

(2019) 12 RAJ CK 0090

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1479 Of 2019

Devendra Singh Purawat

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Constitution of India, 1950 — Article 266(3)

Citation : (2019) 12 RAJ CK 0090

Hon'ble Judges : Sangeet Lodha, J; Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Lokesh Mathur, Sandeep Shah, Akshiti Singhvi

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against order dated 30.10.19 passed by the learned Single Judge of this Court, whereby while allowing the application preferred by the respondents under Article 226(3) of the Constitution of India, the interim order passed in favour of the appellant has been vacated and the stay petition has been dismissed.

2. The appellant was employed man with machine in the office of Additional Public Prosecutor for the stipulated period or till the regular posts are filled in by way of recruitment. The term of the contractual appointment was extended from time to time and the appellant continued in service.

3. In the year 2017, the persons who were recruited on the posts of Clerk Gr.II pursuant to the regular recruitment conducted in 2013 were posted in the offices of Additional Public Prosecutors and other offices, which resulted in termination of services of the appellant and his likes. The legality of the termination has been questioned by the appellant by way of writ petition, which is pending consideration before the learned Single Judge.

4. The appellant was continuing in service pursuant to the interim order passed by the learned Single Judge. However, the respondents preferred the application

under Article 226(3) of the Constitution of India for vacating the interim order stating that on account of interim order, they are compelled to continue two persons against one post and thus, to pay double salary for the same post.

5. After due consideration, the learned Single Judge being of the opinion that once the recruitment has taken place for the post of Clerk Gr.II by the respondents, it is well within their power to accord posting to the selected persons at a particular place and once the postings have been accorded at the place where the appellant is working, the consequences as indicated in the order of appointment are bound to follow, the interim order has been vacated.

6. Learned counsel appearing for the appellant contended that the respondents could not have filled in the posts created in the year 2017-18 from the incumbents recruited pursuant to the recruitment process initiated in the year 2013 and concluded in the year 2018 and thus, the termination of services of the appellant on account of the posting of the respondent no.4 is ex facie illegal.

7. Indisputably, the appellant was appointed on contractual basis for the stipulated time or till the availability of regularly recruited employees. Obviously, on availability of the regularly recruited candidates, the appellant's services were bound to be terminated. Admittedly, the appellant was recruited against the vacant posts existing in the year 2013 and it is not in dispute that the recruitment as against the vacancies of the year 2013 stand concluded. In this view of the matter, the existing vacancies having been filled in by way of regular recruitment, the appellant a contractual employee, cannot claim continuance in service as a matter of right. Obviously, the appellant has no claim against the posts created in the year 2017 and therefore, he cannot raise any grievance regarding the posts created in the year 2017 being filled in from amongst the candidates selected pursuant to the recruitment process initiated in the year 2013 and concluded in the year 2018. In any case, the respondents cannot be compelled to continue the appellant, a contractual employee in service, ignoring that the regular post against which he was working already stands filled in by way of regular recruitment.

8. In view of the discussion above, the order impugned passed by the learned Single Judge does not warrant any interference by us in exercise of intra court appeal jurisdiction.

9. In the result, the appeal fails, it is hereby dismissed. No order as to costs.