



Ms. Nitika Sud
 Mr. Ritwick Dave
 Mr. Shyogi Ram Sharma
 Mr. Shyogi Ram, Adv. on behalf of
 Mr. Lokesh Sharma

HON'BLE MR. JUSTICE INDERJEET SINGH

Reportable

Order

06/04/2022

1. Since identical questions of facts and law are involved in these petitions, therefore with consent of the parties, these writ petitions have been heard finally and are being decided by the present order.

2. On the request made by the parties, the facts have been noticed from S.B. Civil Writ Petition No.6232/2019 and the prayer made therein reads as under:-

"It is, therefore, humbly and most respectfully prayed that your lordships may very graciously be pleased to admit and allow this Civil Writ Petition and further;

i. By issuing appropriate writ order or direction, Respondents may be restrained from terminating the services of the petitioners from the post in question and they may further be restrained from replacing the petitioners from another set of contractual employees in DAY-NULUM scheme till the currency of the project.

ii. By issuing appropriate writ order or direction, the respondents may be directed to strictly adhere with the operational guidelines issued by the government of India in respect of DAY-NULM project and accordingly respondents may be directed to extend the benefits as mentioned in the operation guidelines.

iii. By issuing appropriate writ order or direction, the order dated 08.03.2019 may be quashed and set aside and respondents may be directed to engage the petitioners directly on the post in question.

iv. That any other order or direction as this Hon'ble High Court may deem fair, just and



proper in the facts and circumstances of the case may be passed in favour of the Petitioner.”

3. Brief facts of the case are that the Government of India introduced a scheme namely **DEENDAYALANTYODAYAYOJNA-NATIONAL URBAN LIVELIHOOD MISSION (DAY-NULM)** (hereinafter to be referred as the “**Scheme**”) for the purpose of reducing poverty & vulnerability of the urban poor households by enabling them to get the gainful self employment and skilled wage employment opportunities, ultimately resulting in appreciable improvement in their livelihoods on sustainable basis through building grass route level institutions of the poor by tendering process. The scheme started in the year 2014-2015 and has been decided to be funded 60% by the Central Government and 40% by the State Government. Implementing the said scheme in the State of Rajasthan, the respondents invited bids from the placement agencies to provide manpower of various posts. In the case of the petitioners, the placement agency namely T & M Services Consulting Private Limited Mumbai (hereinafter to be referred as the “**placement agency**”) was engaged by the respondents for providing manpower at the State Level as well as at the District Level. The said placement agency issued the advertisement for hiring the persons on various posts i.e. State Manager, District Manager and Community Organizer, on contract basis. The petitioners pursuant to the advertisement issued by the placement agency applied for appointment on the respective posts and after consideration, the petitioners were given offer of appointment on the respective posts by the placement agency. Initially, the process was started in the year 2015 and the petitioners were engaged on contract basis on the respective posts





by the placement agency initially for a period of one year and their term on contract basis was extended further from time to time. It has also come on record that taking into consideration the achievement of 100% of targets allocated under the said scheme, the term of said placement agency was accordingly extended by the State Government, thereafter the term of said placement agency was ultimately terminated on 15.06.2019. After the termination, a new tender was floated in which the placement agency namely B.S.A. Corporation, Pune was selected, which entered into a contract with the State Government for the purpose of providing manpower on various posts. Thus, a perusal of the factual matrix shows that the State Government entered into a contract with the placement agency for manpower and the placement agency invited applications for appointment on various posts on contract basis and after consideration, the persons like the petitioners were given appointment, as such it is clear that the petitioners' appointments was contractual, made by the placement agency, their salary/remuneration was also paid by the placement agency and therefore the petitioners are not either contractual or regular employees of the State Government in any manner.

4. These writ petitions have been filed by the petitioners claiming themselves to be the employees of the State Government and have prayed for providing them regular pay-scale and salary of the post directly from the State Government and not from the placement agency and have also claimed regularisation.

5. Counsel for the petitioners submitted that the petitioners although have been engaged through placement agency but in fact they are employees of the State Government. Counsel further submits that their term was extended by the placement agency on



the recommendations of the State Government. Counsel further submits that the scheme in question is still continuing but the respondents in an arbitrary manner want to terminate their services. Counsel further submits that in other States, the persons have been directly appointed on contract basis by the State Government and not through the placement agency, therefore, the action of the respondents in terminating services of the petitioners is violative of principles of natural justice. Counsel further submits that the respondents have not paid due salary to the petitioners and even in some of the cases, the respondents have orally terminated their services. Counsel further submits that their salary has already been reduced by the respondents without any justifiable reason. Counsel further submits that the State Government has enacted Rajasthan Contractual Hiring to Civil Posts Rules, 2022 (hereinafter to be referred as the "**Rules of 2022**") vide notification dated 11.01.2022. Counsel further submits that the respondents have also issued the order dated 31.03.2022 with regard to implementation of the Rules of 2022.

6. In support of the contentions, counsel for the petitioners relied upon the judgment passed by the Hon'ble Supreme Court in the matter of **Mohd. Abdul Kadir & Anr. Vs. Director General of Police, Assam & Ors.** reported in **(2009) 6 SCC 611**.

7. Mr. Anil Mehta, AAG opposed the writ petitions and submitted that there is no direct relationship of employee and employer between the petitioners and the respondent-State. He further submits that admittedly there is no privity of contract, as the contract was entered between the placement agency and the petitioners. He further submits that the scheme has been sponsored by the Central Government and the petitioners have



failed to implead any of the concerned official of the Central Government as party-respondent in the writ petitions. Counsel further submits that during pendency of the writ petitions, number of posts have been reduced and certain were abolished. Counsel further submits that the Rules of 2022 framed by the State Government provides for appointment of the persons on contract basis directly by the State Government and as per Rule 5 of the Rules of 2022, if the respondents fail to engage the persons on contract basis then the applications have to be invited through public advertisement, which is not the situation here as in the present matter no public advertisement has been issued by the State Government, rather the petitioners were appointed by the placement agency, as such the Rules of 2022 are not at all applicable in the case of the petitioners as they are not the contractual employees of the State Government and lastly prayed for dismissal of the writ petitions.

8. In support of the contentions, counsel for the respondents relied upon the judgment passed by the Coordinate Bench of this court in the matter of **Rohitash Verma & Ors. Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.3540/2020) and other connected petitions**, decided on **24.11.2021**.

9. Counsel further relied upon the judgment passed by the Division Bench of this court in the matter of **Prahlad Sahai & Ors. Vs. Employees State Insurance Corporation & Anr. (D.B. Civil Writ Petition No.14618/2020)** decided on **07.07.2021**.

10. Reliance was also placed upon the judgment passed by the Division Bench of this court in the matter of **Khemraj Mali & Ors.**



Vs. State of Rajasthan & Ors. (D.B. Civil Special Appeal (Writ) No.652/2021 decided on **05.08.2021**.

11. Heard counsel for the parties and perused the record.
12. The Hon'ble Supreme Court in the matter of **K.K. Suresh & Anr. Vs. Food Corporation of India & Ors.** reported in **(2018) 17 Supreme Court Cases 641** in para No.7, has held as under:-



"In the first place, the Appellants failed to adduce any evidence to prove existence of any relationship between them and the FCI; Second, when the documents on record showed that the Appellants were appointed by the FCI Head Load Workers Co-Operative Society but not by the FCI then obviously the remedy of the Appellants, if at all, in relation to their any service dispute was against the said Society being their employer but not against the FCI; Third, the FCI was able to prove with the aid of evidence that the Appellants were in the employment of the said Society whereas the Appellants were not able to prove with the aid of any documents that they were appointed by the FCI and how and on what basis they claimed to be in the employment of the FCI except to make an averment in the writ petitions in that behalf. It was, in our opinion, not sufficient to grant any relief to the Appellants."

13. The Division Bench of this court in the matter of **Rakesh Kumar & Ors. Vs. State of Rajasthan & Ors. (D.B. Special Appeal Writ No.1040/2021 and other connected appeals, decided on 20.12.2021)** has held as under:-

"This quite apart, there was clear agreement between the Government and the service provider which was essentially for providing the workforce for implementing the scheme. The entire responsibility of providing the workforce was on the service provider. The agreement clearly envisaged that upon completion of the tenure of the contract the workforce provided by the service provider would be withdrawn. In clear



terms thus there was no privity of contract between Government and the petitioners. This is not a case of engagement of the employees by the Government on contractual basis. The contract was between the Government and the service provider and if at all it may be an understanding between the service provider and the petitioners. In any case, the engagement cannot be seen as engagement of the petitioners by the Government on contractual basis. Any other view would make the task of the service provider wholly redundant and would also amount to overriding the agreement between the Government and the service provider. The general principle therefore that one set of contractual employees cannot be replaced by the another set of contractual employees as long as the work lasts cannot be applied in the present case.

In the result all the appeals are dismissed. Pending applications if any also stand disposed of."

14. Admittedly, there is no relationship of employee and employer between the petitioners and the respondents as the offer of appointment was given to the petitioners by the placement agency and the salary/remuneration was also paid to the petitioners by the placement agency. Initially, the contract was for a period of one year and the term of petitioners' services was further extended from time to time by the placement agency. The Rules of 2022 referred by the counsel for the petitioners relate to the persons appointed by the State Government on contract basis through public advertisement and admittedly the petitioners were not engaged as contractual employees directly by the State Government rather were appointed by the placement agency, as such the Rules of 2022 are not at all applicable in the case of the petitioners.





15. In view of the above discussion, these writ petitions filed by the petitioners deserve to be dismissed for the reasons; firstly, the petitioners have failed to establish their relationship of employee and employer with the respondent-State and only narration in the petition cannot be considered to be a justifiable ground to grant the relief prayed for, unless it is supported by cogent evidence on record as has been held by the Hon'ble Supreme Court in the **matter of K.K. Suresh (supra)**; secondly, as per own version of the petitioners, they were appointment by the placement agency but failed to implead the placement agency as party respondent in the writ petitions; thirdly, the salary/remuneration was also paid to the petitioners by the placement agency and not by the State Government; and lastly claim of the petitioners for regularisation in the State cannot be approved by this court as the petitioners were never appointed by the State Government against sanctioned post on regular basis, rather, as already observed above they were appointed by the placement agency; therefore, in the facts and circumstances, the petitioners have completely failed to make out a case against the respondents, as such I am not inclined to exercise the jurisdiction of this court under Article 226 of the Constitution of India.

16. As a result of the aforesaid discussion, these writ petitions fail and are hereby dismissed. A copy of the order be placed in each connected file.

(INDERJEET SINGH),J

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