

(2011) 01 RAJ CK 0119
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6771 of 2010

Aruna Verma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Rajasthan Educational (Collegiate Branch) Rules, 1986 — Rule 7A

Citation : (2011) 4 RLW 3409

Hon'ble Judges : Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Rafiq, J.—This writ petition has been filed by the petitioner assailing the order passed by the respondents dt. 3.12.2009 (Ann. 10) whereby, explanation of the petitioner was called for, order dated 9.12.2009 (Ann.11) whereby, services of the petitioner were terminated and she was relieved and the order dated 5.2.2010 (Ann.14) whereby, contractual term of Lecturers appointed was extended from 28.2.2010 to 30.4.2010 pursuant to the orders passed by this Court however on the original terms and conditions of contract.

2. Petitioner was appointed as Lecturer on contract basis vide order dated 30.11.2007 (Ann.1) from 30.11.2007 till 28.2.2008 or till the availability of duly selected candidates from the RPSC, on a consolidated payment of Rs.7950/- per month. Her services were initially discontinued vide order dated 28.2.2008 (Ann.2) however, she was again appointed vide order dated 21.7.2008 (Ann.4) on the same terms and conditions till 28.2.2009. This appointment was also made on contract basis and for which, a separate contract was executed between the petitioner and the respondents. Thereafter, her services were again terminated for the second time on 28.2.2009 (Ann.6). Then, petitioner was reinstated in service vide order dated 28.7.2009 pursuant to the judgment of this Court dated 22.5.2009 passed in S.B. Civil Writ Petition No.2711/2009 Jagdish

Prasad & Ors. vs. State of Rajasthan & Ors.. Her services were then again discontinued third time vide order dated 9.12.2009 (Ann.11), which is the last order and which is subject-matter of challenge in the present writ petition.

3. Shri Rajvir Sharma, learned counsel for the petitioner has argued that this Court while deciding batch of writ petitions in S.B. Civil Writ Petition No.5238/2009 Ms. Savita Samriya vs. State of Rajasthan & Ors. decided on 22.5.2009 held the termination of term Of contract of the petitioners during the continuation of the availability of the vacancies of College Lecturers arbitrary and illegal and respondents were restrained from appointing substitute College Lecturers for the session 2009-10 against the vacancies on which the petitioners were appointed." As regards continuation of the petitioners after reopening of the colleges from 1.7.2009, the respondents were directed to consider the claim of the respective petitioners on priority basis for the session 2009-10 and pass appropriate orders. It was however held that petitioners shall not be entitled to the fixed amount as referred to in the appointment letter for the period of closure of the respective colleges for summer vacations.

4. Shri Rajvir Sharma, learned counsel for the petitioner submitted that in view of the aforesaid judgment, services of the present petitioner could not be terminated during the academic session 2009-10. For the subsequent period, learned counsel argued that contention of the respondents that since another Lecturer in the subject of Mathematics has become available by way of transfer, which also cannot be a reason for discontinuing services of the petitioner. According to the term of the appointment order, her services were liable to be discontinued only in the event of availability of a candidate duly selected from the RPSC. Secondly, learned counsel for the petitioner argued that there: is not one post, there are in fact two posts of Lecturer in Mathematics with the respondent-college, which fact he sought to substantiate from the order dated 7.11.2007 passed by the Joint Director of the College Education Department. Learned counsel also referred to the letter of the Principal of the Government Girls, PG College Jhalawar dated 9.10.2009 wherein, it has been stated hat there are two posts of Lecturer. This is second, additional and clear vacancy of the post of Lecturer on which, petitioner is liable to be continued. Learned counsel for petitioner in support of his argument aforesaid further placed reliance on Supreme Court judgments in Commissioner, Kendriya Vidyalaya Sangathan and Ors. v. Anil Kumar Singh and Ors., (2003) 10 SCC 284 & (1988) Supp. SCC 428 & judgment of this Court in Anita Kothari Vs. State of Rajasthan and Others, and prayed that writ petition be allowed.

5. Per contra, Shri Anant Bhandari, learned Deputy Government Counsel for respondents opposed the writ petition and submitted that this Court in Ms. Savita Samriya supra in para 16(iii) of the said Judgment, merely required continuation of the Lecturers for the academic session 2009-10 and, respondents were restrained from appointing substitute College Lecturers against the vacancies of academic session 2009-10 against which, petitioner was appointed. As it is, she

has continued not only for the entire academic session 1009-10 but also beyond that period, albeit pursuant to the interim-order of this Court dated 12.5.2010. Learned counsel in support of his argument, cited the judgment of this Court in Dr. Madhusudan Shrimali vs. State of Rajasthan & Ors. SBCWP No.3073/10 decided on 29.3.2010 to argue that appointment of the petitioner was made on contract basis and therefore once the contract period expired, appointment would by itself come to an end. Beside that, fact is that respondents also filled in the vacancies by transferring there against the candidates duly selected from RPSC. There was only one post of Lecturer (Mathematics) and on which one Shri Manish Gaur, a candidate selected from RPSC has joined on 11.8.2008 therefore, contract period of the petitioner came to an end. Even, then, the Principal of the College did not illegally terminate services of the petitioner from service. They sought clarification from the Directorate of College Education and only after receiving the clarification from the Directorate on 9.12.2009, services of the petitioner were terminated. Learned counsel submitted that this Court in Dr. Madhusudan Shrimali supra has held that in contractual appointment of this nature, petitioner shall have to make a room for substantively appointed Lecturer even if such person has become available by way of transfer. Petitioner did not occupy the post after due selection on regular substantive basis. She was merely engaged on purely contract / temporary basis. Cited judgments are distinguishable because in the present case, appointment was given purely on contract/temporary basis, which term of the contract was liable to expire either itself or arising out of any of the contingencies, either on availability of duly selected candidate from the RPSC or by transfer. Learned counsel for the respondents has submitted that petitioner has no right to continue beyond the academic session 2009-10 even according to the judgment of this Court passed in Ms. Savita Samriya supra.

6. I have given my anxious consideration to the rival submissions of the parties and perused the material available on record.

7. The co-ordinate Bench of this Court in Ms. Savita Samriya supra, also therewith in earlier writ petition filed by Jagdish Prasad & others being S.B. Civil Writ Petition No.2711/2009 Jagdish Prasad & Ors. vs. State of Rajasthan & Ors. and several others in para 16 thereof while deciding batch of writ petitions held as under:-

(16) In the result, all the aforesaid writ petitions are disposed of in the following manner -

(i) Point No.5 of the undertaking about not availing of legal remedy for continuation of appointment; furnishing of the same on free will and without there being any undue pressure and in full consciousness without there being any influence of intoxication is declared illegal being violative of Articles 14 and 16 of the Constitution of India.

(ii) The termination of the petitioners contract during the continuance of the

vacancies is held arbitrary and illegal;

(iii) The respondents are restrained from appointing substitute College Lecturers for the session 2009-2010 against the vacancies on which the petitioners were appointed.

(iv) As regards, continuation of the services of the petitioners after reopening of the Colleges from 1.7.2009, the respondents are directed to consider the claim of the respective petitioners on priority basis for the session 2009-2010 and pass appropriate orders.

(v) The petitioners shall not be entitled to the fixed amount as referred in the appointment letter for the period of closure of the respective colleges for summer vacations and further, they are entitled to the fixed amount from the date of their joining as per the order of continuation/fresh appointment in case it is given in the next academic session 2009-2010 in the light of the observations made hereinabove.

8. According to the aforesaid judgment, termination of the present petitioner and others was held to be arbitrary and illegal because it was brought about during continuation of the contract period and the respondents were restrained from appointing substitute College Lecturers for the session 2009-10 against the vacancies on which the petitioners were appointed. As regards continuation of the services of the petitioners after reopening the college from 1.7.2009 was concerned, this Court in *Ms. Savita Samriya supra* directed the respondents to consider the claim of the respective petitioners on priority basis for the session 2009-10 and pass appropriate orders. Action of the respondents to that extent in discontinuing services of the present petitioner during academic session 2009-10 vide order dated 9.12.2009 (Ann.11) therefore cannot be said to be in conformity with the aforesaid judgment.

9. Now, the question remains whether petitioner can still insist in law for her continuation in service and whether the respondents can be restrained from filling up those vacancies against which, petitioner was working by duly selected Lecturers from RPSC; whether a newly appointed person through RPSC or by transfer another duly selected candidates from the RPSC, for the academic-session 2009-10 or in other words, for academic session 2010-11. onwards. Counsel for the petitioner has placed reliance on the judgment of *Anita Kothari supra* and argued that this judgment was passed on the basis of the judgment passed by the Supreme Court in *Raj Bala and others vs. State of Punjab and Anr. Writ Petition No. 125/1987 dated 24.8.1987* in which case also, substitution of the candidates by way of transfer was held to be illegal. In so far as case of *Anita Kothari supra* is concerned, that was a case where appointment on the post of Lecturer was made on ad hoc temporary basis under Rajasthan Educational (Collegiate Branch) Rules, 1986 and was decided on the analogy that as per Rule 7A of the Rules, the appointing authority is under obligation to make year wise determination of vacancies on 1st April of every year and recruitment against

those vacancies has to be made as per provisions contained in Part-IV of the said Rules. But that duty has not been discharged by the appointing authority with the result that adhocism continues and more than 211 persons were working on ad hoc temporary basis. It may be noted that the law as regards compulsion on the part of the appointing authority to make year wise determination of vacancies and to fill in the vacancies on regular basis has undergone a sea change thereafter. It is now upto the appointing authority to decide to fill up the vacancies or to keep some of them unfilled. Secondly, in Anita Kothari supra, this Court was dealing with a case where appointment was made on adhoc temporary basis but here the appointment of the petitioner was contractual in nature and that too was subject to stipulated condition that she will have to make room, if and when duly selected candidates become available. Issuance of writ of mandamus now to the respondents requiring them to still continue the petitioner in service would tantamount to renewal of the term of contractual appointment on the same condition of contract on which, petitioner was appointed. In Raj Bala supra, the judgment of Supreme Court on which, learned counsel for the petitioner has placed reliance was also a case where appointments were made on ad hoc temporary basis in leave vacancies, seeking direction from Supreme Court to continue them until regular selected candidates from RPSC are made available, those who are appointed or employees, who proceeded on leave return and join back. In Raj Bala supra, Supreme Court has directed to allow the petitioners to continue in service till the regularly recruited candidates become available from RPSC. In Commissioner, Kendriya Vidyalaya Sangathan supra also, employees were appointed on contract basis with the school of the Kendriya Vidyalaya Sangathan. They approached the High Court just after the expiry of contractual period with the prayer that their services may not be terminated until posts are filled up by course of regular recruitment. High Court decided writ petition directing that they may be allowed till the posts are filled up and further directed that petitioners should be allowed to compete with other candidates. High Court also issued an additional direction that petitioner cannot claim their continuation after the term of contractual period expired. Supreme Court upheld the judgment of the High Court by clarifying that those candidates would have to compete with other candidates for being appointed on regular basis.

10. Now that the academic session 2009-10 has already come to an end, petitioner, if there is no vacancy available with the respondents, cannot be continued on the post of Lecturer (Mathematics) in the respondent-college particularly when after end of session 2009-10 and beyond the period thereof for which respondents did not execute any contract with the petitioner for engaging him further. Respondents would have filled up the vacancies by appointing there against either any newly appointed Lecturers selected from the RPSC or by transferring any other substantive Lecturer. However, petitioner has sought to justify her continuation on the basis of the order passed by the Joint Director dated 7.11.2007 to say that one additional post of Lecturer (Mathematics) was still available in the respondent-college but that order mentions that this post

was created purely on ad hoc temporary/contract basis. Counsel for petitioner further placed reliance on the letter of the Principal of the College addressed on 9.10.2009, which letter states that there are two sanctioned posts of Lecturer (Mathematics) and therefore they sought guidance from the Directorate whether in the face of availability of one post of substantive Lecturer, another Lecturer against the post created for contract appointment can be continued. Apparently, this letter was written by the Principal in response to the order passed by the Directorate dated 7.11.2007 referred to supra and the Principal after receiving desired clarification from the Directorate, passed the impugned-order dated 9.12.2009, which fact has been clarified by the respondents in their reply that there was some confusion for which, clarification was sought by the Principal and for which reason, petitioner was continued upto 9.12.2009. But thereafter also petitioner was continued in service, albeit under the interim-order of this Court dated 12.5.2010 passed in the present writ petition. As already discussed above, pursuant to the judgment of this Court in Ms. Savita Samriya supra, petitioner was liable to be continued till the end of academic session 2009-10 only.

11. In view of above, petitioner is held entitled to receive whatever benefits she has already drawn pursuant to the interim-order of this Court dated 12.5.2010 but for the rest however, writ petition is dismissed. Respondents however are directed to release the salary of the petitioner, if any due, within a period of two months from the date copy of this order is produced before the respondents.