

(2018) 07 RAJ CK 0198
In the Rajasthan High Court
Case No : Civil Writs No. 13021 of 2017

Dr. Prabha Verma @APPELLANT@Hash University Of Rajasthan

Date of Decision : 18-07-2018

Acts Referred:

Citation : (2018) 07 RAJ CK 0198

Hon'ble Judges : Veerendr Singh Siradhana, J

Bench : Single Bench

Advocate : Shiv Charan, Rajendra Prasad, Alankrita Sharma

Final Decision : Disposed Off

Judgement

Learned counsel for the parties are not disputed on the proposition that identical controversy fell for consideration before the Division Bench in D. B.

Special Appeal (Writ) No. 536/2013 (The University of Rajasthan VS. State of Raj. & Ors.), decided along with analogous matters on 21st

December, 2018, affording an opportunity of hearing to the parties represented through their counsel in the intra-court appeal proceedings (supra). The

Division Bench of this Court upon hearing and consideration of somewhat identical controversy observed thus:

“We have considered the submissions of the parties on merits and with their assistance perused the material on record. It is not disputed that

services of the teachers are regulated under the Act, 1974 and substantive appointments could be made on the recommendations of the statutory

Selection Committee but a very disturbing situation has come/arisen that the University failed in discharge of its duty and to some extent the State of

Raj. is also responsible & for more than two decades no substantive appointments could be made u/S.3(1) of the Act which is the only source of

recruitment of a teacher under the provisions of the Act, 1974 and whenever the

exigency arises at a given point of time either on account of shortage of teachers or more teachers are required, the provisions u/S.3(3) came to be invoked with the hope & belief that the authority may initiate the process of making regular appointments as envisaged u/S.3(1) of the Act,1974 expeditiously but the experience shows that no substantive appointments were made for more than two decades and Sec.3(3) of the Act,1974 which is an exception to Sec.3(1), to be used very sparingly, by passage of time became a rule and whenever there was a requirement to fill the substantive sanctioned posts of teachers of the various faculties the University adopted the easy recourse invoked Sec.3(3) and ad-hoc appointments were made & by the time 272 teachers were working in the University on temporary basis appointed u/S.3(3) of the Act,1974 and after there was a series of litigation by the teachers for safeguarding their interest, orders were passed by this Court time & again to hold regular selection and till then allow the temporary teachers to continue but the University failed to hold regular selections and the temporary teachers are allowed to continue for almost two decades and at this stage the State Government intervened in the matter and the Act, 2008 came into force with the object that the teachers who were working for long and either are at the verge of retirement appointed u/S.3(3) of the Act,1974 at least they may be absorbed and become member of service and such of the temporary teachers as defined u/S.2(iv) of the Act,2008 after being screened by a committee constituted u/S.4 of the Act,2008, minutes of the screening committee were placed before the Syndicate in its meeting held on 5-8-2008 and on approval of the recommendations of screening committees in consequence thereof order came to be passed dt.5-8-2008 absorbing the teachers and became substantive from the date of their initial appointment and a member of service of Act,1974.

A teacher is someone who gains from the experience of working with young people. How can one expect commitment from someone who is hired for a short while and is facing chronic uncertainty. Teaching used to be a career until the late 80's and 90's but now our brightest young people want to avoid this profession as they know how vulnerable it is. One could very well see the plight of the students at the one hand, vacancy of teachers could not be filled may be for any administrative reasons for a sufficient

long time as in the instant case for more than two decades and no option is left then to fill the sanctioned posts of teachers by making temporary appointments invoking Sec.3(3) of the Act,1974 and if the vacancies remained unfilled or there is assurance that it should be filled in due course of time what does it mean and when there is a complete restriction on making temporary appointments which ordinarily as observed should be to safeguard the interest of the students to be invoked as an exception to the Rule of making substantive appointments which in the instant case has been given a complete go-bye for at least two decades and the student who joined the University even might not be having a subject teacher for the reason that substantive appointments could not be made and temporary appointments are not permissible the consequence is the student needs to wait and pass out his graduation/postgraduation without a teacher and in the given situation what will be the fate of the student which might occurred who is never at fault but a victim for the fault of the authorities who failed to discharge its legal obligation in making regular/substantive appointments of teachers & that has to be taken on top priority.

The submissions made by counsel for the appellant University questioning the Syndicate's resolution & consequential order dt.5-8-2008 for grant of CAS is of no substance for the reason that the Syndicate is a statutory executive body of the University and it has to discharge its statutory duties prescribed u/S.22(g) of the Act,1946 and in the constitution of the Syndicate apart from the officers of the University the government nominees are also its members and that being so the Government has a right of say and keep a vigil over functioning through its nominee in the constitution of Syndicate of the University constituted under the Act,1946 has made recommendations to grant benefit of past service rendered by the teachers who were appointed u/S.3(3) of the Act,1974 and in consequence thereof the teachers were absorbed & substantively appointed & became member of service under the Act,1974 pursuant to order dt.5-8-2008.

The decision/resolution of the Syndicate or the order if any passed in consequence thereof are always open to judicial review as in the instant case the order dt.5-8-2008 passed by the appellant-University of Rajasthan on the recommendations of the Syndicate was open for judicial review but was never the subject matter of challenge in any of the proceedings on the contrary

the teachers when approached this Court by filing their respective writ petitions with the limited grievance that once their services have been acknowledged from the date of their initial appointment there appears no reason not to consider them for the benefit of CAS and the University of Rajasthan supported the cause of the teachers as indicated from the reply filed by University of Rajasthan to the writ petition before the Ld. Single Judge of which reference has been made in above paras and the only objection was that the Government should be directed to release funds and because of the financial constraints being faced by the University it is not possible for the University to discharge its legal obligation and we find no reason or justification at least for the University in questioning order of the Ld. Single Judge more so when the order dt.5-8-2008 has been passed on the recommendations of the Syndicate of the University of Rajasthan and was never questioned in any of the proceedings before the Ld. Single Judge but when it could not have been possible to question directly, approached the Division Bench of this Court questioning order of the Ld. Single Judge by adopting this indirect method of filing special appeals and practically assailing order dt.5-8-2008 and this court finds substance that the special appeals preferred at the instance of the University appellant is not only on principle to question but the later minutes of the Syndicate dt.27-5-2013 reveals that a bureaucrat who became the ad-hoc Vice Chancellor of the University since recorded its note of dissent but still the minutes of the Syndicate meeting approved by majority appears to be the reason for which the University filed the batch of special appeals.

The judgment on which the counsel placed reliance reported in 2013 (3) SCC 705 is of no assistance for the reason that it was a case where the teachers approached the Court at the stage after they stood retired from service before the Act of 2008 came into force and their grievance was that the temporary service rendered by them be treated to be regular service and to make them member of Pension Regulations,1990 for all practical purposes which was declined by the Apex Court for the reason that they were not the member of service at the time when they stood retired from service and consequential effect of the Pension Regulations,1990 would not make them member of service for the purpose of grant of pension under the Scheme of Regulations,1990.

However, in the instant case, after the Act, 2008 came into force the existing teachers who were working became member of service which

acknowledges their service for the benefit of CAS & also for pension under the Pension Regulations, 1990 & other benefits flowing thereof and the

observations made by the Apex Court in the given facts & circumstances may not be of any assistance to the appellant.

The further submission made by appellants' counsel that after the Act, 2008 came into force the Syndicate committed apparent error in

regularizing their service from the date of their initial appointment, in our view it is not open for the University to question and once the screening

committee constituted under the Act, 2008 has recommended case of the teachers and the Syndicate a statutory committee approved such

recommendations and resolved to absorb & appoint substantively from the date of initial appointment, keeping in view the duties being discharged by

the teachers during the interregnum period when the University failed to discharge its legal obligation in making regular appointments u/S.3(1) of the

Act, 1974 and the teachers who have served for at least one/two decades appointed u/S.3(3) of the Act, 1974 ultimately become suffers for none of

their fault & looking to the kind of duties being discharged by a teacher, no distinction could be pointed out and such decision cannot be said to be

apparently irrational or impermissible in the eye of law but still taking note of the fact situation we are of the view that it is not open for the University

to question the decision of the Syndicate a statutory body constituted under the Act, 1946 of the University of Rajasthan, in the intra court appeal to

examine the question which was neither raised nor examined by the Ld. Single Judge at the instance of the University of Rajasthan in the writ

proceedings.

So far the submission made by Sh. Kamalakar Sharma, Sr. Adv., assisted by Ms. Alankrita Sharma Adv., in respect of applicability of the Pension

Regulations, 1990 is concerned, the Ld. Single Judge in its judgment impugned dt. 22-1-2016 has specifically observed that once the teacher became a

member of service from the date of his initial appointment there appears no bar/impediment under the Pension Regulations, 1990 which deprives him

from being considered to be a member of Pension Scheme and we find substance in what has been observed by the Ld. Single Judge for the reason

that the University Pension Regulations,1990 has become effective from 1-1-1990 and we consider it appropriate to refer certain provisions of the Scheme of Pension Regulations,1990 for appreciation of the submissions, as under :-

Reg.2:- Scope and Application :-

(i) These regulations shall also apply to all persons regularly appointed to the service of the University of Rajasthan on or after 1.1.1990.

(ii) These regulations shall also apply to all existing employees-both teaching and non-teaching-who opt for pension scheme under these regulations

within the period specified in Reg. for exercising option. In the case of employees who do not exercise option within the specified period it will be

deemed that the concerned employee has opted for the pension scheme under these regulations.

Provided that these regulations shall not apply to:

(a) Persons employed on contract or part-time basis.

(b) Persons on deputation to the University.

(c) Purely temporary and daily wages staff.(d) Re-employed pensioners.

Reg.3 : Definitions :

(5) "Pension Fund" means the fund created for purpose of transferring the total accumulated amount of University contribution in C.P.F.

(including the amount of loan taken out of it) and interest there on as on date of commencement of these regulations and monthly contribution made

thereafter in respect of such employees who opted or are deemed to have opted the pension scheme under these regulations. The pension paid to the

retired employees shall be charged to this Fund.

Reg.22 : Conditions of Qualifying Service : The service of an employee does not qualify for pension unless it conforms the following conditions:

(1) It is a paid service of a regularly appointed employee under the University.

(2) The employment is in substantive, temporary or officiating capacity.

Reg. 47 : Creation of the Pension Fund :

In case of all such employees who opt for pension scheme and are governed under these regulations, the total accumulated amount of University

contribution in C.P.F. (including the Amount of loan taken out of it) and interest there on as on 1st January,1990 will be transferred to the pension fund

created under these regulations. There after, the University's share of monthly contribution in respect of all such employees, as aforesaid, will be

deposited in the pension fund every month latest by 10th of the next month.

If we look into the scheme of Pension Regulations, 1990 it clearly emerges that the Pension Scheme has become applicable u/Reg.2(i)(ii) to the

persons who are regularly appointed to the service of University on or after 1-1-1990 and as per Reg.5 read with Reg.47 the pension fund has to be

created from monthly contribution of the members of the fund along with University's share of monthly contribution in respect of such employees

to be deposited in the pension fund every month and pension paid to the retired employees shall be charged from the pension fund at the same time

Reg.22 refers to the conditions of qualifying service and the paid service of regularly appointed employee under the University and his employment in

substantive, temporary or officiating capacity shall be considered to be a qualifying service for all practical purposes which makes him entitled for

grant of pension under the Pension Regulations, 1990, with the rider appears to be that it will be applicable to only such of the persons who are

regularly appointed on or after 1-1-1990.

In the instant case, the teachers who are absorbed under the Act, 2008 and substantively appointed & became member of the service of the Act, 1974

vide order dt.5-8-2008 from the date of initial appointment indisputably became member of the Scheme of Pension Regulations, 1990 and the

accumulated fund of CPF and monthly contribution of the service rendered by the teacher after Regulations, 1990 became effective & of

University's contribution has to be transferred to the pension fund after 1990 and pension be paid to the retired employees to be charged from the

corpus of the pension fund created under the Pension Regulations, 1990. Thus inbuilt mechanism has been provided how the pension fund shall be

created and paid to the retired employees.

So far as grievance of the State is concerned, suffice to say that Sec.35-B has been added by the Amendment Act of 2013 to safeguard interest of

the State Government and we do find substance that where the government funds are involved it is open for the Government to keep a vigil over its

utilization and the observations which has been made by the Ld. Single Judge under judgment impugned dt.22-1-2016 are in consonance with the

mandate of Sec.35-B of the Act,1946.

At this stage we would like to record that the Government cannot remain ignorant or a silent spectator from the fact that draft pension scheme

primarily was approved by the Govt. and sent to all the universities with the enclosure dt.16-4-1990 to be made effective from 1-11990, in

consequence thereof the Universities got its approval from its statutory bodies, like in the instant case by the Syndicate in exercise of power u/S.22(g)

of the Act,1946 and it was expected from the Govt. to provide funds if required to make the scheme operational & effective to fulfill its social

obligation towards the employees who have given their valuable services to the institution with contentment and protection from social evils in their old

days.

It is also true that the University alone cannot generate funds with its limited resources at the same time if there is mis-utilization of the funds allocated

by the Government for the purpose it is sanctioned certainly it is open for the Government to control & keep vigil over the funds allocated & its

utilization must be within the four corners of Sec.35B of the Act,1946.

After we have heard counsel for the parties, we find no error in the judgment impugned dt.28-5-2012 & 22-12-2016 which may call for our interference.

Consequently, the special appeals are without substance & deserves to be dismissed with observations (supra). No cost.

Copy of the order be separately placed in each file.â??

As prayed, by the counsel for the parties, the instant writ application stands disposed off in terms of order in the intra-court appeal as extracted

hereinabove.

Respondents would do the needful to extend the due benefits to the petitioners as expeditiously as possible; preferably, within four months from the

date a certified copy of this order is presented.

Interim application stands closed.