Rajendra And Others vs State Of Rajasthan And Others on 5 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 923, 1999 (2) SCC 317, 1999 AIR SCW 487, 1999 LAB. I. C. 1106, 2000 (1) SERVLJ 119 SC, 1999 (1) SCALE 256, 1999 (1) LRI 295, (2000) 1 SERVLJ 119, 1999 (1) ADSC 451, 1999 (2) UPLBEC 889, 1999 (1) UJ (SC) 304, 1999 UJ(SC) 1 304, (1999) 3 ANDH LT 53, (1999) 1 SERVLR 636, (1999) 2 UPLBEC 889, (1999) 1 SUPREME 355, (1999) 1 SCALE 256, (1999) 3 SCT 294, 1999 SCC (L&S) 551

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Bench: Sujata V. Manohar, R.C. Lahoti

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           CASE NO.:
Appeal (civil)  5476-83 of 1998

PETITIONER:
RAJENDRA AND OTHERS

RESPONDENT:
STATE OF RAJASTHAN AND OTHERS

DATE OF JUDGMENT: 05/02/1999

BENCH:
SUJATA V. MANOHAR & R.C. LAHOTI

JUDGMENT:
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JUDGMENT 1999 (1) SCR 408 The Judgment of the Court was delivered by R.C. LAHOTI, J. In the early eighties, the Government of Rajasthan introduced, various programmes and allied schemes for poverty elimination employment generation etc. It brought into existence known as District Rural Development Agencies (hereinafter referred to as `DRDAs') registered under the Sections Registration Act, 1860. The main object of these agencies was to plan and administer the area development programme aiming at Integrated Rural Development. In the year 1992, these DRDAs were concerned with the following schemes :

Limit of Admn. Expenses

(i) I.R.D.P. (Antyodaya) 10-15%

(ii) Desert Development Programme 5%

(iii) Jawahar Rozgar Yojna 2%

(iv) Indira Avas Yojna 2%

(v) Apna Gaon Apana Kam 2% (vi) Bio-gas Plants

(vii) Development of women and Children of Rural Areas.

2. The main object of the Agencies was to implement such Schemes and to identify beneficiaries including small and marginal farmers, agricul-tural labourers and other persons eligible for assistance under these Schemes. The agencies also co-ordinated execution of these plans for the benefit of the identified participants through the existing agencies engaged in this direction in the field whether private, public or co-operative. Each District Rural Development Agency was an independent entity with a District Collector as ex-officio Chairman and a project Director as the Chief Executive Officer.

3. There are 33 districts in the State of Rajasthan and as such there were 33 DRDAs in the State with an ex-officio Chairman and a Project Director. Subject to the allocation of the fund by the State of Rajasthan to each DRDA for implementation of particular scheme, persons were employed on various posts pursuant to the Stale Rural Development Agency Employees Service Regulation, 1983. Each DRDA was an inde-pendent Agency located in each district. The appointments were made locally and seniority of the employees was also maintained on district basis. There was no inter se seniority. The jobs were not interchangeable or transferable from one DRDA to another. The services of the employees strictly depended on funds made available to individual DRDA for im-plementing its scheme for only a fixed administrative expenses were met out of the same.

4. In the year 1992, looking to the availability of the funds, the Government of Rajasthan took a decision to abolish 273 posts in the entire State of Rajasthan belonging to different DRDAs. The DRDAs were accordingly informed. This led to termination of several LDCs, and class-IV (Peons). The petitioners in Civil Appeal Nos. 5476-83 of 1998 and Civil Appeal Nos. 5484-5494 of 1998 are such Class-Ill and Class-IV employees.

5. Several petitions were filed before the High Court of Rajasthan challenging such termination of the employees. The principal grounds of challenge were that the petitioners having been appointed regularly against different posts, their services could not have been so terminated un-ceremoniously; that the petitioners though outwardly appointed in several societies were in fact the employees of the State Government inasmuch as their salaries were being paid from the funds made available by the State Government and even if the need for such employment had come to an end with the societies, there were several vacancies available with the State Government against which the petitioners could have been accommodated and regularized; that the DRDA was `industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and yet the provisions of Section 25-F were not complied with an so the termination was bad; and that the rule of `last-come-first-go' was not followed.

6. The learned Single Judges before whom came up the petitions for hearing allowed the same and several orders of termination were directed to be quashed. The State of Rajasthan, as well as the Societies preferred Writ appeals which were heard by a Division Bench and have been allowed reversing the single bench decisions. The aggrieved petitioners have come up to this court. The learned Single Judges and the Division Bench have both held that the DRDA Societies were instrumentalities of the State within the -meaning of Article 12 of the Constitution and hence amenable to writ jurisdiction of the High Court. This finding has not been assailed before this Court, being unnecessary in the submission of the learned counsel for the State of Rajasthan, and hence we express no opinion thereon. So also neither the Single Judge nor the Division Bench has held the DRDA Society to be an `Industry' for the purpose of the Industrial Disputes Act, 1947. This finding is also not assailed before us.

7. A perusal of the judgments of the Learned Single Judges and the Division Bench goes to show that the Learned Single Judge allowed the writ petition Bench solely on the ground that though the petitioners were employees of the DRDA Societies which were independent bodies, the decision to abolish the posts and consequently to terminate the employ-ment of the petitioners was taken by the State Government which was followed by the Societies without any application of mind of their own. Inasmuch as the Societies terminated the employment of the petitioners at the behest of the State Government and not on their own, the decision was vitiated. Having so set aside the orders of termination, the learned Single Judge left it open to the DRDAs concerned to take decision afresh after properly applying mind to the financial and administrative aspects of the case. In the event of the services of the employees of the DRDAs being terminated after following the directions of the High Court, the State Government was advised to consider the absorption of the petitioners in various other departments if State Government by practice was doing so. The Division Bench has differed with the Learned Single Judges and therefore set aside their decisions.

8. Having heard the learned counsel for the parties, we are of the opinion that these appeals are wholly devoid of any merit and hence are liable to be dismissed. It is not disputed that the employment was given to the petitioners under various schemes framed by the State of Rajasthan and entrusted to the DRDA Societies for implementation. The societies did not have any funds of their own. The funding was hundred percent by the State of Rajasthan. One Rajender Jain Committee was constituted in the year 1992 to review several decisions taken regarding various schemes of S.S. and I.R.D. which recommended that out the then 1339 posts in the DRDAs under various schemes, 338 posts needed to be abolished and 112 new posts deserved to be provided under various schemes. The 338 abolished posts included 19 posts of UDCs, 43 posts of LDCs, and 24 posts of Class-IV. The newly created 112 posts did not include any posts of UDCs, LDCs and Class-IV.

9. Several appointment letters filed on behalf of the petitioners themselves go to show that the appointments were made by District Rural Development Agencies. There is no material brought on record to hold that the societies were merely a veil but the real employer was the State of Rajasthan. The appointment letters clearly go to show that the petitioners were appointed as temporary LDCs/Class-IV employees for a period of six months or date of expiry of the posts whichever was earlier. The foot-notes inserted in the letters of appointment stated that the appointment was purely

temporary and the services of the agency were not transferable in any other department of the Government though the period of appoint-ment would be extended after putting in satisfactory service during the period of initial appointment i.e. six months. Such appointments were extended from time to time but on similar terms and conditions. Inasmuch as the need for the work was partially over and the Government was finding it difficult to provide funds for administrative expenses which it found to be non-productive and unnecessary, an expert committee was appointed to review the situation. Decision for abolition of posts was taken consistently with the findings and recommendations of such committee.

10. In our opinion, the decision of this Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and Others, AIR (1992) SC 789 clinches the issue. It was a case of a temporary employment provided to the petitioners therein under Jawaharlal Nehru Rozgar Yojna. It was held that the right to livelihood was found not feasible to be incorporated as a fundamental right in the Constitution and therefore the employment was also not guaranteed under the constitutional scheme. Employment schemes were brought into being consistently with the limited resources available at the disposal of the State. It was further held:

> "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 the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc."

11. In Sandeep Kumar and Others v. State of Uttar Pradesh and others, AIR (1992) SC 713 there were employees working on project of slum clearance. The project was for a particular purpose and there was no permanent need for work. The employment having been brought to an end and the terminations having been subjected to challenge, it was held that a direction as to regularisation of services of such employees could not be given. In State of Himachal Pradesh v. Ashwani Kumar and Others, JT (1996) 1 S.C. 214 a project had to be closed down for non-availability of funds. It was held that a direction to regularise the displaced employees of the project could not be given because such direction would amount to creating posts and continuing them in spite of non-availability of work. So is the view taken in State of U.P. and Others v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Another, AIR (1996) SC 708.

12. In the cases at hand, on Special Leave Petitions being filed, by interim orders passed by this Court the employment of the petitioners was protected and they were continued in service. In its concern for the employees, the court directed the State of Rajasthan to examine the possibility of absorption of the petitioners if necessary by shifting them to other DRDAs and to indicate a scheme/roster for absorption/appointment. The court also at one stage adjourned the hearing in these matters to enable the respondent-State to frame a scheme, if any, so as to absorb the petitioners. An additional affidavit has been filed on behalf of respondent-State on 6.10.98 setting out the relevant facts and circumstances and explaining why the posts earlier held by the petitioners were abolished and how and why presently there were no costs available against which the petitioners could be accommodated or absorbed. However, at the end, the respondent-State has made a statement (vide para 9 of the affidavit dated 6.10.1998) which reads as under :

> "In view of the facts mentioned above and after evaluating the fact that the number of person working are already in excess to the posts existing in the DRDAs in the above mentioned categories, it is submitted that there is no scope of adjusting/ab-sorbing persons for the present, however in case if additional posts are created in future due to some new schemes/programmes, the petitioners and similarly situated persons can be given preference according to their seniority subject to eligibility after giving relaxa-tion of age."

13. In our opinion, when the posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end on account of the need for the project itself having come to an end either because the project was fulfilled or had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. The decision taken by the respondent-State to abolish the posts was a bona fide decision taken after due application of mind by appointing an Expert Committee which went deep into all relevant considerations and made recommenda-tions in the interest of rationalization. The decision is based on administra-tive and financial considerations. There is nothing wrong in the societies having acted on the policy decision of the State Government. Really speaking there was hardly anything left to be done by the DRDA societies at their own end. Inasmuch as the societies did not have any funds of their own independent of those made available by the State Government how could the societies have continued with the posts and the incumbents thereon though they were left with no means to pay salaries attaching with the posts.

14. An attempt was made by the petitioners to bring in some new material on record to raise a plea that a few years after the abolition of the posts, the respondents have opened new avenues of employment where against the petitioners could be accommodated. The respondents have disputed such stand taken on behalf of the petitioners. We find it difficult to entertain such plea taken at this stage and sustain the same when no reliable material has been placed before us to uphold such plea of the petitioners. In fact a similar attempt was made before the Division Bench also by the petitioners moving an application for review of the judgment of the Division Bench but the review petition was dismissed by the Division Bench forming on opinion that a new plea was not open for

consideration in review jurisdiction of the court and if at all there was any substance in such plea of the petitioners then it provided a new cause of action enabling the petitioners to file a fresh petition. In our opinion, the Division Bench was right in taking the view which it did. From the affidavit filed on behalf of State of Rajasthan and the figures placed before us in the form of a tabular statement we are satisfied that the State has already made effort at accommodating dislodged employees of one DRDA in other DRDAs as far as possible. There are no transferees/deputationists from Government occupying posts meant for LDCs or Class-IV in DRDAs and therefore the petitioners' plea that they may be accommodated by repatriating such governmental employees has no merit and no foundation.

15. We do not find any reason to interfere with the well considered judgment of the Division Bench of the High Court. In our opinion, these appeals are liable to be dismissed and are dismissed accordingly subject to the observation that the petitioners must feel satisfied with the stand taken by the State Government in the affidavit dated 6.10.1998 filed on its behalf, the relevant extract wherefrom has been re-produced in para 12 above. Subject to this observation C.A. 5476-83 of 1998 and CA 5484-94 of 1988 are dismissed.

16. Writ Petition (Civil) No. 540 of 1998 was filed by Rafiq Ahmad and others who were working as bio-gas mistry Grade- II under DRDAs and their employment was also terminated consequent upon a decision taken to abolish the posts of Bio-Gas Mistries Grade-II. This writ petition was simply retained for hearing with the appeals dealt with hereinabove. As we have found the petitioners in the civil appeals not entitled to any relief, for the same reasons the petitioners in Writ Petition (C) No. 540 of 1998 also are held not entitled to any relief. The petition is dismissed subject to the observation that in the event of any additional posts being created in future due to some new schemes/programmes being introduced, the petitioners herein may be given preference according to their seniority subject to eligibility after giving relaxation of age in view of the service so far rendered by each one of them in the DRDAs.