

(2018) 08 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ No. 11757 of 2018

Dr. Kirti Maheshwari @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 08-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 08 RAJ CK 0048

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Muktesh Maheshwa

Final Decision : Disposed Off

Judgement

Â Learned counsel for the petitioner submits that the matter is covered by the judgment passed by this Court in Bhagwan Singh Shekhawat &

Ors.Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.10259/2018) decided on 19.07.2018, which reads as under:

1. The petitioners have preferred this writ petition under Article 226 of the Constitution of India claiming the following reliefs:

â??1. The record of the case may kindly be called for.

2. The order dated 15.06.2018 (Annex.17) and consequential orders issued pursuant thereto may be quashed and set aside.

3. The selection process initiated by the respondent University for selection of the petitioners on the post of Assistant Professor be declared as valid.

4. The respondents may kindly be directed not to interfere in the working of the petitioners on the post of Assistant Professor. 5. Any other appropriate

writ, order, direction, which this Honâ??ble Court may deem just and proper in the facts and circumstances of the case, may kindly be passed in

favour of the petitioners.

6. The writ petition filed by the petitioners may kindly be allowed with costs.â??
2. The petitioners are holding the post of Assistant Professor in the respective Subjects in the respondentUniversity.
3. Learned counsel for the petitioners seeks confinement of this petition to the extent of petitioner No.1, while seeking liberty to move separate writ petitions on behalf of other petitioners.
4. The aforesaid prayer is allowed, and accordingly, the matter has been heard finally.
5. Brief facts of the case as noticed by this Court are that the petitioner is working as Assistant Professor in the respondent-University. The petitioner was selected and appointed on the said post in February, 2013.
6. Learned counsel for the petitioner has pointed out that initially an Agenda was brought in by the respondents regarding 34 Assistant Professors, who had been selected out of the same recruitment process.
7. Learned counsel for the petitioner has further pointed out that regarding those 34 persons, a proper inquiry was conducted and a conscious decision was taken after adopting due process of law to remove those 34 Assistant Professors. The respondent-University also came to the conclusion that the said recruitment was contrary to the UGC Regulations, 2009 & 2010.
8. For ready reference, the relevant portion of the Agenda is reproduced hereunder:

â??AGENDA ITEM NO.12

t; ukjk;.k O;kl fo'ofok; }kjk fofHkUu fo""k;ksa ds lgk;d vkpk;Z ds fjDr inksa dh lh/kh HkrhZ djus gsrq foKkiu la[k;74@2011&12 tkjh fd;k x;k Fkka

mDr foKkiu ds rgr vkosnu djus okys vkosndksa dk o""kZ 2012&13 esa lk{kkRdkj ds i'pkr~ p;u lfefrÂ }kjk dh xbZ vuq'kalk ds vk/kkj ij flf.MdsV ds

vuqeksnu i'pkr~ dk;kZy; vkns'k la[k;k 7673 fnukad 13-022013 Â¼24 lgk;d vkpk;ZÂ½ }kjk dqy 111 fofHkUu fo""k;ksa ds p;fur lgk;d vpk;ksZa dks

fu;qfDr vkns'k tkjh fd;s x;s FksA jkT;iky lfpoky;] jktHkou] t;iqj ls izkIr i= fnukad 16-01-2017 esa iznÃ?k funsZ'kksa ds Ã?e esa dqyifr egksn; }kjk

tkap lfefr dk xBu fd;k x;kA mDr tkap lfefr }kjk 35 lgk;d vkpk;ksZa vkosnu i= izLrqr djus dh vafre frfFk fnuakd 25-01-2012 dks ;w-th-lhjsX;wys'ku

2009 ,oa 2010 esa lgk;d vkpk;Z in gsrq fu/kkZfjr U;wure 'kS{kf.kd ;ksX;rk,a / kkfjr ugha djus ,oa ,d lgk;d vkpk;Z dk vuwlwfpr tkfr izek.k i= jktLFkku

jkT; dk ugha gksus ds dkj.k vik= ekuk x;kA bl izdkj tkap lfefr }kjk dqy 36 lgk;d vkpk;ksZa dks vik= ekuk gSA tkap lfefr dh fjiksVZ ds vk/kkj ij

fo'ofokj; esa orZeku esa dk;Zjr 34 lgk;d vkpk;ksZa dks dkj.k crkvksa uksfVI fnukad 31-01-2017 dks tkjh fd;k x;kA 34 lgk;d vkpk;ksZa }kjk izLrqr

tokc dk ijh{k.k dqyifr egksn; }kjk xfBr vU; lfefr }kjk fd;k x;kA tokc dks ijh{k.k djus gsrq xfBr lfefr }kjk izLrqr fjiksVZ ds vuqlkj lgk;d vkpk;ksZa dks

fn;s x;s uksfVI fnukad 31-01-2017 esa mYysf[kr Remarks ,oa observations dk larks""kizn tokc muds }kjk ugha fn;k x;k gSA vr% IEiw.kZ izdj.k

flf.MdsV ds le{k fopkjFkZ ,oa fu.kZ;kFkZ izLrqr gSAâ??

9. The decision taken by the respondents regarding the aforesaid Agenda is also reproduced hereunder:

â??AGENDA ITEM NO.12 RES. NO.40/2017

Â fo'ofokj; }kjk tkjh foKkiu la[k;k 74@2011&12 ds rgr 111 lgk;d vkpk;ksZa esa ls orZeku eas fo'ofokj; eas dk;Zjr 34 lgk;d vkpk;ksZa esa ls 33 lgk;d

vkpk;ksZa }kjk ;tw hlh jsX;wys'kul~ 2009 ,oa 2010 ds vuq:i vkosnu izLrqr djus dh vafre frfFk fnukad 25-01-2012 rd fu/kkZfjr U;wure 'kS{kf.kd

;ksX;rk /kkj.k ugha djus ,oa ,d lgk;d vkpk;Z Â¼laxhr foHkkx esa fu;qDr Jh lqjsUnz dqekjÂ½ ds jktLFkku jkT; dh vuqlwfpr tkfr dk ugha gksus ds

ckotwn vuqlwfpr tkfr gsrq vkjf[kr in ij fu;qfDr fn;s tkus ds dkj.k 34 lgk;d vkpk;ksZa ds izdj.k dks flf.MdsV ds le{k j[kk x;k ftl laca/k esa flf.MdsV }kjk

fuEukuqlkj fu.kZ; fy;k x;k& fo'ofokj; }kjk vf/klwfpr v/;kns'k 317 ,oa rnuq:i tkjh foKkiu la[k;k 74@2011&12 esa mYysf[kr lgk;d vkpk;Z in ij lh/kh

HkrhZ gsrq fu/kkZfjr 'kS{kf.kd ;ksX;rk ;wthlh jsX;wys'kul~ 2009 ,oa 2010 ds rgr mYysf[kr lgk;d vkpk;Z in ij lh/kh HkrhZ gsrq okafNr U;wure

'kS{kf.kd ;ksX;rk ds vuq:i ugha gSA fl.MhdsV }kjk mijksDr folaxfr dh fLFkfr dk vkadyu ekuuh; mPpre U;k;ky; }kjk ikfjr fu.kZ; ih- lq'khyk o ekuuh;

jktLFkku mPp U;k;ky; dh [k.MihB }kjk ikfjr fu.kZ;ksa ;Fkk jfoUnz flag 'ks[kkor o ehuk dqekjh xqtZj ds izdj.kksa ds rgr fd;k x;kA fof/kd n`f""Vdks.k ls

fo'ofokj; }kjk vf/klwfpr v/;kns'k 317 ,oa rnuqlkj tkjh foKkiu la[k;k 74@2011&12 esa lgk;d vkpk;Z in ij lh/kh HkrhZ gsrq fu/kkZfjr@izdkf'kr dh xbZ

'kS{kf.kd ;ksX;rk fof/k vuq:i ugha gSA mijksDr lgk;d vkpk;ksZa ds in ij fo'ofokj; }kjk dh xbZ lh/kh HkrhZ ds lca/k esa ekuuh; dqykf/kifr o mPp

f'k{k foHkkx] jktLFkku ljdkj] t;ij }kjk le; le; ij izkIr gq, i=kpkj o funsZ'kksa dk lIEeku voyksdu fd;kA fo'ofokj; }kjk fd;s x, i=kpkj o rhu lnL;h; tkap

lfefr;ksa Â¼dqy nksÂ½ }kjk rS;kj dh xbZ fjiksVZI dk miyC/k fjdkMZ ds ifjis{k

esa v/;;u fd;k x;kA dgykf/kifr egksn; }kjk fn, x, funsZ'kksa dh

vuqikyuk esa uSIfxZd U;k; ds fl+)kar dks n`f""Vxr j[krs gq, fo'ofokj; }kjk vik= lgk;d vkpk;ksZa ¼33+1½ dks fnukad 31-01-2017 dks uksfVI tkjh fd,

x, ,oa mDr uksfVI ds vuqlj.k esa izLrq leLr tokcksa dk i`Fkd i`Fkd voyksdu fd;k x;kA blds vfrfjDr flf.MdsV dh cSBd ds nkSjku lgk;d vkpk;ksZa }kjk

izLrqr fjV ;kfpdkvksa] fo'ofokj; }kjk izLrqr tokc] ekuuh; mPp U;k;ky; }kjk mDr ;kfpdkvksa esa ikfjr varfje fu.kZ; ,oa vafre fu.kZ; dk lIEeku voyksdu

fd;k x;kA izR;sd lgk;d vkpk;Z ds dwy Isok vfHkys[k dk Hkh voyksdu fd;k x;kA lEiw.kZ fLFkfr esa le; foospu ls ;g Li""V gS fd fo'ofokj; }kjk tkjh

foKkiu la[;k 74@2011&2012 ds rgr fofHkUu foHkkxksa esa fu;qDr lgk;d vkpk;ksZa esa ls 34 lgk;d vkpk;Z esa ls 33 lgk;d vkpk;ksZa tks vkosnu djus

dh vafre frfFk fnukad 25-01-2012 dks ;wthlh jsX;wys'kul 2009 ,oa 2010 eas of.kZr U;wure 'kS{kf.kd ;ksX;rk ugha j[krs Fks] blh izdkj ,d lgk;d vkpk;Z

¼¼laxhr foHkkx esa fu;qDr Jh lqjsUnz dqekj½ ds jktLFkku jkT; dh vuqlwfr tkfr dk lnL; ugha gksus ds ckotwn vuqlwfr tkfr gsrq vkjf{kr in ij fu;e

fo:) fu;qDr fn;s tkus ds dkj.k mijksDr leLr 34 lgk;d vkpk;Z lh/kh HkrhZ ds tfj;s lgk;d vkpk;Z ds in ij fu;qDr gsrq vik= gSaA mDr leLr 34 lgk;d

vkpk;ksZa dh Isok,a lekIr djus dk flf.MdsV }kjk loZIEfr ls fu.kZ; fy;k x;k ,oa ,rn} kjk mudh Isok,a lekIr dh tkrh gSaA vik= 34 lgk;d vkpk;ksZa dk

foLr`r fooj.k i`Fkd ls layXu gSA fl.MhdsV dk mijksDr fu.kZ; ekuuh; mPp U;k;ky;] tks/kiqj }kjk ikfjr fu.kZ; fnukad 18-04-2017 ds v;/k/khu eKU;

gksxkA

,ts.Mk esa nks lgk;d vkpk;ksZa ;Fkk Å?e la-16 ij vafdr izk.kh'kkL= foHkkx dh txg lekt'kkL= foHkkx rFkk Å?e la-17 ij vafdr lekt'kkL= foHkkx dh txg

bfrgkl foHkkx i10. Learned counsel for the petitioner states that the case of the aforesaid 34 persons, who after due inquiry and adopting due process of law, were

removed by the University, is subjudice and is under adjudication before this Honâ??ble Court.

11. It is contended by learned counsel for the petitioner that after such exercise, now the respondents, in an arbitrary manner, are initiating another

exercise separately in pursuance of order dated 15.06.2018 (Annexure 17), which reads as under:

â??Å?ekad ,Q-2¼¼3½ vkjch@2013@4890 fnukad 15 twu] 2018

dgyifr]

t; ukjk;.k O;kl fo'ofokj;]

tkS/kiqjA

fo'''k;%& o'''kZ 2012&13 esa fo'ofokj; esa HkfrZ;ksa eas gqbZ vfu;ferrkvksa ds laca/k esaA

lanHkZ%& jkT; ljdkj ds i= Å?ekad I-13Â¼48Â½ f'k{kk&4 ikVZ 111 fnukad 31-

5-2018 egksn;] mijksDr fo'''k;kUrxZr funsZ'kkuqlkj jkT; ljdkj ds lanfHkZr i= Å?ekad i-13 Â¼48Â½Â f'k{kk&4 @2014 fnukad 09-04-2018 o Å?ekad

I-13Â¼48Â½ f'k{kk&4 ikVZ 111 fnukad 31-5-2018 dh izfr layXu djrs gq, muesa fn;s funsZ'kksa dh ikyuk ds vuqlkj fuEu dk;Zokgh fofufnZ'''V le;kof/k

esa fÅ?;kfUor dj ekuuh; dqykf/kifr egksn; dks voxr dj;k tk,&

1- o'''kZ 2012&13 esa gqbZ HkrhZ izfÅ?;k esa cjrH xbZ vfu;ferrkvksa gsrq lacaf/kr O;fDr;ksa ds mÅ?kjnkf;Ro dk fu/kkZj.k fd;k tdkj fu;ekuqlkj

vuq'kklukRed dk;Zokgh vfoYEc vey esa ykbZ tkosa

2- ;wthlh ds ukElZ ds vuqlkj U;wure ;ksX;rkvksa dh ikyuk fd;s cxSj ,oaxaHkhj izfÅ?;kRed [kkfe;ksa ds dkj.k HkrhZ gq, vkpk;Z] lg vkpk;Z] lgk;d

vkpk;ksZa ,oa vU; dks gVk;s tkus gsrq fu;ekuqlkj dk;Zokgh dh tkosa 3- Hkfo'''; esa bl izdkj dh xaHkhj vfu;ferrkvksa dh iqujko`fr jksds tkus gsrq

O;oLFkk lq/kkj dh leqfpr dk;Zokgh dh tkosa

Hkonh;

,lMh@&

Â¼ nsck'kh'''k i`'''Vh Â½â??

12. It is also contended by learned counsel for the petitioner that neither a single notice has been given to him nor any procedure has been adopted by

the respondents to have reached to the conclusion to go ahead with the exercise of removal of the present petitioner. Learned counsel for the

petitioner is however unable to explain as to what threat the petitioner is facing at this juncture, when the complete procedure is yet to take place and

the matter is yet to be processed by the respondent-University themselves.

13. After hearing learned counsel for the petitioner and perusing the record of the case, this Court is of the opinion that though the letter dated

15.06.2018 speaks of certain action against the present petitioner for removal, but at this stage, when the removal can only be done by adopting the

due process of law where proper opportunity of hearing would be given to the present petitioner, it is not possible to believe that the petitioner is under

any kind of threat of removal, at this stage.

14. This Court is of the opinion that the matter is premature in nature, and accordingly, without going into the merits of the case, as the consideration

by the respondents is yet to be completed, this Court deems it appropriate to dispose of the writ petition at this stage as premature with liberty to the

petitioner to file fresh petition, in case, any adverse order is passed against the petitioner by the respondents. This Court is however, concerned by the

language of the order dated 15.06.2018, which virtually orders removal and therefore, in the interest of justice, it is ordered that the adverse order, if

any passed shall not be given effect to for at least 40 days from the date of passing of such order so as to enable the petitioner to challenge the said

order, if any, before this Court. It is further clarified that disposing of the present writ petition as premature is subject to the rights of the petitioner to

challenge the proceedings undertaken against him, if so required, including adverse order if any.

15. With the aforesaid observations and directions, the present writ petition is disposed of.

2. This Court after examining the issue finds that the controversy is same.

3. In light of the aforequoted judgment, the present writ petition is also disposed of in the same terms while making it clear that the adverse order, if

any passed shall not be given effect to for at least 40 days from the date of passing of such order so as to enable the petitioner to challenge the said

order, if any, before this Court.