

CASE NO.:
Appeal (civil) 7999 of 2002

PETITIONER:
District Rehabilitation Officer & Ors

RESPONDENT:
Jay Kishore Maity & Ors.

DATE OF JUDGMENT: 10/11/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
WITH
Civil Appeal Nos. 4313-4319 of 2003

S.B. Sinha, J.

Union of India filed a Scheme for Rehabilitation of the disabled people. The project started with financial assistance of Central Government/Union of India. The full financial assistance was extended till 1993, whereafter only 50% of financial assistance was provided for by the Central Government. The Union of India, however, took up the entire financial burden for the project with effect from 31.1.1998.

Pilot projects were started under which centres were established in several States of the country with a view to identify the services required by the disabled population, to assist the manpower required for delivering those services to them or to work out the modalities for the types of manpower etc. One of such centres was established in Kharagpur in the State of West Bengal and another in the district of Mysore in the State of Karnataka. For the purpose of execution of the said projects, a Project Coordination Committee was constituted. A set of detailed guidelines were circulated. The Project Coordinator would be the main agency to implement the Project and would function through Member Secretary of the State Level Advisory Committee. The Scheme dated 3.1.1983 was circulated with the concerned State Governments by the Joint Secretary of the Union of India. The total package of services for the disabled starting with awareness in the community and ending with their economic rehabilitation was to contain with the following elements:-

- "1) Creation of community awareness about the disabled population in order to seek community participation in the measures for the welfare of the disabled.
- 2) parent counseling about the home care and management of the disabled child.
- 3) promote dissemination of information on prevention, early detection and possibilities of treatment of the disabled.
- 4) arrangements for screening of disabilities and early referrals.
- 5) arrangements for physical rehabilitation including medical or surgical intervention.
- 6) integration of disabled children in normal schools schedule and establishment of special schools wherever necessary.
- 7) provision of vocational training for the disabled.
- 8) employment guidance and placement services both in integrated as well as sheltered conditions of the

disabled."

The category of employees found suitable for recruitment for the project were: (i) Community Health Workers; and (2) Anganwari Workers. The Scheme envisaged that the Pilot Scheme with the infrastructure provided should be utilized by the State Governments with an intent to continue the project. The infrastructures created for these pilot projects was expected to prove to be useful for training the required manpower for future pilot projects and similar centres which the State Governments may like to establish. The Project Coordinators of the Rehabilitation Centres were the officers of the State Governments of States of West Bengal and Karnataka. They selected the employees for the said Rehabilitation Centres. The employees were offered a salary of Rs. 660/- in the scale of Rs.660-60-1100-50-5600. Indisputably they have been working for a long time. Initially as noticed hereinbefore, although funds were provided by an outside agency, the same have been taken over by the Central Government. Terms and conditions of service of the employees appointed were governed by the rules applicable to the employees of the State Governments. The pay-scales applicable to employees of the State Government were also applied to their case. The employees, however, filed Original Applications before the Central Administrative Tribunal, Calcutta as also Karnataka at Bangalore, inter alia, contending that they being the employees of the Central Government, the terms and conditions of services applicable to the Central Government should apply in their case also. A preliminary objection was taken as regards of the jurisdiction of the Tribunal on the premise that the applicants were the employees of the State Governments. By a judgment and order dated 14.7.2000, the Tribunal held:-

"12...So we are, therefore, of the clear opinion that applicants were appointed by the Project Officer for and on behalf of the Central Government and the Central Government had direct control over the DRC and fund is being provided by Central Government and we are satisfied from facts that the prima facie it is for determination of the relationship between the employer and the employee which is in existence in this case; Central Government is employer of the applicants and the employees are entitled to claim to be employees of the Central Government. In view of the aforesaid circumstances, we find that there cannot be any dispute in this case that the Tribunal has no jurisdiction to adjudicate the grievance of the applicants who were directly appointed and being controlled by the Central Government. It is true that the aforesaid applicants are getting the pay and allowances as per rate prescribed by the Govt. of West Bengal. It is found that the scale prescribed by the government of West Bengal has been adopted by the concerned authorities under the scheme. So, were adoption of the scale of the State Government does not disentitle the applicants the right of status of the Central Government employees under the scheme.

13. In view of the aforesaid circumstances we are of the view that the applicants are the employees of the Central Government though their salary is being paid as per scale of the State Government. Under the circumstances stated above, we allow the application with a direction upon the respondents to treat the aforesaid applicants as employees of the Central Government and to grant the relief's to the applicants in accordance with the rules in respect of salary, provident fund etc. with immediate effect. No cost."

A writ petition filed thereagainst by Appellants herein has been

dismissed by a Division Bench of the Calcutta High Court by reason of the impugned order. The Division Bench although noticed the pleadings of the parties as also the submissions made at the bar at great details, but merely held:-

"We have carefully considered the submissions made on behalf of the respective parties and we are inclined to agree with the findings of the learned Tribunal regarding the status of the private respondents herein. The Scheme for setting up the Pilot Projects for the District Rehabilitation Centres amply demonstrate that the same was a Scheme of the Ministry of Social Welfare, Government of India, and the State Government was merely the implementing agency through its officers of the Social Welfare Directorate. The entire funding and recruitment process and the manner of functioning, as provided for in the Scheme, is under the direct control of the Central Government, and even the State Level Advisory Committee, which was to be chaired by the Secretary of the Social Welfare Department, was required to send periodical reports of the functioning of the District Rehabilitation Centre to the Central Government."

Mr. Doabia, the learned Senior Counsel appearing on behalf of Appellant, inter alia, contended that keeping in view the scheme floated by the Central Government, the manner in which the funds were secured and implementation of the scheme that took place, it is evident that Respondents were the employees of the State of West Bengal and State of Karnataka respectively. It was submitted that in any event as the project has been wound up from 1st April, 2006 and no budgetary provisions therefor having been made for payment of salaries to the employees, this Court should pass an appropriate order. It was urged that the Central Administrative Tribunal as also the High Court applied wrong tests in determining the relationship of 'Employer and Employee and failed to consider that effective control over the employees was with the State Governments and not the Central Government. Mr. Doabia has also pointed out that some of the State Governments e.g. State of Chhattisgarh, Rajasthan and Tamil Nadu have taken similar projects on their own.

Mr. Jaideep Gupta and Mr. P. Vishwanath Shetty, learned Senior Counsel appearing on behalf of the State of West Bengal and State of Karnataka, on the other hand, supported the impugned judgments.

They, moreover, appealed that having regard to the number of years Respondents had served in the projects, the Scheme should either be directed to be continued or the employees be directed to be absorbed either by the Central Government or by the State Governments of West Bengal Karnataka, as the case may be.

By an order dated 13.9.2006, we recorded as under:-

"A statement has been made by Mr. T.S. Doabia, learned senior counsel appearing on behalf of the Union that the Central Government has stopped releasing any fund from 1.4.2006. On a query made by us in that behalf it was stated at the Bar that so far as the employees of the State of West Bengal are concerned, they have been paid salary up to July 2006 and so far as the employees working in the State of Karnataka are concerned, they have been paid their salary up to August 2006. We have been given to understand that the salary to the respondents herein could be disbursed by the Council only from the excess fund available with it from the last

years' budget and the amount now stands exhausted in view of stoppage of the grant by the Central Government.

We direct the State of Karnataka as also the State of West Bengal to state on oath as to whether they would like to continue with the projects in lieu of the scheme as has been done by the States of Chhattisgarh, Rajasthan and Tamil Nadu. Learned counsel for the Central Government shall hand over a copy of the project adopted by the State of Tamil Nadu, Rajasthan or Chhattisgarh, as the case may be, to Mr. Tapash Ray, learned senior counsel appearing on behalf of the State of West Bengal and Mr. Sanjay Hegde, learned counsel appearing on behalf of the State of Karnataka so as to enable them to seek instructions as to whether their States are prepared to continue with the said projects on the terms adopted by the said States.

We would also direct the Government of India to file an affidavit as to what steps, if any, are feasible to be taken by it for continuation of the project at least for some time more so that solution of the problem may be found out by this Court in the meanwhile in the event the States express their inability to continue with the existing project. We also direct the respondents to file affidavit(s) stating as to whether they are ready and willing to serve other projects run by the Central Government, in the event the Government of West Bengal and Government on the other are not ready and willing to continue with the projects.

The directors of Social Welfare Department of the State of West Bengal as also the State of Karnataka would also file a status report as regards the project by 26.9.2006."

Pursuant to the said direction, the Director of Social Welfare as also the Secretaries of the Social Welfare Departments of the States of West Bengal and Karnataka have filed their respective status reports. According to the respective State Governments, they are not in a position to take over the project. It was urged that the State Governments run other projects and also provide adequate funds to Non-Governmental Organisations which have been working in the field and the projects should, thus, be directed to be continued by the Central Government only.

In its counter-affidavit, the State of West Bengal, inter alia, contended that the Central Government has been running four other projects in the District of Midnapore. The State Governments has other projects for which budgetary provisions to the extent of Rs. 6 crores per annum have been made and thus in view of the acute financial constraints, continuation of the projects like the present one would not serve any purpose. An affidavit has also been filed by the State of Karnataka almost to the same effect.

The Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Act was enacted to give effect to the proclamation on the full participation and equality of people with disabilities on both Central and State Governments. Implementation of its provisions is the primary responsibility of the State Governments. The projects were started at different centres in different States by the Central Governments by way of a Scheme. The funds for the said projects initially came from the Central Government. The purpose of a pilot project has been noticed by us hereinbefore. The control of the Rehabilitation Centres for the benefit of the people for whom the same were started was with the concerned State Governments.

The employees do not become the employees of the Central Government only because the project was conceived by it or it used to give

directions from time to time. The tests which are determinative for ascertaining the relationship of 'Employer and Employee' are well known viz. functional test or control test or organisational test etc. For determination of relationship of the employer and the employees, separate tests may have to be applied having regard to the factual matrix involved in each case. The parties did not adduce any oral evidence before the Central Administrative Tribunal. The Central Administrative Tribunal although referred to some of the decisions of this Court, but without applying them, opined that Respondents are the employees of the Central Government. No reason has been assigned therefor. No analysis of the available materials was made.

The question has been considered by this Court in *Workmen of Nilgiri Coop. Mkt. Society v. State of T.N. and Others* [(2004) 3 SCC 514], wherein it has been held:-

"Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the employees concerned are employees of the contractors has never been an easy task. No decision of this Court has laid down any hard and fast rule nor is it possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test \026 be it control test, be it organization or any other test \026 has been held to be the determinative factor for determining the jural relationship of employer and employee."

[See also *Haldia Refinery Canteen Employees Union and Others v. Indian Oil Corporation Ltd. and Others* 2005 (5) SCC 51].

In *State of Karnataka and Others v. KGSD Canteen Employees' Welfare Assn. and Others* [(2006) 1 SCC 567], this Court held:-

"We, however, intend to point out that in a case of this nature even an industrial adjudicator may have some difficulty in coming to the conclusion that employees of a canteen for all intent and purport are employees of the principal employer."

We, therefore, with respect, are unable to agree with the findings of the Central Administrative Tribunal as also the Division Bench of the High Court.

A question has arisen as to whether the employees are the employees of the State of West Bengal or the District Rehabilitation Centres. In view of the order proposed to be passed by us, it may not be adverted to at this state as we are of the opinion that the projects should be continued by the State of West Bengal and the State of Karnataka as the case may be. Even if the States think it fit to close down the project, the services of the employees working in the rehabilitation centres should be continued.

In a case of this nature, however, we think it expedient to invoke our jurisdiction under Article 142 of the Constitution of India. The Central Government has categorically stated that those employees who would opt for employment under the Central Government may be accommodated in its ongoing projects. Pursuant thereto or in furtherance thereof, the concerned employees who have affirmed affidavits showing inclination to serve any project under the Central Government, may be absorbed by it. Services of those employees may be utilized by the Central Government in any of its project. They would, however, be continued to be paid salaries on the same scale of pay. Their experience may also be considered for the purpose of determination of their seniority, subject of course to any rule which is in operation in the field. All other financial benefits including those of superannuation benefits should be protected. It is, however, clarified that such employment under the Central Government would be temporary and

personal posts which would come to an end with the retirement of the concerned employees.

Similarly those Respondents who have opted for their employment with the State of West Bengal or the State of Karnataka, as the case may be would be absorbed by the States of West Bengal and Karnataka, as the case may be, on the same terms and conditions as referred to hereinbefore.

Keeping in view the nature of order passed by us, it is clarified that the same shall not be treated as a precedent. We also make it clear that these orders have been passed by us keeping the stand taken by the parties. These appeals are disposed of with the aforementioned directions. There shall be no order as to costs.

JUDIS