



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 22, 2024

+ W.P.(C) 8560/2022

RAVISH RATHI & ORS.

..... Petitioners

Through: Mr. Abhinay Sharma,
Mr. Pooran Chand Roy and
Ms. Deeksha Prakash, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sandeep Kumar
Mahapatra, CGSC with
Mr. Tribhuvan, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

CM APPL. 59435/2023 (for delay)

This is an application filed by the petitioners / applicants seeking condonation of 212 days delay in filing the review petition.

Though, the learned counsel for the respondents has serious objection with regard to the same, for the reasons stated in the application and in the interest of justice, the delay is condoned. The application is disposed of.

CM APPL. 62227/2023

This is an application filed by the petitioners / applicants



seeking permission to file additional documents on record.

For the reasons stated in the application, the same is allowed and the additional documents are taken on record. The application is disposed of.

REVIEW PET. 321/2023

1. This review petition has been filed by the petitioners herein seeking review of order dated March 13, 2023. Vide the said order, we have dismissed the writ petition by stating in paragraphs 15 onwards as under:

“15. Having heard the learned counsel for the parties, we agree with the submissions made by the learned counsel for the respondents. The fact that, 2000 vacancies are to be filled on regular basis out of which 1300 posts have already been filled and we have been informed that the remaining 700 vacancies shall be filled by June, 2023, there by the engagement of the contractual employees shall be dispensed with, then no direction can be given to re-engage/re-appoint the petitioners on contract basis.

16. No doubt the reason for termination of the petitioners may not be appropriate, but we are of the view that, in the given facts and circumstances of the case, as there is no requirement for contractual employees, any direction to re-engage the petitioners, cannot be given.

17. We have seen the judgments as relied upon by the counsel for the petitioners. In the peculiar facts of this case, we are of the view that the said judgments shall not be applicable. Hence, the only plea urged by the learned counsel for the petitioners cannot be accepted.

18. The petition is dismissed. The applications are dismissed as infructuous. No costs.”



2. The primary ground on which the review is sought by the petitioners is that pursuant to impugned order dated March 13, 2023, the respondents have extended the tenure of existing contractual employees in the Month of April 2023 till April 18, 2023 instead of replacing them with permanent employees. According to Mr. Abhinay Sharma, learned counsel appearing for the petitioners, the above fact was concealed from this Court and had the same not been done, this Court would not have dismissed the writ petition. Moreso, when the impugned judgment reveals that the petitioners were entitled for the reliefs as prayed before this Court.

3. He submitted that because of the false, wrong, incorrect and misleading statements made by the respondents before this Court, the petitioners were deprived of salary since at least April 2023 which they were entitled for, as a bare perusal of impugned order shows that this Court would have granted the relief to the petitioners, if the respondents had not misrepresented in the manner they did, as can be seen from paragraphs 15 and 16 of the impugned order which have already been reproduced in paragraph 1 above.

4. He further submitted that it was the case of the respondents before this Court in the writ petition that the remaining 700 vacancies shall be filled by June, 2023, and thereby the engagement of the contractual employees shall be dispensed with and on the basis of such statement, this Court passed the impugned order that no direction can be given to re-engage/re-appoint the petitioners on contract basis.

5. It is also his case that the petitioners came to know only in the month of October, i.e., 12/13 October, 2023 about the extension of the



tenure of the contractual employees till April 18, 2024 and the direct appointment of LOP candidate from the ACIO-II 2020 notification on the post of DFO.

6. So, he submitted that in view of the position that the respondents having continued with the engagement of the certain contractual employees, the petitioners are also entitled to the same benefit.

7. A reply to the review petition has been filed wherein the respondents have contested the stand taken by the petitioners. It is the submission of Mr. Sandeep Kumar Mahapatra, learned CGSC appearing on behalf of the respondents that subsequent to passing of the impugned order dated March 13, 2023, the respondents have not made any fresh appointment of contractual employees. In fact, no such document has been placed by the petitioners to show that after passing of the impugned order, any fresh appointments have been made amongst the contractual employees.

8. It is his submission that the respondents have justified in the continuance of certain contractual employees by stating as under:

“(i) As recorded in the said order / judgment, the Respondents continued with process of recruitment by issuing letters of appointment to all the 2000 selected candidates which is still in progress. However, as against the notified 2000 posts of ACIO-II/Exe, approx. only 1700 posts could be filled so far against which these Immigration Assistants (IAs/ Immigration Supports (ISs) were engaged.

(ii) Further, before deployment of an ACIO-II/Exe on field, one has to undergo a mandatory approx. 6 months



induction training (9 weeks BFC, 9 weeks BIC & 6 weeks attachment with local police). As such, approx. only 975 ACIOs-II/Exe were available for posting to various SIB / BoIx by June 2023 while another approx. 725 candidates were undergoing the aforesaid training. Meanwhile, about 1000 new vacancies have become available under direct recruitment quota of ACIO-II/Exe which is aggravating the problem of shortage of manpower at various BoIx across the country.

(iii) Thereafter, in view of G20 summit in September 2023 and GoI direction to take over 56 ICPs from States to BoIx (which required sanction of additional manpower), there was no option left but to continue with the services of the existing experienced IAs/ISs upto 18.4.2024 in order to mitigate the problem of increased footfall at airports.

(iv) It is reiterated that after the order and judgment dated 13.3.2023 of this Hon'ble Court, no fresh contractual engagement of IAs/ISs has been done till date. However, owing to shortage of manpower, existing IAs/ISs have been allowed extension upto 18.4.2024 as per requirement of various BoIx."

9. He submitted that reliance placed by the petitioners on the document placed at Annexure-P2, was issued to various candidates in 2021-2022 and not after March 13, 2023 and that too after obtaining sanction from the government on April 19, 2021. Whereas, the petitioners were disengaged after the recommendation of the Competent Authority.

10. He submitted that perusal of document placed at Annexure-P2 would reveal that the petitioners have placed on record the undated document with *mala fide* intention to mislead this Court. The conduct



of the petitioners leading to their disengagement coupled with the fact that they are still continuing to indulge in such conduct by placing reliance on the undated and unsigned document, establishes that they are even otherwise also not eligible to be appointed to the posts in question.

11. As such, it is the case of Mr. Mahapatra that no ground for review has been made by the petitioners seeking review of order dated March 13, 2023.

12. Having heard the learned counsel for the parties and perused the record, suffice to state, that we have already reproduced the paragraphs 15 and 16 of the impugned order in paragraph 1 above. Perusal of the same reveals that because of the fact that it was put before this Court by the respondents that fresh regular appointment are being made and as such fresh appointments shall be completed by June 2023, this Court had not granted any relief to the petitioners, who had sought re-employment / reinstatement / regularization to the posts concerned. It is a fact that the petitioners' challenge in the petition was basically against their disengagement and for that reason they had sought the prayer for reinstatement. So, it is clear that at that time, the petitioners were not working with the respondents.

13. It is in this background, the impugned order passed by this Court and the justification given by the respondents have now to be seen. The respondents in paragraph 8 above provided the justification for extending the contract of the existing contractual employees, inasmuch as, it has been stated that before deployment of an ACIO-II/Exe on field, one has to undergo a mandatory approximately 6



months induction training. As such, only 975 ACIOs-II/Exe became available for posting to various places by June 2023 while another approximately 725 candidates were undergoing the aforesaid training. Meanwhile, about 1000 new vacancies became available under direct recruitment quota of ACIO-II/Exe which has aggravated the problem of shortage of manpower across the country.

14. Thereafter, it is also stated that in view of G20 summit in September 2023 and Government of India direction to take over 56 ICPs from States to Bureau of Immigration, there was no option left but to continue with the services of the existing experienced IAs / IS upto April 18, 2024 in order to mitigate the problem of increased footfall at airports.

15. From the aforesaid, it is clear that the intent to continue contractual employees till April 18, 2024 was in public interest. The extension was given to the contractual employees, who were already engaged with the respondents unlike the petitioners, who were not working when the writ petition was decided, the fact, which we have already noted above.

16. If that be so, the impugned order of which review is sought cannot be faulted as it is the case of the respondents that their engagement is till April 18, 2024. Further, it is also not the case of the petitioners that any fresh contractual employees have been done overlooking the right of the petitioners, post March 13, 2023, i.e., after passing of the impugned order.

17. Though, Mr. Sharma has placed reliance on the judgment of the Supreme Court in the case of *Gangadhara Palo v. Revenue Division*



Officer and Another, (2011) 4 SCC 602 to contend that the delay in filing of the review petition should be condoned and as such, the review petition would be decided on merits, as we have already allowed the application being CM APPL. 59435/2023 for the reasons stated in that application, this judgment need not be gone into.

18. Suffice to state, Mr. Sharma has also relied upon the following judgments to contend that the instant review petition is maintainable, it is stated that as we have decided the review petition on merits, these judgments shall also need not to be gone into:

- i. ***Board of Control for Cricket in India and Another v. Netaji Cricket Club and Others, (2005) 4 SCC 741;***
- ii. ***State of Rajasthan and Another v. Surendra Mohnot and Others, (2014) 14 SCC 77;***
- iii. ***Dr. J.S. Yadav v. Dr. Anil Kumar Upadhyay and Others, 2022 SCC OnLine All 240; and***
- iv. ***Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550;***

19. Mr. Sharma has also relied upon the judgment of the Supreme Court in the case of ***Dwarka Nath v. Income Tax Officer, Special Circle, D-Ward, Kanpur and Anr., 1965 SCC OnLine SC 61***, to contend that this Court can mould the reliefs to meet the peculiar and complicated requirements. Though, there is no doubt that the Supreme Court in that case has noted that Article 226 of the Constitution of India is couched in comprehensive phraseology and it *ex facie* confers a wide power on the High Court to reach injustice wherever it is found, however, as in the instant case, we have held that the respondents are



justified in extending the contracts of the existing employees in the public interest, as such, the said judgment cannot help the case of the petitioners to mould the relief in the manner suggested by them.

20. Insofar as the judgment relied upon by Mr. Sharma in the case of **Rajesh D. Darbar and Others v. Narasingrao Krishnaji Kulkarni and Others**, (2003) 7 SCC 219, the Supreme Court has in paragraph 4 held as under:

“4. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson v. State of Alabama [294 US 600: 79 L Ed 1082 (1934)] (US at p. 607) illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [1940 FCR 84: AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to



avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in Pasupuleti Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770 : AIR 1975 SC 1409] read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in the cause of action or relief. The primary concern of the court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (see V.P.R.V. Chockalingam Chetty v. Seethai Ache [AIR 1927 PC 252: 26 All LJ 371])."

21. Suffice to state, the said judgment and also the following judgments which have been relied upon by Mr. Sharma to contend that this Court under Article 226 of the Constitution has all the powers to mould the relief, shall also have no applicability for the reason that on the merit of the case, the respondents are justified in their action and as such, this Court is of the view that no relief can be moulded in a manner which can give relief of reinstatement to the petitioners as it is not the case of the petitioners that post passing of the impugned order, the respondents have freshly recruited the contractual employees instead of recruiting the regular employees:-

i. ***M. Sudakar v. V. Manoharan and Others, (2011) 1 SCC 484;***



ii. ***Ramesh Chandra Sankla and Others v. Vikram Cement and Others, (2008) 14 SCC 58;***

22. Insofar as the proposition of law that replacing one set of *ad hoc* employees with another set of *ad hoc* employees is not appropriate is concerned, suffice to state, that the said proposition of law will not be applicable in the facts of the present case, especially, when it is the case of the respondents that the contractual employees shall be substituted by the regular employees and the said position has been noted by this Court in the impugned order dated March 13, 2023. Moreso, it is also a fact that post the passing of the impugned order, the respondents have not freshly recruited the contractual employees. Therefore, the following judgments which have been relied upon by Mr. Sharma for the said proposition shall not be applicable:-

- i. ***Manish Gupta and Another v. President, Jan Bhagidari Samiti and Others, 2022 SCC OnLine SC 485;***
- ii. ***Rattan Lal and Others v. State of Haryana and Others, (1985) 4 SCC 43;***
- iii. ***Hargurpratap Singh v. State of Punjab and Others, (2007) 13 SCC 292;***
- iv. ***Narinder Singh Ahuja and ors. v. The Secretary, Ministry of Health and Family Welfare and Ors., 2014 SCC OnLine Del 2243;***
- v. ***Tintu K. and Another v. Union of India Represented by Secretary and Others, 2022 SCC OnLine Ker 11018;***
- vi. ***Murad Ali Sajan and Others v. UT of J&K and Others, 2022 SCC OnLine J&K 940;***



23. It is true that the respondents have extended the contract of the existing employees, who were engaged in the year 2021-2022 for certain valid reasons, which we have already stated above. Having stated so, insofar as the plea of consequential relief is concerned, in view of the fact that we have dismissed the review petition, no consequential relief can be granted. Therefore, the following judgments which have been relied upon by Mr. Sharma seeking consequential relief under Article 226 of the Constitution of India shall have no applicability:

- i. *Surya Dev Rai v. Ram Chander Rai and Others*, (2003) 6 SCC 675;
- ii. *Hari Vishnu Kamath v. Syed Ahmad*, (1995) 1 SCR 1104;
- iii. *State of Madhya Pradesh and Another v. Bhailal Bhai & Ors.*, AIR 1964 SC 1006; and
- iv. *M.M.T.C. Limited v. Commissioner of Commercial Tax and Others*, (2009) 1 SCC 8.

24. In view of the above, we do not find any merit in the review petition, the same is dismissed.

CM APPL. 59436/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MARCH 22, 2024/aky