

(2013) 07 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 19 of 2005

Daya Ram Bhadu

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 4 WLN 216

Hon'ble Judges : Dinesh Maheshwari, J;Arun Bhansali, J

Bench : Division Bench

Advocate : R.S. Saluja, for the Appellant;

Final Decision : Dismissed

Judgement

1. This intra-court appeal is directed against the order dated 15.09.2003 whereby the learned Single Judge of this Court has dismissed the writ petition (CWP No. 3642/2000) filed by the petitioner-appellant on his claim for absorption in the services of Panchayati Raj Institution and on his grievance against the order dated 25.08.2000 (Annex. 3), as issued by the Chief Executive Officer, Zila Parishad Hanumangarh, directing termination of his ad hoc services in Gram Panchayat Chaiya, Panchayat Samiti Nohar. The writ petition leading to this appeal was filed by the petitioner-appellant seeking the following reliefs:-

(i) the impugned order dated 25-8-2000 (Annex. 3) whereby directions for terminating Petitioner's services have been issued may kindly be declared illegal and may be set aside and quashed.

(ii) Consequent to the aforesaid, the respondents may further be directed to complete the process of regular absorption of the petitioner initiated by them consequent to letter dated 3-6-2000 (Annex. 2) which process was initiated at the level of State Govt. vide order dated 13-4-99.

(iii) Pending decision of the writ petition, if any action is taken or order is made prejudicial to the interest of the Petitioner, same may also be quashed and set

aside.

(iv) Any other relief may also be granted in favour of the Petitioner.

(v) Costs be awarded to the Petitioner.

2. The petitioner-appellant claimed the reliefs aforesaid with the averments that though the post of Sah Sachiv i.e., Assistant Secretary was not the one falling in the cadre of Panchayati Raj Institutions but, he was initially appointed as Phatak Lekhak-cum-Sah Sachiv by an order dated 01.09.1988 with the concurrence of the Standing Committee of the concerned Panchayat Samiti; and was being paid from the funds of the concerned Gram Panchayat. According to the appellant, this appointment was made to facilitate the working of Gram Panchayat because the Gram Sevak-cum-Paden Sachiv (Village Level Worker-cum-Ex Officio Secretary) holding the regular post was made to look after 4-5 Gram Panchayats and was not always in a position to manage all the works of the particular Panchayat. The petitioner-appellant alleged that having been appointed in the aforesaid manner, he continued to discharge the assigned duties until 31.05.1991; and then, from 01.07.1991 to 31.01.1995, he worked on honorary basis without receiving any remuneration; and thereafter, from 01.02.1995 until filing of the petition, he was working on the wages, as revised from time to time.

3. The petitioner-appellant further averred that pursuant to the directions of this Court in other matters, his name was also sent for being considered for regular absorption as Gram Sevak-cum-Paden Sachiv; and referred to a communication dated 03.06.2000 (Annex. 2) in this regard. The petitioner-appellant stated the grievance that despite commencement of such an action for absorption, by another order dated 25.08.2000 (Annex. 3), the Additional Chief Executive Officer, Zila Parishad, Hanumangarh posed the question to the Sarpanch concerned as to under which provision of law, was he appointed as Private Secretary; and issued directions for his removal.

4. The petitioner-appellant also referred to the order passed by this Court in the case of Om Prakash and Another Vs. State of Rajasthan and Others, to submit that the Scheme for regularisation of the services of Assistant Secretaries, as suggested by the State Government, was approved; and this Court directed regularisation of the Assistant Secretaries on the given conditions. According to the appellant, such directions were further issued in D.B. Special Appeal No. 1132/1997 decided on 04.12.1997 and then, in the SLP before the Hon'ble Supreme Court, a positive undertaking was given by the State Government that the Assistant Secretaries working in various Panchayats would not be disturbed and their cases would be considered for appointment on the post of Village Level Worker-cum-Ex-officio Secretary.

5. With reference to above, the petitioner-appellant took the grounds in the writ petition that his services were sought to be terminated on a wholly erroneous assumption that he was working as Private Secretary to the Sarpanch though it were not so. The petitioner-appellant also contended that prejudicial action was

sought to be taken against him without any opportunity of hearing; and reiterated that the matter of regularisation having already been taken up under the letter dated 03.06.2000 and this Court having directed so, the respondents were under obligation to consider his case for regularisation under the Scheme. It was also submitted that condition No. (v) in the Scheme (prescribing eligibility criteria for regularisation that during the relevant period, no V.LW.-cum-Ex-Officio Secretary was posted in the concerned Panchayat) would not be of any adverse applicability to him because such V.LW.-cum-Ex-Officio Secretary was given the work for a group of Panchayats and in that process, working of an Assistant Secretary under some V.LW. was not ruled out.

6. Per contra, the respondents submitted that on 01.09.1988, the petitioner-appellant was appointed as Phatak Lekhak for a period of six months as per the resolution of Gram Panchayat on a fixed payment of Rs. 250/- per month, to be made from the funds of Panchayat. The respondents denied that he was appointed on the post of Assistant Secretary (Sah Sachiv). As regards the communication dated 03.06.2000 (Annex. 2), the respondents asserted that the same was issued on the basis of wrong information and false documents and hence, was withdrawn by the same authority under the next communication dated 09.06.2000 (Annex. R/1).

7. It was also pointed out by the respondents that the complaints were made as regards engagement of the petitioner-appellant and it was pointed out that the Sarpanch was unnecessarily continuing with the appellant as his Personal Secretary though Gram Panchayat was already having a regularly appointed Secretary; and the payment was being made to the appellant from the funds of Panchayat causing unnecessary loss. The respondents pointed out that the impugned communication dated 25.08.2000 (Annex. 3) came to be issued in this context asking for an explanation of the Sarpanch concerned and directing removal of the appellant. It was also asserted that under the Rules, the Panchayat had no power to appoint any person, even on part-time or on contractual basis, without prior permission of the Chief Executive Officer of the concerned Zila Parishad. It was reiterated that the petitioner-appellant having never been appointed as Assistant Secretary, was not entitled to the benefit of the Scheme of regularisation or of the orders passed by the Hon'ble Courts in the referred litigation. Thus, put in a nutshell, the respondents asserted that the petitioner-appellant was having no legal right of regularisation for having never been appointed as Assistant Secretary.

8. The petitioner-appellant submitted a rejoinder with the assertion that he was appointed as Sah Sachiv-cum-Phatak Lekhak and had been serving the respondents since the date of initial appointment; and his case was squarely covered by Om Prakash Sharma's case. The appellant also produced certain certificates to suggest that he had worked as Sahayak Sachiv and Phatak Lekhak.

9. It may be noticed that initially, when the writ petition filed by the petitioner-appellant came up for consideration on 13.10.2000, while issuing notices for final

hearing, this Court directed that in the meantime, the respondents may hold an inquiry as to whether the petitioner had illegally been appointed or was appointed on a non-sanctioned post; but without holding the inquiry on the said issues, he would not be removed until further orders. It is borne out from the record that such an inquiry was held and report in that regard was drawn by the Chief Executive Officer, Zila Parishad, Hanumangarh on 02.04.2002 after finding several shortcomings in the engagement of the petitioner-appellant and after finding further the fact that he was never posted as Assistant Secretary. The Chief Executive Officer found that a few appointment orders were issued in relation to the petitioner-appellant for six months' period but they had been for his engagement as Phatak Lekhak and only in the order dated 24.05.1990, the words "Sahayak Sachiv" were inserted below the words "Phatak Lekhak", which was likely to be a matter of interpolation. The Chief Executive Officer referred to several aspects on record and ultimately concluded as under:-

10. The petitioner-appellant filed an objection against the inquiry report with the submissions that the report was factually incorrect; and while preparing the same, he was never called upon to explain. The petitioner-appellant placed on record two decisions of the Standing Committee of Panchayat Samiti taken in the years 1995 and 1996, to assert that he was appointed on the post of Phatak Lekhak-cum-Sah Sachiv; and, in this light, made the claim that he was entitled to be considered for absorption on the post of V.LW.-cum-Ex-Officio Secretary.

11. By the short order dated 15.09.2003, the learned Single Judge proceeded to dismiss the writ petition filed by the petitioner-appellant only on the basis of an order dated 05.05.2003 as passed in CWP No. 1001/2001.

12. The petitioner-appellant has filed a copy of said order dated 05.05.2003 and it is contended that on material aspects, his case stands at the footing different than that of the writ petitioner in CWP No. 1001/2001; and the material aspects relating to his case have not been taken into consideration by the learned Single Judge while passing the order dated 15.09.2003. The learned counsel for the petitioner-appellant has strenuously argued that his claim deserves to be allowed in view of the decision in Om Prakash Sharma's case (supra) covering the controversy. It is submitted that the petitioner-appellant having worked as Assistant Secretary, his services were not to be terminated and in this perspective, the letter Annexure-2 was rightly issued recommending his case for regularisation but the same was withdrawn without any notice to the appellant. It is submitted that the respondents, otherwise, proceeded against the appellant only on the strength of the allegations that he was working as Private Secretary to the Sarpanch but these allegations were factually incorrect. It is also submitted that the ex parte inquiry conducted by the respondents pursuant to the of this Court was of no effect as various orders/certificates show that the appellant was in fact appointed as Phatak Lekhak-cum-Sah Sachiv and continuously discharged the duties as such.

13. Though it appears that by the impugned order dated 15.09.2003, the learned

Single Judge has proceeded to dismiss the writ petition without dilating on all the factual aspects but, on the merits of the case, we are clearly of the view that the petitioner-appellant being not entitled to the reliefs as claimed, the writ petition was nevertheless required to be dismissed.

14. In our view, the directions in O.P. Sharma's case (supra) had been specifically for the persons who were working as Assistant Secretaries in different Gram Panchayats. The Scheme for absorption/regularisation of the Assistant Secretaries working in various Panchayats as submitted before the Court was approved, but as one time exception and with modifications, as under:-

1. Asstt. Secretaries who have completed more than 10 years service shall be awarded 5 bonus marks in the ensuing recruitment to the posts of Gram-Sevak.

2. Others who have completed more than 15 years of service shall be given 7.5 bonus marks.

3. As an exception, it is decided that those Asstt. Secretaries who had in fact discharged all the available duties and responsibilities of the post of V.L.W.-cum-Ex-Officio Secretary for the last continuous 5 years would be screened for absorption by a Screening Committee nominated by the Government. The eligibility criteria for such Asstt. Secretaries would be as under:-

(i) They should possess the minimum qualification of "Matric" or equivalent to it.

(ii) They should not have attained the age of superannuation, i.e. 58 years.

(iii) Such Asstt. Secretaries must have been drawing regular payment from the concerned Panchayat for the relevant period with a proof in the record of the Panchayat.

(iv) Such Asstt. Secretaries must have been discharging all the available duties and responsibilities of the V.L.W.-cum-Ex-Officio Secretary continuously for the last minimum 5 years.

(v) During the relevant period no V.L.W.-cum-Ex-Officio Secretary was posted in the concerned Panchayat where the Asstt. Secretaries were discharging the duties of Secretaries.

(vi) Such Asstt. Secretaries should possess good moral character and should be medically fit. No criminal proceeding should be pending against them.

4. The above scheme is made applicable only as a one time exception because no rule permits appointment/regularisation of the Asstt. Secretaries to the post of V.L.W.-cum-Ex-Officio Secretary. Therefore, this scheme shall be taken as an exception. It is, however, made clear that for the purpose of providing above referred benefits/weightage, the Committee shall call for entire record of all the Asstt. Secretaries working in different Panchayats for the purpose of its scrutiny to find out various details as indicated above.

15. The petitioner-appellant though has claimed that his case is required to be

considered under the aforesaid Scheme but it is noticed that right from inception, his engagement had only been as Phatak Lekhak, which is evident from the initial order dated 01.09.1988 as also the next order dated 05.06.1989. It appears that only in the order dated 24.05.1990, the expression "Sahayak Sachiv" came to be inserted in his further ad hoc appointment. Interestingly, there had been no regular engagement shown for a long period between 01.07.1991 to 31.01.1995 and then, he was shown engaged as Phatak Lekhak by the order dated 16.05.1995. These facts and factors had been mentioned even in the communication dated 03.06.2000 (Annex. 2), sought to be relied upon by the appellant. In the given status of record, it is difficult to find if the appellant was regularly engaged as Assistant Secretary.

16. The appellant though has referred to certain resolutions of the Panchayat Samiti but, after a comprehensive examination of the record, the Chief Executive Officer found that he was engaged only as Phatak Lekhak and was never appointed as Assistant Secretary. The report drawn by the Chief Executive Officer after a thorough examination of the record cannot be ignored simply on the contention of the petitioner-appellant that he was not called upon to explain. The appellant has failed to show if anything was incorrect in the said report on the material factual aspects.

17. In our view, the certificates filed by the appellant with his rejoinder are hardly of any relevance and they cannot be accepted as primary evidence on the nature of his engagement. The engagement of the petitioner-appellant having essentially been as Phatak Lekhak, his claim for regularisation on the strength of the allegation that he worked as Assistant Secretary cannot be accepted.

18. The petitioner-appellant is also not in a position to assert that he answers to all the requirements of the Scheme of regularisation/absorption as approved by this Court. In this regard, significant it is to notice that the Scheme was to be made applicable per the orders of this Court only as one time exception. The said Scheme was approved by this Court on 05.12.1996 to the effect that those Assistant Secretaries, who had discharged all the available duties and responsibilities of V.LW.-cum-Ex-Officio Secretary for the last continuous 5 years, would be screened for absorption. Apart from the fact that the appellant's engagement had only been as Phatak Lekhak, he is even otherwise not answering to the requirement of having worked for "last continuous 5 years" as Assistant Secretary. As noticed above, for a long period between 01.07.1991 to 31.01.1995, there had not been any order of his engagement. According to the appellant's own averments in the petition, he allegedly worked during this period "on honorary basis without receiving any remuneration". In the ultimate analysis, the engagement of the appellant can neither be said to be continuous nor specifically on the post of Assistant Secretary.

19. Moreover, it appears that there had been a regular V.LW.-cum-Ex-Officio Secretary working in the Panchayat concerned during the period the appellant is said to have been engaged.

20. Therefore, even if the aspect relating to the actual nature of engagement is left aside for a moment, evident it is that the appellant is not answering to the very basic requirements of the said Scheme of absorption. In this view of the matter, his claim for regularisation cannot be accepted.

21. The result of the discussion foregoing is that the petitioner-appellant is not entitled to the reliefs as claimed. Consequently, even for the reasons different, we are satisfied that the writ petition was liable to be dismissed. In view of what has been noticed and discussed hereinabove, the appeal fails and is, therefore, dismissed. No costs.