
(2019) 05 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5483 Of 2019

Chopasni Shiksha Samiti And Ors

APPELLANT

Vs

Gajendra Singh And Ors

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Rajasthan Non-Government Education Institutions Act, 1989 — Section 16(1)
Constitution Of India, 1950 — Article 311

Citation : (2019) 05 RAJ CK 0071

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Nupur Bhati, Abhishek Mehta

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioners aggrieved against the order dated 21/8/18 passed by Rajasthan Non-Government Educational Institution Tribunal, Jaipur ('the Tribunal').

The respondent no.1 was appointed to the post of Administrative Officer by order dated 2/3/1985. His services were terminated by order dated 14/11/2000 and various recoveries were also ordered to be effected against him, which order was challenged by him before the Tribunal, whereby, the appeal filed by him was allowed by the Tribunal by its order dated 27/3/2002. The petitioners approached this Court by filing S.B. Civil Writ Petition No.2563/2002, however, during the pendency of the writ petition a settlement was arrived at between the parties, therefore, by order dated 8/12/2005, the petition was disposed of in terms of the agreement dated 7/9/2005.

Whereafter, the respondent no.1 was issued a charge sheet on 7/2/2009 leveling four charges, the charges were later on amended and a fresh charge sheet dated 23/4/2010 was again issued to the respondent no.1, however during the pendency of the said charge sheet, a resolution was passed by the petitioners

inter alia compulsorily retiring the respondent no.1 under the provisions of Section 16(1) of the Rajasthan Non-Government Education Institutions Act, 1989 ('the Act, 1989').

Feeling aggrieved, the respondent approached the Tribunal by filing an appeal, the appeal was contested by the petitioners, however, the Tribunal by its impugned judgment dated 21/8/2018 (Annex.1) came to the conclusion that the plea raised by the petitioners regarding the jurisdiction already stood decided by the judgment of the Tribunal dated 27/3/2002; from the facts it was apparent that the petitioners herein were bent upon relieving the respondent from service and, therefore, the order of compulsory retirement was passed which was not legal and consequently quashed the order dated 7/5/2010 compulsorily retiring the respondent no.1 and ordered for reinstatement with all consequential reliefs including salary and other benefits.

It is submitted by learned counsel for the petitioners that the Tribunal was not justified in passing the order impugned. It was submitted that the order of compulsory retirement cannot be termed as a stigmatic order and once the power under Section 16(1) of the Act, 1989 exists and same has been exercised by the petitioners, there was no occasion for the Tribunal to interfere with the same.

Further submissions were made that the Tribunal was not justified in ordering for payment of consequential benefits to the respondent no.1 inasmuch as the burden was on the respondent no.1 to prove that he was unemployed from the date of his compulsory retirement till reinstatement, which was not proved. On the other hand from the material available on record including (Annex.14) filed along with the present writ petition, it is apparent that the respondent no.1 was gainfully employed and, therefore, the order to the extent of awarding consequential monetary benefits to the respondent no.1 deserves to be set aside.

Reliance was placed on Posts and Telegraphs Board & ors. vs. C.S.N. Murthy : (1992) 2 SCC 317, Allahabad Bank Officers' Association & Anr. vs. Allahabad Bank & Ors. : (1996) 4 SCC 504,

Rajasthan State Road Transport Corporation, Jaipur vs. Phool Chand : AIR 2018 SC 4534 and Jawahar Vidya Peeth & Ors. vs. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur : S.B. Civil Writ Petition No.2856/1987 decided on 24/2/2015.

I have considered the submissions made by learned counsel for the petitioners and have perused the material available on record.

Before the Tribunal, on the challenge laid by the respondent No.1 against the order of compulsory retirement, the defense raised by the petitioners pertained to jurisdiction of the Tribunal based on the allegations that appointment was given by petitioner no.1, which was not an aided institution and that the order was not stigmatic and was within the powers of the petitioners.

The Tribunal based on the earlier round of litigation between the petitioner Institution and respondent no.1 came to the conclusion that the plea raised regarding the lack of jurisdiction of the Tribunal had no substance. The said finding has not been questioned during the course of submissions before this Court.

The Tribunal while noticing the sequence of events, whereby, charge sheet, amended charge sheet were issued to the respondent no.1 in the year 2009 & 2010 and during the pendency of the charge sheets the order of compulsory retirement was passed, concluded that the petitioners were bent upon relieving the respondent no.1 from service and, therefore, applied the procedure of compulsory retirement, which was not justified.

The Hon'ble Supreme Court in State of Gujarat vs. Umedbhai M. Patel : (2001) 3 SCC 314 taking into consideration the judgments in the case of Allahabad Bank Officers' Association (supra) cited by learned counsel for the petitioners and various other judgments, inter alia laid down the principles pertaining to compulsory retirement as under:

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

A perusal of the said principles laid down by Hon'ble Supreme Court in the context of the facts of the present case, as noticed hereinbefore, would reveal that the petitioners did not place any material on record before the Tribunal justifying the exercise of power of compulsory retirement. On the other hand,

from the material which came on record, it was apparent that the order of compulsory retirement was passed as a shortcut to avoid departmental enquiry which was already pending and the same was imposed as a punitive measure by the petitioners and in those circumstances the order was clearly contrary to principles (vi) & (viii) above, the findings of the Tribunal qua the wrongful exercise of power of compulsory retirement cannot be faulted.

So far as the reliance placed on the judgment in the case of Posts & Telegraphs Board (supra) is concerned, the Hon'ble Supreme Court in the said case also came to the conclusion that on review of the working of employee at the end of a particular period, the power has to be exercised based on the material available on record. The Court in the given case came to the conclusion that the material showed that the efficiency of the petitioner therein was slackening in last two years' period under review and based on that came to the conclusion that in absence of malafide the order cannot be interfered with. In the circumstances of the present case, wherein, no material whatsoever has been produced by the petitioners to support the order of compulsory retirement, the said judgment has no application to the facts of the present case.

Again in the case of Allahabad Bank Officers' Association (supra), a finding was arrived at regarding the working of the officer therein and an opinion was formed for passing the order of compulsory retirement, however, in the present case as no material worth the name has been placed on record before the Tribunal seeking to justify the order of compulsory retirement and on the other hand the principles laid down by the Hon'ble Supreme Court in the case of Umedbhai M. Patel (supra) are found to be violated, the said judgment also has no application to the facts of the present case.

In view thereof, the finding of the Tribunal as noticed hereinbefore pertaining to the justification for passing of the order of compulsory retirement cannot be faulted.

Coming to the award of consequential monetary relief to the respondent no.1 by the Tribunal, the judgment in the case of Phool Chand (supra) cited by learned counsel for the petitioners pertained to a case where after holding departmental enquiry punishment was imposed and the Labour Court while setting aside the order of removal from service ordered for award of back wages, which was interfere with.

However, present is a case where no finding was recorded against the respondent no.1 regarding any misconduct and/or ineligibility and the Tribunal found that passing of the order of compulsory retirement was wholly unjustified, in the firm opinion of this Court the passing of the order for consequential monetary relief was apparently justified and proper.

The plea raised in the writ petition that the respondent no.1 did not prove the fact that he was not gainfully employed for the period in question, essentially is putting the cart before the horse inasmuch as soon as the respondent's services

were terminated, he approached the Tribunal by filing appeal in the year 2010 itself and the matter remained pending for all these years, wherein, apparently there was no occasion for the respondent no.1 to make an assertion regarding his not being in gainful employment during the said period, however, the relief claimed in the application before the Tribunal was specific seeking 'reinstatement with full back salary and all consequential benefits as if the order of compulsory retirement was never passed'. The petitioners in their reply did not take any plea regarding the respondent no.1 being gainfully employed and, as such there was no occasion for the Tribunal to decide the said aspect on merits.

The petitioners now have obtained a certificate Annex.14 from a private institution indicating that the respondent no.1 was working in the said school on a purely temporary capacity. The very fact that respondent no.1, who was in permanent employment with the petitioners was wrongly retired compulsorily, who immediately challenged his order of compulsory retirement before the Tribunal and during the intervening period as a temporary employee got engagement with some institution cannot be a reason for the petitioners to deny the payment of back salary and other benefits once it is found that their action was against the law and the order of compulsory retirement was passed only with an intention to ease out the respondent no.1 from employment during pendency of enquiry.

To deny the back salary and other consequential benefits to respondent no.1 would essentially amount to putting a premium on an illegal action of the petitioners, which would not be justified in the circumstances of the case.

In view of the above discussion, there is no substance in the writ petition filed by the petitioners and the same is, therefore, dismissed