

(2018) 02 RAJ CK 0001
In the Rajasthan High Court
Case No : 2430 of 2018

Hari Ram S/o Sh. Teja Ram

APPELLANT

Vs

State of Rajasthan Through the Secretary

RESPONDENT

Date of Decision : 21-02-2018

Acts Referred:

Citation : (2018) 02 RAJ CK 0001

Hon'ble Judges : Pushpendra Singh Bhati

Bench : Single Bench

Advocate : Ram Niwas Choudhary., Deepika Purohit, PR Singh

Final Decision : Disposed off

Judgement

1. Petitioner has preferred this writ petition praying for the following reliefs :-

"It is, therefore, prayed that this writ petition may kindly be allowed with cost and by an appropriate writ, order or direction,

a) That respondent may very kindly be directed to allow the petitioner to serve continuously at Additional Public Prosecutor, Parbatsar. With regular salary; and

b) That respondents may kindly be directed to pay the remuneration to the petitioner directly and not through placement agency.

c) The respondent may kindly be directed not to replace the petitioner with the other set of contractual employees.

d) The respondents may kindly be directed to continue the petitioner in project where post are lying vacant of computer Operator (Man with Machine).

e) That any other relief, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may kindly be granted in favour of the petitioner."

2. Learned counsel for the parties agree that the controversy was decided by this

Court in the matter of Mukesh Kumar Khatik vs. State of Rajasthan & Ors.. (S.B. Civil Writ Petition No.5049/2014) decided on 01.09.2014, the relevant portion of this judgment, reads as under :-

"The instant writ petition has been filed by the petitioner for seeking direction to the respondents to allow him to serve in the office of the Special Public Prosecutor, Bhilwara and further prayed that respondents may kindly be directed to pay regular salary directly not through the placement agency.

As per the facts of the case, the petitioner was engaged on the post of Stenographer on contract basis through placement agency Trig Ex-servicemen Welfare Cooperative Society Ltd. and he was given posting in the office of Addl. Public Prosecutor, Bhilwara vide order dated 31.1.2012. The petitioner was allowed to work continuously on the said post but all of sudden, the State Government issued an order dated 28.4.2014 by which the services of all those employees who were engaged through placement agency under the control of Department of Law and Justice were extended upto 30.6.2014 and it was made clear that they remain in service upto 30.6.2014 or till regular appointments are made. The petitioner has annexed the said order with the writ petition as annex.6. The petitioner present in person submit that till today no regular selection took place for appointment on the post of Stenographer, so also, the post in question is still in existence, therefore, the impugned order dated 28.4.2014 extending his service tenure upto to 30.6.2014 is not sustainable in law. Therefore, it is prayed that order may be quashed and respondents may kindly be directed to allow the petitioner to work on the post in question till regularly selected candidates are made available.

Mr. Madan Lal, Officer Incharge present in person for the respondents submit that appointment of the petitioner was not in accordance with the Rules. The appointment was made through the placement agency known as Trig Ex-servicemen Welfare Co-operative Society Ltd., therefore, there is no relationship of master and servant in between the State Government and the petitioner. It is also submitted by Mr.Madan Lal that at Government level a decision was taken for engaging employees on contractual basis whereby the State Government took decision that the department may engage retired employees as per laid down procedure/relevant rules on DOP rates against vacant post, as per the actual requirement for a period of 6 months or till regular appointment is made, whichever is earlier subject to further provision that if retired persons are not available present contractual arrangement of job contact through placement agency for 23 stenographers, 13 LDC and 32 Class-IV services may be taken. Meaning thereby, the Law Department took decision to engage the petitioner through placement agency, therefore, there is no illegality in the decision taken by the State Government. Mr. Madan Lal vehemently argued that no case is made out for interference because petitioner was appointed through placement agency and there is no relationship of master and servant in between the petitioner and the Law Department, therefore, this writ petition maybe dismissed.

After hearing the petitioner as well as the representative of the Government, first of all, I have perused the decision taken by the Government, which is placed on record as Annex.R/1 dated 7.3.2014. The same is reproduced as under:-

"Department may engage retired employees as per laid down procedure/relevant rules on DoP rates against vacant posts, as per actual requirement for a period of six months or till regular appointment is made, whichever is earlier, subject to further provision that if retired persons are not available, present contractual arrangement of job contract through agency for 23 Stenographer, 13 LDC and 32 Class-IV services may be taken.

FD also concurs for hiring 48 services of computer machine with man upto 28.02.2015 (as per guidelines issued by the FD), if necessary, as per actual requirement against vacant posts of similar nature, until regular recruitment takes place, whichever is earlier.

It bears approval of FD at competent level."

Upon perusal of above decision it is apparently clear that the post of Stenographer, LDC and Class-IV employee are in existence but only mode of engagement is changed under the above decision. It is very strange that large number of young qualified persons are available and waiting for the job and no recruitments are made by the State Government on the post of Stenographer, LDC and Class-IV employees in the Law Department from last so many years and a decision was taken to engage employees through placement agency. In case of Mooli Devi Choudhary Vs. State of Rajasthan reported in 2010 (4) WLC (Raj.) 334 this Court has disapproved the procedure for engagement through placement agency and following directions were issued:

"41. Therefore, for these reasons, this Court is inclined to allow these writ petitions with aforesaid directions and following answers to the questions framed above.

CONCLUSIONS:

(i) Question No.1 is answered in the manner that employment of teachers for SSA or KGBV is a "sovereign function" of imparting education by the State Government or the Central Government and such "sovereign function" including employment of teachers for imparting education cannot be delegated to private placement agencies by the State Government.

(ii) Question No.2 is answered like this that since the State Government has not so far enacted any law nor it has laid down any guidelines or parameters for selection of private placement agencies, therefore, practice of giving away such contract by the State Govt. to the private placement agencies is unconstitutional and cannot be sustained and the teachers and other related staff in SSA or KGBV cannot be treated as employees of private placement agencies whether such projects are financed by the Central Government or the State Government or any other agency.

(iii) Question No.3 is answered in the manner that the object of SSA Or KGBV is not a project of limited tenure or period and the nonavailability of funds cannot be a ground to discontinue the said educational programmes and such programmes even with or without the change of name have to be continued to give effect to the provisions of the Act No.35 of 2009, namely, Right of Children to Free and Compulsory Education Act, 2009 and Article 21A of the Constitution of India.

(iv) Question No.4 is answered in the manner that the provision of Article 21A and provisions of Right of Children to Free and Compulsory Education Act, 2009 are of paramount and supervening importance and Appropriate Governments should adopt a uniform employment policy for teachers and other staff under it with assured continuity of employment with all other benefits which are payable to regular civil servants including the teachers employed in Government schools even as of now.

(v) Question No.5 is answered in the manner that teachers cannot be treated as workmen so as to subject them to the provisions of Industrial Disputes Act, 1947.

(vi) Question No.6 is answered in negative and it is held that fixed term contract of service for the teachers in SSA or KGBV Projects on year to year basis by different placement agencies with no assured continuity of employment is not justified, nor it is a legally sustainable practice.

42. With the writ petitions allowed by the aforesaid directions to the State Government to continue the services of petitioners till regularly selected candidates are appointed in the respective positions, this Court is not inclined to initiate any contempt action against the respondents at this stage against the alleged violation of interim orders passed by this Court and, therefore, the contempt petitions are dismissed and notices are discharged.

43. The writ petitions are accordingly allowed with no costs."

In view of above judgment, obviously the appointment through placement agency is not proper, but at the same time, the engagement of retired persons is also not in consonance with the constitutional provision because large number of qualified young unemployed candidates are waiting for appointment, therefore, young qualified candidates possessing requisite qualification are better than the retired person and their service can be utilized upon the posts available with the Government on temporary basis. Here in this case, when a conscious decision is taken by the respondents for making regular recruitment and till then to engage the employees on contract basis or by way of recruitment of retired person then why order has been passed to disengage the petitioner to work on the post in question which he was provided appointment through placement agency.

In view of the above this Court disapprove the decision of the Government to engage retired employees on the post in question, therefore, it is held that no retired person shall be appointed on the post in question and if the petitioner's

work is satisfactory, though he was appointed through placement agency, then he may be allowed to work said post till duly selected candidates made available as per decision of Mooli Devi's case.

In view of the above, the instant petition is allowed with the following directions:

(i) the petitioner may be permitted to work on the post in question till regular selected candidates made available for the post in question as per the decision taken by the Government;

(ii) no retired person shall be engaged on these regular sanctioned posts;

(iii) the stay is operated in this case, therefore, the petitioner may be permitted to work on the post in question till regularly selected candidates are made available upon the same terms and conditions upon which he was engaged."

3. However, even after agreement recorded on behalf of the respondents on precedent law, learned counsel for the respondents defers on the ground that the petitioner has approached this Court belatedly on 1.2.2018 whereas the judgment was passed by this Court in Mukesh Kumar Khatik's case (supra) on 1.9.2014 and, therefore, since the petitioner has slept over his rights, the petitioner cannot be given benefit of precedent law. Learned counsel for the respondents has further stated that the petitioner was not continuing in job and, therefore, continuing him at this stage may not be possible.

4. In light of the aforesaid, the present writ petition is disposed of with a direction to the respondents to consider the case of the petitioner within a period of 30 days from today in light of the judgment in Mukesh Kumar Khatik (supra). It shall be open for the respondents to deny the appointment if the post is not vacant or if any other person has replaced the petitioner or if task in question is no more required.