
(2009) 02 RAJ CK 0159
In the Rajasthan High Court

Central Board of Secondary Education	APPELLANT
Vs	
Shri Mohabbat Ali and Another	RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Manual of the Rules and Regulations of CBSE — Rule 15

Citation : (2009) 4 RLW 3342

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by the petitioner Central Board of Secondary Education challenging the award of Labour Court, Jaipur dated 28.4.1994. Labour Court by the aforesaid award answered the reference with regard to validity of removal of respondent-workman by the petitioner from their service.

3. The respondent-workman was appointed by the petitioner on compassionate ground on the post of Record Keeper in the pay scale of Rs. 800-5-1010-GB-20-1150 vide order dated 9.11.1989. After passing the aforesaid order, the petitioner by order dated 1.3.1990 terminated service of respondent-workman on the premise that he was appointed as Record Keeper on purely temporary basis and his services are not longer required.

4. Shri R.P. Singh, learned Counsel for the petitioner argued that appointment of the respondent-workman was wrongly made on compassionate ground because his father has already retired on 28.2.1983 and he died thereafter on 2.5.1986. The respondent-workman submitted application for compassionate appointment on 7.11.1989 and on that basis he was appointed on 9.11.1989. Since his father did not die in harness, the respondent could not be appointed on compassionate ground. Learned Counsel submitted that the respondent secured such appointment by misrepresentation and by suppression of fact. Referring to

documents enclosed with rejoinder and copy of the affidavit of the respondent, which the respondent filed before Labour Court, it was submitted that the respondent before Labour Court wrongly stated that he was appointed because his father died while serving the petitioner. Learned Counsel referred to provision of Rule 15 of Manual of the Rules & Regulations of CBSE and argued that appointment on compassionate ground could be made only of a relation of employee, who dies in harness. Learned Labour Court has failed to appreciate this aspect of the matter and erred in law while holding the termination of respondent as illegal. Learned Counsel referring to Condition No. 4 of the appointment order dated 9.11.1989 and argued that in the appointment order it was clearly stated that appointment was purely on temporary basis and it was being made against a post, term of which was not likely to be extended and, therefore, it could be brought to an end at any time without any notice. Learned Counsel submitted that appointment of the respondent was against a temporarily created post which could be brought to an end as stipulated in condition No. 4 of the appointment order. It is, therefore, prayed that writ petition be allowed and the impugned award be quashed and set aside.

5. Dr. Saugath Roy, learned Counsel for the respondent-workman submitted that nothing was concealed by the petitioner when he applied for appointment on compassionate ground on 7.11.1989. Even the order of appointment categorically states that such appointment was made on compassionate ground. Father of the respondent stood retired on medical grounds and that there are rules with the petitioner to offer appointment on compassionate to such an employee. Learned Counsel submitted that appointment of the respondent on compassionate ground could not be treated as temporary in the sense that it could be dispensed with for any reason whatsoever. Even if the order of appointment has referred it as temporary, he could not be removed arbitrarily. Learned Counsel submitted that none of the pleas now raised before this Court, such as that the appointment was secured by fraud or misrepresentation and that appointment could not have been given because father of the petitioner was not serving while the petitioner applied for appointment and that respondent made a false assertion before Labour Court, were raised by the petitioner in their reply to the statement of claim. Learned Counsel referred to statement of claim (Annexure-4) to bring home the point. Learned Counsel submitted that Division Bench of this Court in State of Rajasthan and Another Vs. Ajay Sharma, has taken a view that if an appointment is made on compassionate ground, such appointment cannot be treated as temporary and would have to be treated as regularly made. Learned Counsel lastly submitted that respondent during the pendency of the writ petition has met with an accident resulting to his disability to the extent of 40% and this fact he wants to bring to the notice of the Court.

6. Arguments raised aforesaid if analyzed in the light of award passed by the Labour Court and reply to the statement of claim filed by the petitioner, I find that the petitioner has not at all pleaded before the Labour Court that there was any concealment or misrepresentation on the part of the respondent or that the

respondent procured employment canceling the fact that his father was not in employment when he died. This argument cannot be accepted because the petitioner cannot be presumed to be unaware of the fact that whether the father of the respondent died while in service or he stood already retired when the application was submitted by the respondent seeking compassionate appointment. Moreover, this argument would not be available to the petitioner because if all such arguments would have been raised before the Labour Court, the respondent-workman would have been in a position to meet the same by producing relevant evidence showing that his father retired on medical ground and that the petitioner had such provision to grant appointment on compassionate ground to the dependents of an employee retiring so and that his appointment was for this reason made on recommendation of the committee of the petitioner board. Moreover if according to the petitioner, the respondent had made a misrepresentation before the Labour Court on this aspect, there was nothing, which prevented the petitioner to point out the truth before the Labour Court, if at all that was a truth. Argument of learned Counsel for the petitioner that appointment of the respondent was against a temporarily created post, which could be brought to an end as stipulated in condition No. 4 of the appointment order, cannot be accepted firstly, because no such reason was cited by the petitioner themselves in termination order dated 1.3.1990 and secondly, no such case was set up by them even before Labour Court in their reply to the statement of claim. In fact, no evidence was adduced by the petitioner before the Labour Court on what they are now seeking to urge before this Court and on that basis seeking annulment of the award. The award passed by Labour Court cannot be castigated as bad in law by upholding the arguments factual foundation of which was not laid before Labour Court and no evidence with regard to which was adduced by the petitioner. On the basis of such arguments raised by the petitioner, it cannot be said that the award passed by the Labour Court suffers from any error apparent on the face of record. In any case, termination of the respondent was made abruptly on 1.3.1990 inspite of the fact that his appointment was on compassionate ground and that the petitioner had no valid reason to dispense with service. As per the ratio of aforementioned Division Bench judgment of this Court in Ajay Sharma (supra), appointment on compassionate grounds, even if described as temporary, has to be treated as substantive.

7. Coming now to the question as to what relief can be granted to the respondent-workman considering the fact that he has now acquired disability of 40% and the award passed by Labour Court has remained stayed during the pendency of the writ petition on account of interim order passed by this Court on 28.3.1995. In view of the fact that respondent has remained out of employment however, since his services were terminated by the petitioner on 1.3.1990 and a period of 19 years have gone by since then and also the respondent acquired the disability of 40% on account of accident that took place on 1.10.1999, it would not be appropriate to require the petitioner to reinstate the respondent at this

distance of time. Ends of justice would be met if direction of reinstatement is modified by requiring the petitioner to pay to the respondent-workman a lump sum compensation of Rs. 2 lacs in lieu of reinstatement, which shall be paid to the respondent-workman within a period of two months from the date of production of copy of the judgment before the petitioner. It is made clear that in case payment of this amount is not made within a period of two months, the respondent shall be entitled to interest @ 9% per annum for the period of delay till it is paid.

This writ petition is accordingly allowed in part, with no order as to costs.