
(2015) 08 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14491 of 2013

Director, Secondary Education, Rajasthan, Bikaner and Others	APPELLANT
Vs	
Indu Sharma and Others	RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 08 RAJ CK 0124

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

**Advocate : Sanjay Kumar Sharma, Government Counsel, for the Appellant;
Himanshu Jain, Advocates for the Respondent**

Final Decision : Allowed

Judgement

Veerender Singh Siradhana, J—The State-petitioners are aggrieved of the order dated 11th December, 2002, passed by the Rajasthan Civil Services Appellate Tribunal, at Jaipur (for short "the Tribunal"), upholding the claim of the respondent-employee for benefit of selection scale from the date of her initial appointment i.e. 30th November, 1987, on completion of ten years of service, and therefore, have assailed the legality, validity and correctness of the impugned order dated 11th December, 2002, praying for the following relief(s):--

"[i] by an appropriate writ, order or direction the impugned order dated 11.12.2012 [Annexure-4] passed by the learned Rajasthan Civil Services Appellate Tribunal in Appeal No. 192/2004 may kindly be held illegal, arbitrary, perverse and unconstitutional, and, therefore, the same may kindly be quashed and set aside and the appeal of the respondent-appellant may kindly be dismissed.

[ii] Any other writ, order or direction which the Hon''ble Court deems fit and proper in the facts and circumstances of the case, the same may kindly be passed in favour of the humble petitioners.

[iii] Cost of the writ petition may kindly be awarded in favour of the petitioners."

2. Briefly, the skeletal material facts necessary for appreciation of the controversy raised herein needs to be first noticed. The respondent-employee (Smt. Indu Sharma), was initially appointed as Teacher Grade-II vide order dated 23rd December, 1986. She was further promoted to the post of Lecturer (Chemistry) [School Education] vide order dated 30th November, 1987, purely on ad hoc/temporary basis. The respondent-employee was accorded regular promotion to the post of Lecturer (School Education) by the Departmental Promotion Committee (for short "D.P.C.") on 20th October, 1996. On an appeal preferred before the Tribunal by the respondent-employee, the State-petitioners have been directed to count the service of ten years, for the benefit of selection scale, from the date the respondent-employee was promoted on ad hoc basis to the post of Lecturer (School Education) i.e. 30th November, 1987.

3. Learned counsel appearing on behalf of the State-petitioners, reiterating the pleaded facts and grounds of the writ application, stressed that the respondent-employee was accorded promotion to the post of Lecturer (School Education), purely on ad hoc/temporary basis for a period of one year or till the selected candidates were made available by the DPC or till further orders, whichever is earlier. In support of his submissions, reliance is placed on the opinion of the Hon'ble Supreme Court in the case of State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, AIR 2010 SC 157 : (2009) 13 JT 9 : (2009) 8 SCALE 28 : (2009) 12 SCC 49 : (2010) 1 SCC(L&S) 105 : (2009) 9 SCR 1011 : (2009) 8 SLR 505 .

4. In response to the notice of the writ application, the respondent-employee has filed her counter-affidavit, reiterating the stand in the memo of the appeal before the Tribunal and supporting the impugned order dated 11th December, 2012, passed by the Tribunal. Learned counsel appearing on behalf of the respondent-employee submits that the impugned order passed by the Tribunal is perfectly legal and valid, having regard to the singular facts and circumstances of the instant case at hand, and therefore, calls for no interference by this Court in exercise of writ jurisdiction under Article 226 and/or 227 of the Constitution of India.

5. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

6. The factual matrix as to appointment of the respondent purely on ad hoc/temporary basis vide order dated 30th November, 1987, as well as the regular promotion accorded on the recommendations of the DPC on 20th October, 1996, is not in dispute.

7. In view of the admitted factual matrix, the controversy raised herein may not detain this Court for long in the face of authoritative pronouncement on the issue by the Hon'ble Apex Court of the land in the case of Jagdish Narain Chaturvedi

(supra), wherein the Hon''ble Supreme Court held that promotion has to be in the existing cadre in service. Ad hoc appointment is always to a post, but not to the cadre/service and is not made in terms of recruitment rules for regular appointment. In case of ad hoc employees, stagnation is till regularization is made. The stress in the present case is on "regular" appointment to cadre/service. The question of promotion arises only when appointment is a regular appointment. Further, appointment to the post is not relevant; on the other hand, what is relevant is the period relatable to cadre of the service. Therefore, while reckoning the required length of service, the period of ad hoc service has to be excluded.

8. In view of the law declared by the Hon''ble Supreme Court in the case of Jagdish Narain Chaturvedi (supra), it is evident that the respondent-employee was not appointed in any existing cadre/service, and therefore, ad hoc/temporary appointment will not qualify to be treated as "regular appointment".

9. For the reasons and discussions herein above and in view of the law declared by the Hon''ble Supreme Court in the case of Jagdish Narain Chaturvedi (supra), the impugned order passed by the learned Tribunal cannot be sustained and has to be quashed and set aside.

10. Ordered accordingly.

11. Consequently, the writ application succeeds. The impugned order dated 11th December, 2002, is hereby quashed and set aside.

12. In view of the final adjudication on the writ application, the stay application stands closed.

13. However, in the facts and circumstances of the case, there shall be no order as to costs.