
(2014) 04 RAJ CK 0125
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3247/2014

Dinesh Kumar

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 21A

Citation : (2014) 04 RAJ CK 0125

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : H.S. Sidhu, Advocate for the Appellant; P.R. Singh, Addl. Advocate General and Mr. Dinesh Ojha for the Respondent State, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—The petitioner, who is working as Lecturer in History in the respondent No. 3-Gyan Jyoti P.G. College, Srikanpur District Sriganganagar, has filed the present writ petition for the following reliefs:-

(i) The respondents may kindly be directed to allow the petitioner to work on the post till the regular selected candidates are not being made available after 30.04.2014.

(ii) that the respondents may kindly be directed to absorb the petitioner on the post of Lecturer in History, or in alternate he may be absorbed on the suitable post available in the College with respondents as per the Rules of 1977.

2. Learned counsel for the petitioner submits that the respondent No. 3 College has been taken over by the State Government vide order dated 26/7/2013 (Annex. 3).

3. Both the learned counsels submit that the controversy involved in the present set of writ petitions is squarely covered by the decision of this Court in the case

of Hansraj vs. State of Raj. & Ors.-SCBWP no. 1717/2014 decided on 28/3/2014, in which this Court has held as under:-

1. The present set of writ petitions involving common question is being disposed of by a common order. The facts are illustratively taken from the case of Hansraj and Mandeep Kaur.

2. The respondent Shaheed Bhagat Singh PG College, Raisinghnagar and Meera Girls College, Sangaria were taken over by the State Government in the year 2013 along with all its movable and immovable assets vide order 30.07.2013, copy of which is placed on record as Annex. 4. The Rules applicable for such takeover of the private educational institutions framed by the State Government are known as Rajasthan Civil Services (Appointment and Other Service Conditions of employees of Private Institutions and other Establishments taken over by the Government) Rules, 1977. Rule 5 of the said Rules of 1977 which is relevant for the present controversy is quoted below for ready reference:

5. Taking over the private Institutions.-(1) In case the Government decides to take over a Private Institution along with its staff in public interest, it shall decide the equation of posts in such Institution and those existing under the Government and such of the staff as are willing to be absorbed in Government service who are serving or hold a lien in that Institution and subject to the availability of posts and vacancies in the Service they may be appointed on an equated or lower post as may be decided after being screened by a Committee which will be the same as the Departmental Promotion Committee constituted in the respective Service Rules for the post of concerned or if there is no such Committee, such Committee as may be appointed by the Government subject to the following conditions-

(i) the employee of such Institution, who is a candidate for absorption in the Service, possesses the minimum qualifications as laid down in the Rules/Schedule for the post for which he is a candidate or possessed such qualifications as were prescribed by the Government for recruitment to corresponding posts when he was initially appointed to such posts;

(ii) the candidate is not less than 21 years of age and more than the normal age of superannuation prescribed for such post by the Government on the date the Private Institution is taken over by the Government;

(iii) the employee is physically fit and does not suffer from any of the disqualifications for recruitment contained in these Rules or in the respective Service Rules for the post concerned:

Provided that after being taken over by Government, the number of candidates serving in Private Institution so selected for entry into Service, shall not be more than the number of posts sanctioned for that Private Institution by the competent authority unless the Government decides otherwise.

(2) The person so selected shall be considered as fresh recruits to Government

Service and the quota of a recruitment in the relevant service, if any, shall be determined after-absorbing such persons and they shall be appointed in the same capacity as in the Private Institution i.e. temporary, officiating, substantive, as the case may be, and the condition of probation and confirmation shall be deemed to have been waived in case of substantive or permanent officials.

(3) The seniority of the persons selected as a result of taking over of Private Institution, shall be determined with reference to the year of taking over of such employees and they shall rank enblock junior to persons appointed by directed recruitment or by promotion if the post is required to be filled in by promotion only in the relevant category during the year of their appointment. The inter se seniority of such appointment in the same grade under such management/agency; provided that any pre-determined seniority shall not be disturbed. The service rendered by the employees of the Private Institution on an equated post shall be counted as experience or service required for promotion or direct recruitment as the case may be.

3. The present petitioners were appointed as Lecturers or teachers in the said respondent private colleges in the recent past only and that too on contractual basis and while some of them possessed the requisite qualifications as prescribed by the State Government, some did not. The grievance raised in the present case is that the Administrator appointed by the State Government for these private colleges suddenly discharged them from their service by the impugned order Annex. 5 dtd. 28.2.2014 just when the academic session ended on 28.2.2014.

4. The writ petitioners, therefore approached this Court by way of present writ petitions with the prayer for the quashing of the impugned orders and for allowing the present petitioners to work till the regularly selected persons were made available by the State Government to teach the students in these private educational institutions in the next session commencing from July 2014 or in the alternative their services may be absorbed under the Rules of 1977.

5. Upon issuance of notices, the respondent-State has filed a reply in one of these cases in SBCWP No. 1717/2014-Hansraj V/s State and ors. and the State is represented by Mr. PR Singh, AAG and Mr. Digvijay Singh.

6. Mr. H.S. Sidhu and Mr. Sudhir Sharma, learned counsel appearing for the petitioners have submitted that the State Government has taken over the said respondent Private educational institutions at the request of the Managing Committee of the respondent-colleges and only the movable and immovable assets of the said colleges have been taken over of such self-financing colleges, without making any provision for taking over of the services of the teachers or lecturers in these colleges or without making any provision in that regard. They also submitted that the competent committee under Rule 5 of 1977 Rules has not even considered the cases of the present petitioners and the Administrator appointed by the State Government had no jurisdiction to terminate the services or the contract of services of the present petitioners as has been done by him by

the impugned order Annex. P/5 dtd. 28.2.2014.

7. Per contra, learned Additional Advocate General, Mr. P.R. Singh vehemently opposed these writ petitions and urged that the present petitioners are not eligible and entitled to be absorbed in the services of the State under 1977 Rules or otherwise, as most of them do not even possess the requisite minimum qualifications for being appointed on the post of lecturers having not cleared National Eligibility Test (NET, for short) for that post. He also submitted that the private Managing Committees of these respondent-Institutions had temporarily appointed these lecturers on contract basis on session to session basis and some of the lecturers have served the respondent-Institutions only for 1 to 2 years and therefore there is no question of the State Government being saddled with the responsibility to absorb their services. He also submitted that the State Government has adequate number of other qualified lecturers available with them to provide them for teaching in the respondent-Colleges also taken over by the State and no loss of teaching the students in these colleges will happen when the next session begins in July, 2014.

8. I have heard the learned counsels at length and perused the record and the statutory Rules of 1977.

9. Rule 5 of 1977 Rules provides for the Government to take over a private institution along with its staff in public interest and in case it does so, it shall decide the equation of posts in such institution and those existing under the Government and such of the staffs as are willing to be absorbed in the Government service who are serving and held lien in that institution, subject to availability of such posts and vacancies in the service with the State, they may be so appointed on the equated or lower post as the case may be and the said exercises shall be done by the Department Promotion Committee constituted in the respective Service Rules or such Committee as may be appointed by the Government subject to certain conditions. Rule 5 has been quoted above and the conditions for absorption includes possession of minimum qualifications by the teachers of such private institutions, age limit, physical fitness etc. The learned Additional Advocate General also submitted that under the Rajasthan Non-Government Educational Institutions (Recognition and Grant-in-Aid) Rules, 1989, under Rule 26 even the conditions for initial appointment of the lecturers like the present petitioners were not fulfilled and therefore the services of the present petitioners, cannot be absorbed. Praying for dismissal of the writ petitions Mr. P.R. Singh therefore submitted that the petitioners have no legal right to continue in the service of the respondent-institutions which has been taken over by the State Government as the takeover request of the institutions themselves was only of the movable and immovable assets, to permit the State Government to run such educational institutions in future and no agreement about such contractually and temporarily appointed lecturers has been entered into by the State.

10. It is true that no mandamus direction in these circumstances can be issued

to the State Government to absorb the present petitioners obviously because such absorption depends and is hedged with several conditions like the eligibility, qualifications, age, the period for which they have served, their lien held in the respondent institution and their desire to be so absorbed in the service of the State Government subject to availability of the vacancies with the State Government. In the present cases, since the takeover of the institutions was without staff and was specifically at the request of the institutions themselves, the State Government obviously cannot be directed to takeover and absorb the services of the present petitioners since there is no agreement with the institutions and the State Government in this regard. Thus apparently Rule 5 of 1977 Rules has been invoked and applied only partially in the present takeover of the respondent educational institutions which were self-financing colleges and upon finding themselves unable to run these institutions, they approached the State Government for being taken over and to run these colleges in future. The responsibility to provide education to the students is a fundamental duty of the State while on the other hand, it is a fundamental right of the students especially after incorporation of Article 21A in the Constitution of India. Earlier such a right was read by the Hon"ble Supreme Court in various decision under Article 21-right to life and dignified life in the Constitution of India.

11. Therefore, while this Court is conscious of its limitation to direct the absorption of the present petitioners to the State Government, nonetheless the direction to consider the cases by the competent Committee envisaged under Rule 5 of 1977 Rules deserves to be given to the respondent-State in the facts and circumstances of the present case. The reason is that so far no definite plan has been produced by the respondent State before this Court to make adequate number of fully eligible/qualified and regularly employed lecturers being available with them to be deputed in these respondent-institutions to continue the session and the academic activities in these institutions on the record of this Court. Some of the petitioners before this Court have admittedly fulfilled the minimum eligibility and qualification criteria under 1989 Rules or 1977 Rules also, but as aforesaid each case has to be considered on its own merits depending upon the variety of factors by the concerned Committee constituted under Rule 5. If no such specific Committee has already been constituted, the State Government is at liberty to constitute such committee for considering the cases of the petitioners and other similarly situated persons to make the takeover of the assets of the respondent-private educational institutions meaningful and purposive. The takeover order, Annex. 4 dtd. 30.7.2013 does not disclose anything about the further plan of the State Government as to how these educational institutions are to be run by appropriate deputation or appointments to these institutions of the lecturers and teachers. Even the formal financial sanction for the takeover of the movable and immovable assets was also stated to be separately awaited under relevant Rules.

12. Therefore, the direction to the State to consider the cases of all these petitioners in terms of Rule 5 at the hands of the appropriate and competent

screening Committee becomes expedient in the present set of cases, even though no specific direction for absorption or continuation of their contractual employment can be given by way of mandamus direction.

13. The learned counsel for the petitioners have also submitted that the petitioners have also not been paid their regular salary for the period for which they have already discharged their duties before passing the impugned orders. The respondent-administrator/respondent-Institutions will be liable to pay salary/wages as per their agreement to the petitioner, if not already paid and such payment may also be made within a period of three months from today, otherwise it will be treated as a charge on the movable and immovable property of these private colleges and the owners/trustees or members of the Managing Committee shall also be personally liable for such dues of salaries/wages of the teachers.

14. These writ petitions are accordingly disposed of with a direction to the respondent-State to constitute the appropriate Committee under Rule 5 of 1977 Rules, if not already constituted and with a further direction and liberty to the present petitioners to file their appropriate representations within a month before such committee making out their individual cases for consideration by the said Committee for their continuation or absorption in the service of the State Government. The said exercises may be completed within a period of 3 months from today. The State Government will of course be free to send on deputation or appoint other regularly appointed and selected lecturers for teaching in these private educational institutions, lest any prejudice or discontinuation of the academic sessions is caused in these colleges before July 2014. No order as to costs. A copy of this order be sent to the parties concerned forthwith.

(Dr. Vineet Kothari), J.

3. The present writ petitions are also disposed of in same terms. No costs. Copy of the order be sent to the parties concerned forthwith.