of the Industrial Disputes Act, 1947 moreso when the petitioners have completed 240 days in the calendar year preceding their dispensation and as such, they could not have been retrenched/removed from service.

(7). Notice of motion was issued to respondents No.1 to 6 on 20.07.2020 and pursuant thereto, the respondents No.1,3, 4, 5 & 6 have filed their reply on 22.09.2020 followed by an affidavit dated 24.11.2020 filed by Naresh Goel, Joint Registrar-cum-Nodal Officer, ICDP, in compliance to the order dated 12.11.2020 passed by this Court.

(8). It is averred by respondents No.1,3, 4, 5 & 6 that ICDP Scheme is introduced and funded by NCDC- a Government of India undertaking and as such the terms of NCDC would be applicable. It is submitted that the terms of the Project was valid upto 31.03.2017, however, since the funds allocated for these projects were not fully utilized, the same were extended from time to time, lastly upto 31.03.2020. It is then submitted that the petitioners were relieved from duties on completion of Project w.e.f. 31.03.2020 with the prior approval of Registrar, Cooperative Societies (Annexure R1) and as such, the petitioners have no claim to continue in service beyond 31.03.2020 i.e. the date of completion of Project. The respondents have stated that on completion of the Project, the services of the petitioners were not required and since no posts were available after the completion of the Project, therefore, there could not have been any question of reinstatement of the petitioners.

(9). Since it was averred that vide order dated 04.05.2020, a Committee has been constituted to complete the project and to engage certain staff on contract basis, learned State counsel was directed to clarify the said fact and in compliance thereof, the respondents, in their affidavit dated 24.11.2020 made the following averments:-

> *"That in compliance of the order dated 12.11.2020, it is clarified that the term of the project was completed on 31.03.2020 and the petitioners were relieved from their duties on 31.03.2020, it is submitted that the case was recommended and forwarded to NCDC by the office of deponent for extension the term of ICDP, Hisar upto 31.03.2020. No extension was received from NCDC upto 23.04.2020 and all the employees working in ICDP, Hisar were relieved already on 31.03.2020. After receiving extension upto 30.06.2020 as communicated by NCDC on 23.04.2020, a committee was constituted under the Chairpersonship of Assistant Registrar, Cooperative Societies, Hisar by giving additional charge vide orders dated 04.05.2020 (Annexure A-1) in order to complete the pending Anstruction works of the project. Further the committe was allowed to engage One Junior Engineer, One Development Officer and One Peon on contract basis i.e minimum staff in order to complete the under process construction works. It was clearly mentioned that the above committee will work under the directions of Nodal Officer, ICDP. M.Cell. The committee engaged the above mentioned staff afresh on contract basis in May, 2020. Sh. Daljeet Singh who was engaged as Junior Engineer on Contract basis has B. Tech degree in Civil Engineering (Annexure A-2) for four years and thus he is higher in qualification than the petitioners.*
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> *4. That it is further submitted that the construction work of ICDP, Hisar was still pending therefore NCDC further extended the term of ICDP, Hisar upto 30.09.2020, and the project work of ICDP, Hisar has been finally closed on 30.09.2020 and all the employees engaged on contract basis have been relieved. It is further clarified that the project of ICDP, Hisar closed on 30.09.2020 & the contractual employees i.e. J E, D O and Peon have been relieved on 30.09.2020."*

(10). Heard learned counsel for the parties and gone through the record.

(11). Though the Directive Principle of the Constitution of India under Article 41, makes a provision that the State shall within the limits of its economic capacity and development effective provision for securing the right to work, but that has not been accepted to be a 'fundamental right' till date as the economic capacity of the State is not sufficient to ensure 'right to work' to all the 'able-bodied' and 'qualified persons'. Our country Bharat has so far not found it feasible to incorporate the 'right to livelihood' as a 'fundamental right' in its Constitution. This is because the country has so far not attained the capacity to guarantee it, not because it considers it any less fundamental to life. Advisedly, therefore, it has been placed in the Chapter of 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 thought it prudent not to do so without qualifying it. [Ref. ***Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Ors. (1992) 4 SCC 99***].

(12). Notwithstanding this fact, there are certain grey areas where the rule of hire and fire, a legacy of *laissez faire*, even in Government employment still rules the roost. Casual labour/employees employed on projects is one such segment of employment where one may serve for years and remain a daily rated worker without a weekly off, without any security of service, without the protection of equal pay for equal work. In short at the sweet will and mercy of the local satraps.

(13). The "Integrated Cooperative Development Project (ICDP)" was introduced in the year 1985-86 as a Central Sector Scheme with subsidy component from Govt. of India and loan from resources of NCDC which supplements the resources of State Govt. for development of cooperatives by providing loan from its resources for implementation for ICDP in selected districts under its Corporation Sponsored Scheme for the purpose of Development of Primary Agricultural Credit Societies and allied sector cooperatives. Under the scheme, an integrated area-based approach is adopted for development of cooperatives in a selected district.

(14). A perusal of the appointment letter (Annexure P1) shows that the appointment was made by the Registrar, Cooperative Societies and pursuant to their appointments, the petitioners were given posting, against their respective posts, in ICDP, on contract basis. Meaning thereby that, for all intents and purposes, the petitioners were the employees of the Cooperative Society and not ICDP or NCDC. The contention of the respondents cannot be accepted that on completion of the Project, the services of the petitioners were not required *inasmuch* as, the purpose of institution of ICDP is for development of cooperatives by providing loan from its resources for implementation in selected districts and thus a continuing and recurring object. If the services of the petitioners were not required in a particular Project, the respondents would be well within its rights to have engaged or utilized the services of the petitioners in some other Projects or institution but, at any rate, being a welfare State, the respondents, cannot shy away from its Constitutional duties to provide livelihood and sustenance after having guzzled blood and sweat of its employees for years leaving them jobless and overage.

(15). What is frowning for this Court is the fact that respondents are still in need of the manpower to complete the project, as can be seen from the averments made in the affidavit dated 24.11.2020 wherein it has been categorically stated that "*after receiving extension upto 30.06.2020 as communicated by NCDC on 23.04.2020, a committee was constituted... in order to complete the pending construction works of the project*". In such scenario, the contention of the petitioners that they are being replaced by some other set of employees, cannot be ruled out outrightly. The right of employer to engage or continue with the engagement of the worker has to be in juxtaposition with the factual aspects i.e. nature of employment and the total period during which the employee was made to serve and if the service of an employee, though on contract etc. basis was made to continue for years, that *ipso facto* would lead to an avowed conclusion that the employer is indeed in need of the services of that employee.

(16). Accordingly, the writ petition is disposed of with a direction to the respondents to allow the petitioners to continue in service along with arrears of salary and other consequential benefits. The respondents are also directed not to dispense with the service of the petitioner(s) except in accordance with law and natural justice. Besides, a direction is also issued to the respondents to pay compensation of Rs.25,000/- to the petitioners towards litigation charges.

(17). Ordered accordingly.

02.09.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No