

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Abhijit Gangopadhyay

WPA 692 of 2022

Shri Alope Singh & Ors.

-Versus-

Indian Statistical Institute & Ors.

For the petitioners : Mr. Raghunath Chakraborty
: Ms. Tanusree Das
:

For the Respondents : Mr. Debapriya Gupta
:

Heard On: 14.01.2022

Judgment On: 14.01.2022

Abhijit Gangopadhyay, J.

1. The petitioners are the gardeners of Indian Statistical Institute (for short 'ISI') who started working as contractual employees in ISI from 2013. They were appointed through a recruitment procedure for which advertisement was published in news paper. (vide page 25 A of the writ application) From the documents it has been shown to me that in a meeting of the outsourcing committee dated 25th November, 2016 the recruitment policy was changed after going through the views of CAG and legal views taken by ISI that the extension (of contract) may

continue till they attain the age of 59 years if they are physically fit and medical test will be essential for that purpose. It is not at all the case of the respondents including the Government that after this decision dated 25.11.2016 there is such change of circumstances whereby this decision of the outsourcing committee taken on 25th November, 2015 is required to be changed and the petitioners can be sent under some contractor for the same job as has been decided now as shown to me by the respondents to one Government labour contractor namely Kalpataru Enterprise for one year. Against 59 years of age as was decided by the outsourcing committee the petitioners are giving job for 1(one) year service period. This is clearly prejudicial to the interest of the petitioners. A benefit granted to the contractual workers by a committee of the autonomous body can never be changed to the detriment of the beneficiary workers that too without taking their consent. This is wholly illegal. Every citizen of this country has a status and prestige as human being as guaranteed by Article 21 of the constitution of India and their life and prestige as a human being cannot be dealt with by some powerful persons like pawns.

The documents in respect of sending of the persons for contractual service under Kalpataru Enterprise instead of ISI are kept on record.

2. No prayer for filing affidavit-in-opposition has been made by the respondents and the matter is heard in extenso.
3. The minutes of the meeting of the ISI council dated 03.01.2022 in respect of considering the matter relating to engagement of contractual

manpower shows that some Government officers are making comments in respect of running of an autonomous institution as if from a higher pedestal without giving any reason for their comments. Therefore, I do not know what is the reason when it has been stated by the Chairman that when the question as to contractual employee was sent to Ministry of Statistics and Programme Implementation representative who clearly said that continuation of employment on contractual basis period after period is not correct(vide page 148 of the writ application).

Why it is not correct if the autonomous body decides that?

Again in page 148 of the writ application it appears that one Government officer has stated that continuation of contractual appointment in the way it has been done cannot be supported by the Government.

Why it cannot supported? What is the reason? Cannot the autonomous body have its own say and decisions in the matter?

There is no answer.

Again it appears from page 148 of the writ application that if there are no regular posts and the services are required the services should be outsourced.

Why the services should be outsourced? What is the reason? Where is the financial involvement and analysis? Is expenditure the only guiding factor in such cases? Service of human beings under a protective umbrella of an autonomous body has no value to a welfare state? And what will happen to the already taken decision of continuation of the

contractual employee till 59 years? When this decision has been overruled? Why this decision of the said committee of the autonomous body will not be respected?

There is no answer.

4. The minutes of the meeting dated 3rd January, 2022 and the decision taken in the meeting as to outsourcing the job for which the petitioners were engaged is wholly unreasonable. High handedness is no substitute for reasoning. In an autonomous institution no Government officer can dictate terms as if standing on a higher pedestal as has been done by some Government Officers in the meeting dated 03.01.2022.
5. An autonomous institution has autonomy in its administration and in its other functions. The Government cannot play the role of a modern day Shylock by saying, as the Government is putting the money, Government will control the autonomous institution in administrative functions. This cannot be done in a country like India where a large number of autonomous bodies are working for a long time. Where is the declared policy which says that the Government will interfere into the administration and other works of the autonomous body? Or such interference would be done in an indirect manner? As the Government is giving money it cannot say that it will control partially or in full an autonomous body, the Government is duty bound to give the money which is not anybody's personal money but the money of the people of India collected from tax and other sources and the Government cannot question the autonomy enjoyed unless there is very serious irregularities in respect of the autonomous institution. No serious financial

irregularity has been shown here. Here some person would do the same job but now not under ISI but under a Government contractor.

What is the purpose? Nobody has been able to explain it before me.

6. Further, I find that the breaks given in the contractual services of the petitioners (vide paragraph 4 of the writ application) are wholly artificial to save the rigour of law. What is the reason for giving such artificial breaks except doing something indirectly when the same cannot be done directly? If required, it could have been said to the contractual employees that their services were not required. Instead of doing so, by giving such artificial breaks after each contractual period to show the employees before the law as they are contractual employees when their duty is perennial in nature. Such artificial breaks given to the contractual employees are not at all acceptable to this court which exercises jurisdiction under the Constitution of India as it is unfair. In favour of the petitioners a right has already grown, as the breaks were artificially given for permanent absorption in ISI. Thus the petitioners who are entitled to be absorbed in ISI permanently are being sent under a government contractor for one year service. From annexure P-1 it is evident that the appointment of the petitioners were not back door appointments.
7. Hence, I wholly set aside and quash the resolution taken in the meeting dated 03.01.2022 that ISI should procure the cooking and gardening services by following the due procedure on GeM. In no circumstances petitioners can be pushed to a Government contractor from the fold of ISI. On the contrary ISI should consider with sincerity about giving

permanent employee status to the petitioners as artificial breaks were given in their contractual periods from 2013 to 2021.

8. The petitioners shall work under ISI as they were working and under no circumstances their services can be terminated without following the decision of the outsourcing committee dated 25.11.2016 as to physical fitness and medical test by the ISI and they cannot be transferred to a contractor from the fold of ISI.
9. The writ application is allowed.

No costs.

LATER: The respondent ISI has prayed for stay of this order which is considered and rejected.

(Abhijit Gangopadhyay, J.)