

(2002) 04 RAJ CK 0123

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 1091, 971, 972, 973, 758, 759, 760, 761, 801, 851 and 852 of 2000

Abhijit Sutradhar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-04-2002

Acts Referred:

Rajasthan Animal Husbandry Service Rules, 1963 — Rule 26

Citation : (2003) 1 WLN 175

Hon'ble Judges : P.C. Tatia, J;Arun Kumar Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Kumar, C.J.—A large number of writ petitions were disposed of by the learned Single Judge by one common judgment dated 19th July, 2000, dismissing the writ petitions. These appeals have been filed against the said judgment of the learned Single Judge and are being disposed of by this common judgment.

2. Briefly, the facts are that the Animal Husbandry Department of the State Government had a large number of vacancies in the post of Veterinary Assistant Surgeon. The State Government was not in a position to fill the posts of regular basis because the Rajasthan Public Service Commission (hereinafter referred to as "the RPSC"), was not in a position to take necessary steps for regular appointments to the posts. Therefore, in pursuance of Rule 26 of the Rajasthan Animal Husbandry Service Rules, 1963 ad hoc short term appointments were made, Rule 26 provides as under:

Urgent Temporary Appointment: (1) A vacancy in the service which cannot be filled in immediately either by direct recruitment or by promotion under the rules may be filled in by the Government or by the authority competent to make appointment as the case may be by appointing in an officiating capacity thereto an officer eligible for appointment to the post by promotion or by appointing

temporarily thereto a person eligible for direct recruitment to the Service, where such direct recruitment has been provided under the provisions of these Rules.

Provided that such an appointment will not be continued beyond a period of one year without referring the case to the Commission for concurrence, where such concurrence is necessary, and shall be terminated immediately on its refusal to concur.

Provided further that in respect of the Service or a post in the Service for which both the above methods of recruitment have been prescribed, the Government or the authority competent to make appointment, as the case may be, shall not, save with the specific permission of the Government in the Department of Personnel in the case of State Services and Government in the Administrative Department concerned in respect of other services, fill the temporary vacancy against the direct recruitment quota by a whole time appointment for a period exceeding three months, otherwise than out of persons eligible for direct recruitment and after a short term advertisement.

Selection Committees headed by the District Collectors and comprising officers of the Animal Husbandry Department in the respective districts selected eligible candidates and short term appointments were made vide order passed in July, 1998, 183 persons were appointed. The appointments were made on ad hoc basis for a period of four months or till the regularly selected candidates by the RPSC were made available, whichever was earlier. Admittedly, the services of these recruits were extended from-time to time on same terms and conditions. In August, 1999, 100 posts of Veterinary Assistant Surgeons were advertised for the purpose of regular appointment. The RPSC made regular selections for 100 posts in June, 2000. As regular appointments could not be made expeditiously the Government sought concurrence from the RPSC for extension of service of the ad hoc appointees. The Commission accorded sanction only upto 30th June 2000. Therefore, the Government issued orders that the services of the short term ad hoc appointees would not be extended beyond 30th June 2000. These persons challenged these orders by way of writ petitions filed in this Court.

3. The petitions can be broadly divided into two categories. The first category is of those ad hoc appointees who were successful in getting selection in the selection held by the RPSC for regular appointments in June, 2000. The other category is of persons who failed to get selection in the said selection for regular appointment. Since services of all the 183 ad hoc short term appointees were sought to be terminated irrespective of the fact whether they were selected for regular appointment in June, 2000 selection by the RPSC or not, both categories of persons were aggrieved and therefore, they approached the Court. The prayer of the persons who got selected in the selections for regular appointments is that they should be treated as regularly appointed and their services be not terminated, while the prayer of the other category of petitioners was that since more are 183 posts and regular selection has been made by the RPSC only for 100 posts, regularly selected candidates in the remaining posts are still not

available and, therefore, their services should not be terminated. The learned Single Judge by the impugned judgment dismissed all the writ petitions mainly on the ground that all the 183 appointments made on short term ad hoc basis were contrary to Rules and, therefore, these appointments were illegal and no benefit could be granted to the petitioners.

4. The learned Counsel appearing for the appellants have in the first instance argued that this was no body's case that the 183 ad hoc appointments were illegal and therefore, they could not be continued. Our attention was drawn to the counter affidavit filed on behalf of the respondents in reply to the writ petition where it is stated that the posts for temporary appointments were advertised on 27th August, 1997 and by letter dated 16th September, 1997 a Committee was constituted consisting of District Collector and Animal Husbandry Officers to select candidates for temporary appointments for four months in the year 1998. On directions of the State Government vide letter dated 9th June 1998 the Director, Animal Husbandry Department issued a short term advertisement on 19th June, 1998 to appoint temporary Veterinary doctors for fixed short term on the selected candidates from RPSC were made available. It was in pursuance of this that districtwise selection committees were constituted consisting of the District Collector of the Area and the Department of Animal Husbandry who made selection of eligible persons for temporary short term appointments to the post of Veterinary Assistant Surgeons. Thus the Government never questioned the validity of these appointments. The Government has not taken the stand that these appointments were initially illegal nor even during the course of hearing of these appeals it was submitted on behalf of the respondents that the initial appointments of 183 persons on ad hoc short term basis were in any way illegal or questionable. Rule 26 of the Animal Husbandry Service Rules referred to hereinbefore permits such appointments. Therefore, when the validity of the appointments was never in question, in our view the learned Single Judge ought not to have gone into the aspect of validity of the appointments of 183 doctors. Possibly, the only reason for treating these appointments as illegal was the provision that if the appointments were to be continued for more than a year, concurrence of the RPSC ought to have been sought. If that is so, in the first instance the initial appointments cannot be said to be bad because the question of concurrence will arise only on or about the expiry of one year period. Secondly, it is to be noted that if the State Government fails to seek the approval of the RPSC and extends the appointments from time to time the concerned employees cannot be faulted and cannot be made to suffer on this account Thirdly, it has often been held that provisions regarding approval of the Public Service Commission being required, are only directory and not mandatory. For all these reasons we are unable to hold that initial appointments were illegal or contrary to the Rules.

5. The next question which arises for consideration is the contention of the appellants that the appointment of the appellants contained a clause according to which the appointment would be continued till the regularly selected candidates

from the RPSC were available. It has been submitted by the learned Counsel appearing for the appellants that till today regularly selected candidates by the RPSC for all the posts are not available because the RPSC has handed over list of 100 selected persons only whereas when the appellants were appointed 183 appointments were made. So at least 183 posts were there which were being manned by appellants and their other colleagues who were selected along with them. These 183 appointees continued to hold the posts till the impugned orders refusing to extend their service after 30th June, 2000 were passed. Therefore, duly selected RPSC candidates for all the posts were still not available and the appellants were entitled to be continued in the posts in which they had been appointed. In reply to this argument, the learned Counsel appearing for the respondents only submitted that the appointments of the appellants were fixed term appointments and on expiry of the term the appellants had no legal right to continue. In our view, this submission made on behalf of the respondents cannot be accepted. The appointments were not merely fixed term appointments. The appointment orders contained a clause for fixed term or till regularly selected candidates from the RPSC were available, whichever was earlier. So far as the words "whichever was earlier" are concerned, they lost their meaning in view of continued extension of services of the appellants from time to time because of non-availability of duly selected candidates by the RPSC. The only condition as per the appointment orders which continued to survive was "till regularly selected candidates from the RPSC were available". This condition as per facts on record continued to be still not satisfied because regularly selected RPSC candidates for all the posts are still not available. As against 183 post candidates for 100 posts have been selected by the RPSC. In this list of 100 candidates also there are several persons out of 183 short term appointees who have been selected. Therefore, there is a wide gap between the number of posts and the number of RPSC selected candidates. It is not the case of the respondents that the need for manning all or even some of the posts in the Animal Husbandry Department has ceased or has reduced. Doctors are still needed by the department. By terminating the services of the appellants we fail to understand what the department is seeking to accomplish. It is also to be noted that there is no allegation against the appellants about their working efficiency or they being not upto the mark in the service. When persons are required by the department why those persons who are already continuing in service for long years should be terminated? The impugned action of the respondents has the adverse affect of ruining the career of the appellants. Some of the appellants must have become overage for government job by now and it will be difficult for them to get any other government appointment at this stage. The manner in which the Government has functioned in this case suggests exploitation of workers by the employer. The government is seen to be taking advantage of the prevailing unemployment in the country and indulging in exploitation. The appellants had no option but to take these jobs when they were offered the same in the year 1998 because of the non-availability of jobs. They accepted whatever terms that were offered to them by the Government. The government employed them when

it needed their services and now for technical procedural wrangles the government wants to throw these persons on the roads to be left to fend for themselves. The Government being a model employer should not indulge in such practices. We could understand a situation of termination of service on account of posts being abolished or need for keeping the posts filled disappearing. When the need for posts continues, it will be a better policy to give these doctors chances to get regularized and continue them in service, subject of course to their remaining fit to discharge their duties.

6. Accordingly, these appeals are allowed. Since regularly selected RPSC candidates are still not available for all the posts which were being hitherto manned by the appellants, the Government is directed not to discontinue the services of the appellants. This will however not come in the way of the respondents considering any action against any of the appellants on account of maintaining efficiency and discipline in service. We hope that the Government will explore appropriate steps to be taken to ensure that the appellants are not thrown on road after so many years of service.