
(2011) 01 RAJ CK 0107
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6411 of 1997

Ganga Sharan Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 — Rule 17

Citation : (2011) 4 RLW 3581

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : S.C. Gupta, for the Appellant; Ganesh Meena, Government Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner - Ganga Sharan Sharma inter-alia with the prayer that respondents by issuance of mandamus be directed to appoint him on the post of General Teacher Gr. III w.e.f. 7/8/1993. Petitioner was appointed on the post of Teacher Gr. III in Panchayat Samiti, Abu Road, Sirohi vide order dated 11/7/1989 passed by Block Development Officer, Panchayat Samiti, Abu Road, Sirohi. His services were extended from time to time vide orders dated 16/4/1990, 28/6/1990, 31/7/1991, 13/5/1992, 13/7/1992, 27/6/1993 and 30/7/1993, copies of which have been placed on record. Petitioner has earlier filed writ petition before the Principal Seat at Jodhpur being SBCWP No. 3181/1991 praying therein that his services may be deemed to be confirmed and regularized. By the interim-order dated 20/1/1992, petitioner was continued in service, which interim-order was confirmed vide order dated 29/11/1995. Services of the petitioner were terminated vide order dated 7/8/1993 and he was relieved on 25/8/1993. Writ petition filed by the petitioner was disposed of vide order dated 22/5/1996 observing that controversy raised therein was covered by the judgment of this Court later on passed by the Division Bench at Jodhpur in Arnod Panchayat

Samiti vs. State of Rajasthan & Ors. (DBCWP No. 979/1990) decided on 6/10/1993. It was directed therein to the petitioner to make a representation to the concerned authority, which shall decide his case in terms of Division Bench judgment in Arnod Panchayat Samiti supra. The interim-order dated 20/1/1992 was discharged and the writ petition was dismissed vide order dated 22/5/1996. Petitioner filed special appeal against the aforesaid judgment wherein, it was given out by the counsel representing the respondents that in case any representation is submitted by the petitioner, same shall be decided within one month from the date of its making in the light of the Division Bench judgment of the Principal Seat in Arnod Panchayat Samiti supra. Division Bench disposed of the appeal vide order dated 22/1/1997. In the meantime, representation submitted by the petitioner on 8/2/1996 was rejected vide order dated 5/7/1997 on the premise that in between from 16/5/1988 to 11/8/1989, he was not in service. Hence, this writ petition. Shri S.C. Gupta, learned counsel for the petitioner has argued that assertion made by the respondents that petitioner was not working with them between the period from 16/5/1988 to 11/8/1989, is factually incorrect. Learned counsel invited the attention of the court towards the letter dated 19/4/2002 written by the Block Development Officer, Panchayat Samiti Abu Road, Sirohi to the Deputy Legal Remembrancer, Elementary Education, Government of Rajasthan, Jaipur. It is contended that in this letter, the Block Development Officer has informed that petitioner was initially appointed on 11/7/1989 and then his services were discontinued on 15/11/1989 and thereafter in compliance of the order of this Court passed in SBCWP No. 4242/1989 at Principal Seat at Jodhpur, he was re-engaged in service and then his services were again terminated vide orders dated 14/5/1990 and 27/4/1993 during summer vacations and he was again re-engaged by different orders issued from time to time on 28/6/1990, 31/7/1991, 13/7/1992 and 31/7/1993 however till regularly selected candidates become available. He was ultimately relieved from service on 25/8/1993. Learned counsel citing judgment of Arnod Panchayat Samiti supra argued that in view of the aforesaid judgment, all those, who were appointed in between 16/5/1988 to 11/8/1989 were required to be screened and regularized in service. Petitioner was also appointed between those dates, date of his initial appointment being 11/7/1989 as indicated in the letter dated 19/4/2002 written by the Block Development Officer, Panchayat Samiti Abu Road, Sirohi to the Deputy Legal Remembrancer, Elementary Education, Government of Rajasthan Jaipur. Representation filed by the petitioner has not been correctly decided in true perspective of the Division Bench judgment, petitioner is liable to be regularized in service by way of screening. Learned counsel argued that the law that has been laid down subsequently by the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, would not be applicable to him. Case of the petitioner would be governed by the law that has been laid down by this Court in Arnod Panchayat Samiti supra. According to that judgment, all those, who were appointed in between 16/5/1988 to 11/8/1989 were required to be regularized in service by way of screening. It is contended that the argument, that petitioner

was not in service therefore he should not be regularized, should be rejected because despite interim-order passed in his case by the learned Single Bench of this Court at Principal Seat on 20/1/1992 and which stay order was confirmed on 29/11/1995, respondents illegally terminated services of the petitioner vide order dated 25/8/1993. He should therefore be deemed to have throughout continued in service. Writ petition therefore be allowed in terms prayed for.

2. Shri Ganesh Meena, learned Government Counsel has opposed the writ petition and argued that this writ petition ought not to have been entertained here Bench at Jaipur because petitioner was appointed at Abu Road in District Sirohi and his services were terminated thereat. He also earlier filed writ petition before the Principal Seat at Jodhpur and thereafter his special appeal was also filed before the Principal Seat. He submitted representation, which was ordered to be decided as per Division Bench Judgment of this Court in Arnod Panchayat Samiti supra, which too was rendered at Principal Seat at Jodhpur. Merely because the representation has been rejected by the Deputy Secretary of the Government at Jaipur and conveyed to the petitioner at Abu Road in district Sirohi, does not mean that writ petition is maintainable at the Jaipur Bench. It is merely a technicality, which may not be a reason to otherwise examine the assertion of the maintainability of writ jurisdiction. On merits, learned counsel for the respondents argued that Division Bench while dealing with a case in which an association of the employees had filed a writ petition and those employees were continuing in service under the interim-order passed by the Court. They were still in service when their cases were ordered to be considered for screening apart from the fact that they were appointed between 16/5/1988 to 11/8/1989. Mere appointment of the petitioner on 11/7/1989 would not entitle him to screening and regularization because his case for regularization by way of screening would be considered only if he was actually in service when he was applying for such consideration. Circular dated 11/8/1989 would not apply to his case. Learned counsel argued that appointment of the petitioner was made on ad-hoc/temporary basis and that he was engaged on 11/7/1989 and thereafter when he was sought to be discontinued, he approached this Court and on the basis of the interim-order passed by the Court on 2/3/1990, he was continued in service but thereafter it appears that his services were discontinued on 7/8/1993. It is submitted that argument of the petitioner that despite the stay order, services were terminated, cannot be accepted because petitioner ought to have taken the appropriate remedy before the Court, which he did not. Learned counsel also argued that a prayer has been made in the writ petition that he should be given appointment as is evident from the order dated 5/7/1997 (Ann. 12) and further prayer that respondents be directed to appoint petitioner w.e.f. 7/8/1993, the date on which, his services were terminated, but there is neither any prayer for screening or otherwise, nor challenge has been made to order dated 5/7/1997. Even in the pending writ petition, the law laid down by the Supreme Court in Uma Devi supra has to be applied that matter cannot be decided merely with reference to the Division Bench judgment in Arnod Panchayat Samiti supra. It is

submitted that petitioner was appointed on ad-hoc/temporary basis for the time specific and continued in service with many breaks in between and his appointment was made subject to availability of duly selected candidates from the RPSC and thus his engagement was discontinued after a duly selected candidate become available. It is therefore prayed that writ petition be dismissed.

3. I have given my anxious consideration to the rival submissions of the parties, perused the material available on record and scanned the case law cited on the controversy.

4. Now that this matter has remained pending before this Court for last thirteen years, writ petition was admitted despite the objection of the respondent-State, I do not deem it appropriate to throw this writ petition on this technical objection although I must hasten to add that mere prolonged pendency of the petition on admission thereafter may not be a reason not to examine the objection of maintainability at a hearing stage and challenge for this reason on the facts of the case when the representation of the petitioner has been rejected by the Government at Jaipur and conveyed to the petitioner at Sirohi, it cannot be said that no part of cause of action arises within the territorial jurisdiction of Jaipur Bench.

5. Coming now to the merits of the case, I find that in Arnod Panchayat Samiti supra, association of employees had challenged validity of Rule 17 of the Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 (for short, "Rules of 1959") on the ground that it was ultravires to the Constitution of India with the prayer to struck down the same. Therein, 16/5/1988 was fixed as cut-off date for regularization and Rule 17 provided that Committee shall scrutinize the applications received from the candidates qualified for appointment and may require him to appear in the interview. In the course of arguments however, learned counsel for petitioner, did not press challenge to the validity of Rule 17 of the Rules of 1959 but confined his challenge to the validity of fixing cut-off date as 16/5/1988 and submitted that such of the members of the petitioner association, who have completed 24 years may be given chance of hearing and if found suitable, regularize them in service. Circular provided that only those candidates would be eligible for screening, who were appointed on or before 16/5/1988 and still continued in service till they are screened for regularization on the basis of fifteen months. Division Bench observed that since no selection was made between 16/5/88 and 11/8/89 when circular was issued fixing cut-off date as 16/5/1988 therefore depriving the other persons, who were appointed as temporary teachers during this period from screening particularly when circular gives a right to such persons for regularization, who have completed only fifteen months of service, appears to be unreasonable.

6. What is significant to note from the aforesaid judgment is that members of the petitioner-association although were allowed to be continued in service with specific interim-order passed by the court on 2.3.1990 that their services shall not be terminated. That was in a fact situation when they approached the court

even before any order of termination in their case is passed.

7. In the present case however, petitioner had approached the Court immediately after his order of termination dated 7/8/1993. Moreover, on the question whether the case of the petitioner would be covered by the aforesaid Division Bench judgment, the order of the learned Single Bench dated 22/5/1996 passed in earlier writ petition being SBCWP No. 3181/1991, has to be noticed where counsel for petitioner himself conceded that the point raised in that writ petition was already decided in *Arnod Panchayat Samiti supra* and that the case of the present petitioner may also be considered in the light of the observation by the Division Bench in *Arnod Panchayat Samiti supra*. It was thereupon that the matter was taken to the Division Bench and counsel appearing for the respondent-State submitted that even if petitioner makes a representation, same shall be considered by the respondents within one month. Although petitioner may be justified to the extent of saying that his appointment was made on 11/7/1989 and thus, he was appointed between 16/5/1988 to 11/8/1989 but admittedly in the present case, petitioner was not in service. Services of the petitioner had already been terminated even when he approached the Court in his earlier writ petition in which, interim-order was passed in his favour and he was continued on the basis of that interim-order but termination was set-aside by the Court, his case stands on better footing than those, who approached in *Arnod Panchayat Samiti supra*. In their case, termination order had not been passed and the Court by the interim-order passed on 2/3/1990, restrained the respondents from terminating their services. This is how, they continued in service when their case was considered for screening. On the aspect of coverage of the petitioner's case by the judgment of *Arnod Panchayat Samiti supra*, which is because on assertion made by the learned counsel for the petitioner, this Court directed the respondents to consider and decide representation of the petitioner. This Court is not precluded from examining the matter independently on merits whether or not his case is covered by the Circular of the Government dated 11/8/1989 because Division Bench while scrutinizing challenge to fixing 16/5/1988 as cut-off date, held that this Circular has to be made applicable w.e.f. 11/5/1989 when it is actually issued and there is no justification for enforcing it only from 16/5/1988, which date has been held to be unjustified.

8. Supreme Court in *Secretary, State of Karnataka and others vs. Uma Devi and others supra* also in para 53 of the judgment held that even in a matter of regularization where one-time scheme was to be prepared by the State, period from which employee continues in service on the strength of interim-stay was liable to be excluded and therefore case of the petitioner for regularization by way of screening on the basis of deemed continuation, also cannot be considered. For all the reasons, I do not find any merit in this writ petition, which is accordingly dismissed.