
(2014) 01 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Writ Petition No. 15128/2011

Babu Lal Gurjar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2014) 01 RAJ CK 0040

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Nawal Singh Sikarwar, Advocates for the Appellant; Rajneesh Gupta and V.K. Jain, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner Babulal Gurjar aggrieved by the action of the respondents in replacing him by another set of contractual employees on the post of Chowkidar as petitioner was suddenly stopped to work on 30/06/2010 without any reason or rhyme by the respondents.

2. Learned counsel for the petitioner has referred to the order dated 12/07/2010 (Ann. 3) by which respondent No. 5-Shri Ram Sahay Gurjar has been appointed as Chowkidar. Petitioner submitted representation to the respondents and also served upon them legal notice for demand of justice dated 20/8/2011 (Ann. 4). Learned counsel for the petitioner cited the judgment of this court dated 8/2/2011 passed by the co-ordinate bench of this Court in Smt. Pramila Devi & Ors. v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No. 8365/2010. He has also placed reliance upon the judgment of this court in Mooli Devi Choudhary and Others Vs. State of Rajasthan and Others, in which this Court held that one set of contractual employees cannot be replaced by another set of contractual employees.

3. Shri Rajneesh Gupta, learned counsel for respondents No. 2 and 3 has opposed the writ petition and submitted that petitioner has left his job on his

own on 26/10/2010 and he has started the business of general merchant in the name and style of Krishna General Store. Petitioner has wrongly stated that he has been making representations to the respondents. The notice for demand of justice was duly replied by the respondents.

4. Shri V.K. Jain, learned counsel appearing for respondent No. 5 has opposed the writ petition and submitted that respondent No. 5 has joined as Chowkidar and is working since 2010 and he was not appointed in place of petitioner and through placement agency. Respondent No. 5 was eligible and therefore he was appointed as Chowkidar on 12/07/2010.

5. I have heard learned counsel for the parties and perused the material available on record and the cited case law on the subject.

6. This Court in Smt. Mooli Devi supra held in para 41 thereof, as under:--

"41. Therefore, for these reasons, this Court is inclined to allow these writ petitions with aforesaid directions and following answers to the questions framed above.

(i) Question No. 1 is answered in the manner that employment of teachers for SSA or KGBV is a "sovereign function" of imparting education by the State Government or the Central Government and such "sovereign function" including employment of teachers for imparting education cannot be delegated to private placement agencies by the State Government.

(ii) Question No. 2 is answered like this that since the State Government has not so far enacted any law nor it has laid down any guidelines or parameters for selection of private placement agencies, therefore, practice of giving away such contract by the State Govt. to the private placement agencies is unconstitutional and cannot be sustained and the teachers and other sustained and the teachers and other related staff in SSA or KGBV cannot be treated as employees of private placement agencies whether such projects are financed by the Central Government or the State Government or any other agency.

(iii) Question No. 3 is answered in the manner that the object of SSA or KGBV is not a project of limited tenure or period and the non availability of funds cannot be a ground to discontinue the said educational programmes and such programmes even with or without the change of name have to be continued to give effect to the provisions of the Act No. 35 of 2009, namely, Right of Children to Free and Compulsory Educational Act, 2009 and Article 21A of the Constitution of India.

(iv) Question No. 4 is answered in the manner that the provision of Article 21A and provisions of Right to Children to Free and Compulsory Education Act, 2009 are of paramount and supervening importance and Appropriate Governments should adopt a uniform employment policy for teachers and other staff under it with assured continuity of employment with all other benefits which are payable to regular civil servants including the teachers employed in Government schools

even as of now.

(v) Question No. 5 is answered in the manner that teachers cannot be treated as workmen so as to subject them to the provisions of Industrial Disputes Act, 1947.

(vi) Question No. 6 is answered in negative and it is held that fixed term contract of service for the teachers of SSA or KGBV Projects on year to year basis by different placement agencies with no assured continuity of employment is not justified, nor it is a legally sustainable practice."

7. The co-ordinate bench of this court reiterating the aforesaid guidelines laid down in Smt. Mooli Devi supra, issued the following directions in Smt. Pramila Devi supra:--

"Consequently, the bunch of writ petitions as per Schedule annexed herewith, in the light of the judgment, referred to supra, stand allowed and the present petitioners and other similarly situated persons (teaching/non-teaching staff), who were continuously working and discharging their duties on contract basis and worked upto the last academic Session 2009-10, are also entitled mutatis mutandis the same relief which has been granted by the coordinate bench of this Court in the judgment referred to supra. The respondents are directed to ensure compliance within three months and allow the petitioners and other similarly situated persons to continue on the respective post in terms of the order of this Court subject to the conditions which have been taken note of in the judgment referred to supra. No costs."

8. In the light of the aforesaid judgment, the respondents could not have discontinued the petitioner as Chowkidar because in fact, it was his replacement by another Chowkidar on contract basis through placement agency.

9. This Court direct the respondents to not to assign employment through placement agencies. Subsequent judgment in Smt. Pramila Devi supra has observed that those, who were continuously working on contract basis and worked upto last academic Session 2009-10, would be entitled to same relief mutatis mutandis the same relief, which has been granted by the coordinate bench of this Court in the judgment referred to supra. Admittedly, petitioner worked with the respondents upto 30/06/2010 and he was not allowed to work thereafter and therefore his case would also be fell within the aforesaid judgment.

10. In the result, the writ petition is allowed. Action of the respondents in replacing the services of the petitioner by another contractual employee as Chowkidar, is illegal. Respondents are accordingly directed to reinstate the services of petitioner on the post of Chowkidar. Compliance of the judgment shall be made within a period of fifteen days from the date of submission of certified copy of this order before the official respondents.