
(2019) 07 RAJ CK 0115
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14586 Of 2018

Anil Lamba

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Rajasthan Educational Subordinate Service Rules, 1971 — Rule 6D

Citation : (2019) 07 RAJ CK 0115

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : C.S. Kotwani, J.S. Khichi, A.R. Godara, Anjali Gopa, Hanuman Singh, G.R. Siyag, V.R. Choudhary, Naresh Kumar, J.S. Bhaleria, Mahaveer Bishnoi, B.S. Tanwar, Shambhoo Singh, Sushil Solanki, H.S. Sidhu, Pramendra Bohra, M.S. Godara, Vikas Bijarnia, L.S. Jodha, Tanwar Singh, Ratish Bhatnagar, S.K. Verma, Rajesh Shah, Vikram Singh, Ram Dev Potalia, R.K. Chauhan, Hapu Ram, S.S. Nirban, H.K. Choudhary, R.C. Joshi, Himmat Jagga, Rakesh Matoria, Kailash Jangid, Mrigraj Singh Rathore, Nishant Motsara, R.S. Choudhary, L.R. Punia, Pankaj Sharma, Rishi Soni, Deepak Chandak

Final Decision : Disposed Off

Judgement

These writ petitions arise out of the orders passed by the respondents, wherein, the petitioners have been subjected to setup change under the provisions of Rule 6D of the Rajasthan Educational Subordinate Service Rules, 1971.

During pendency of the writ petitions, by order dated 11.10.2018 submissions were noticed on behalf of the respondents that the respondents had constituted a Committee with the Divisional Joint Director, School Education of the concerned Division, District Education Officer - Headquarter, Secondary Education of the concerned District and District Education Officer - Headquarter, Elementary Education of the concerned District and had afforded time to the petitioners, who had grievance qua the postings.

It was found that time granted to the petitioners was not sufficient and,

therefore, it was ordered as under:-

"In those circumstances, the petitioner/s, who has/have already filed his/her/their representation before the Committee constituted for the purpose, his/her/their cases as well as other petitioners, who have so far not filed their representations to the respondents, pursuant to the order dated 04.10.2018, may now file his/her/their representation/s with the Committee constituted for the purpose by 22.10.2018 and the respondents would deal with the representation/s appropriately latest by 26.10.2018.

The petitioner/s shall file exhaustive representation/s and the Committee shall ensure that while passing the orders, the grievances raised by the petitioner/s are dealt with appropriately.

Those petitioner/s, who chose not to raise any grievance by 22.10.2018 before the Committee, in his/her/their case/s the interim order, if any, shall come to an end on 22.10.2018.

The interim orders granted in the cases shall continue till the representation/s is/are decided by the respondents.

In case the petitioner/s is/are not satisfied with the disposal of the representation/s, he/she/they may make an application/s in this regard before the authorities and in his/her/their cases the interim orders shall continue till the next date."

Whereafter the matters remained pending.

By order dated 03.04.2019 time was granted to the respondents to file additional affidavit confining the same to the validity of Circular dated 14.09.2018 specially Clause 9 of the circular and to indicate the status of representations, if any made by the petitioners pursuant to the interim order dated 11.10.2018 and other orders passed by this Court.

Pursuant to the said order, the respondents have filed an affidavit dated 01.05.2019, wherein, submissions with regard to Clause 9 have been made alongwith a Schedule indicating the status of filing of the representations.

Whereafter, the parties were heard and as certain discrepancies were pointed out by the learned counsel, the respondents were directed to update the list, produced with regard to the cases where the representations were filed/not filed and status thereof.

Further, learned Additional Advocate General was directed to complete his instructions in relation to the manner, in which, the Grievance Redressal Committees have dealt with the representations made pursuant to the directions issued by this Court.

Today, learned Additional Advocate General has made submissions regarding passing of certain orders by the respondents qua certain petitioners qua whom

though it was indicated in the list that representations have been filed, however, no representations were filed indicating that the orders were wrongly passed as no representations were received and that the said orders have been cancelled.

Submissions have also been made that out of the present pending writ petitions, representations in 11 matters have been accepted and relief has already been granted to the said petitioners.

With regard to the nature of disposal of the representations made, it was attempted to submit that respondents have passed speaking orders while deciding the representations, however, it is fairly conceded that in most of the matters, the disposal may not be in the manner as expected.

Learned counsel for the petitioners made submissions qua the validity of Clause-9. It was submitted that the respondents were not justified in discriminating between the petitioners and other teachers so as not to subject them to setup change under Rule 6D of the Rules and/or not offering the petitioners all the positions available.

In view of the above fact situation, in so far as the cases where the petitioners despite passing of the order by this Court providing them opportunity to file the representations and ordering that in cases where representations are not filed, the interim orders granted would come to an end and in all those cases the petitioners have also been relieved by the respondents, the writ petitions shall stand dismissed. The list of such petitions is Schedule-A to this order.

The cases wherein the representations have been allowed by the respondents, those writ petitions are dismissed as having become infructuous, list of such petitions is Schedule-B to the order.

So far as rest of the cases are concerned, the only plea raised by the petitioners relates to Clause-9 of the order dated 14.09.2018 (Annexure-3), which reads as under:-

"9. ??? ????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ? ?????? ?? ?????????? ?? ?????????/????????????? ??? ? ???? ??, ??? ?????? ??? ?????? ?????? ??? ?? ??? ??"

It is submitted by learned counsel for the petitioners that not subjecting the Teachers to setup change, who are posted in the urban areas and subjecting the petitioners only to provisions of Rule 6D is discriminatory and, therefore, the same deserves to be set aside.

In the additional affidavit filed by the respondents, the nature and purport of Clause -9 has been explained as under:-

"6. In the instant case certain transfers were made as per the requirement and so also on the basis of certain representations made by teachers falling under certain special category like Physically Challenged, Widow, Divorcee etc., After completion of the exercise of the transfers, the process of counselling was

initiated in which the teachers who were already transferred in pursuance to Rule 6D were not included. Thus, in eventuality the teachers who were already transferred after change of setup were not given any benefit in counselling as they were not included in counselling. Under these circumstances it can be clarified that clause 9 of the order dated 14.09.2018 virtually gives no additional benefit to teachers who were already transferred to urban places as per orders of the State Govt. The said clause is nowhere giving rise to any sort of discrimination and is as such ineffective for all practical means."

It is, inter alia, submitted by learned counsel for the respondents that the Teachers, who were already subjected to the procedure under Rule 6D for change of setup, for them it was indicated in the Circular that despite having accepted the said change, if their names are included in the list, their option may be taken and they may be kept at the same place.

The indication made in the Circular in relation to the Teachers, whose names stand included in the list and who had already been subjected to the setup change cannot be faulted on part of the respondents, inasmuch as, once those Teachers have already been subjected to setup change and were working based on such status, they could not have been again subjected to the same procedure all over again and, as such, the plea sought to be raised based on the said Clause has no substance.

So far as the nature of disposal of the representations made by the petitioners pursuant to the provision for filing of such representations made by the respondents as well as order passed during pendency of the writ petitions by this Court is concerned, having gone through the nature of disposal made by the respondents through their Committee, the same leaves much to be desired, inasmuch as, apparently standard/cyclostyled orders have been passed by the respondents disposing of the representations only indicating the power to subject the petitioners to setup change under Rule 6D.

It is no doubt true that the respondents have the power to subject the petitioners to setup change under Rule 6D of the Rules of 1971 and consent in this regard is not required as laid down in the case of Jagdish Chandra Sen v. State of Rajasthan & Ors. : SBCW No.8224/2017, decided on 15.01.2018. However, the other grievances raised by the petitioners essentially pertaining to place of postings, seniority etc. were required to be considered by the Grievance Redressal Committee by way of appropriate speaking orders and the same could not have been rejected by a stroke of pen.

In view thereof, the rejection of representations made by the by the petitioners, by way of non-speaking orders cannot be sustained.

In view of the above fact situation, the writ petitions as indicated in Schedule-C to this order are allowed to the extent that the rejection of representations made by the petitioners shall stand set aside. The respondents are directed through the Committees formed at the District Level to re-determine/re-decide the

representations made by the petitioners. The petitioners would be free to file fresh representations, if any, by 05th August, 2019.

The respondents would then decide the representations by way of speaking orders, as indicated above, by 15th August, 2019. On the disposal of the representations made by the respondents, the petitioners would act as per the disposal/directions.

Till such time that the representations are decided by the respondents, the orders passed by the respondents, regarding the setup change/posting of the petitioners shall remain suspended.

Learned counsel for the petitioners in S.B.C.W.P. Nos.14846/2018, 14839/2018 & 14880/2018 made a specific objection that the respondents have issued vacant positions and list of candidates to be subjected to 6D in bits and pieces, whereby, certain vacant posts were not indicated and within a passage of 2-3 days, the respondents have indicated other candidates to be subjected to 6D and vacant positions, which is not justified.

If the said plea of the petitioners is found correct by the Grievance Redressal Committee, it would take appropriate proceedings to take care of petitioners' grievance in this regard.

In case after disposal of the representations, the petitioners still have grievance, they would be free to take appropriate proceedings in accordance with law, which essentially is approaching the Rajasthan Civil Services Appellate Tribunal under provisions of the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976.