

(2015) 02 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2856/1997

Jawahar Vidhya Peeth and Others

APPELLANT

Vs

The Rajasthan Non-Government Educational Institutions
Tribunal, Jaipur and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 02 RAJ CK 0051

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : M.S. Singhvi, Senior Advocate assisted by Varun Singhvi, for the Appellant

Final Decision : Allowed

Judgement

Jaishree Thakur, J.—The present writ petition has been filed under Article 226 of the Constitution of India in order to challenge the order dated 9.6.1997 passed by respondent No. 1. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short "the Tribunal" hereinafter) which directed the reinstatement of respondent No. 4-Kailash Chandra Sharma to the post of Lecturer with the petitioner.

2. A few brief facts may be noted in order to appreciate the controversy herein. The petitioner is a society registered under the Societies Registration Act and is running educational institutions in the District of Udaipur and it receives aid from the State Government. The college run by the petitioner-society was affiliated to the University of Rajasthan. As per Statute 30 of the Statute of the University of Rajasthan, every college was required to satisfy the University that the number and qualifications of the teaching staff are in accordance with the Rules prescribed by the University. An Ordinance was framed by the syndicate of the University of Rajasthan laying down the minimum qualifications for teachers in each college and faculties affiliated to the University of Rajasthan.

3. Respondent No. 4-Kailash Chandra Sharma was appointed as Lecturer in Political Science on ad hoc basis for one session vide an appointment letter dated 7.9.1977. Since regular selection for the post of Lecturer in Political Science could not be held, respondent No. 4 was again appointed as Lecturer on part time basis on 23.8.1978. In this fashion, respondent No. 4 continued to teach on ad hoc basis till the end of the academic session 1979-1980. In the beginning of the academic session 1980-1981, respondent No. 4 moved an application for giving him appointment on ad hoc basis. On this application, respondent No. 4 was appointed on temporary basis by the petitioner-society for a period of three months or till duly selected candidate was made available whichever was earlier.

4. Regular selections were initiated for the post of Lecturer in Political Science and respondent No. 4 appeared for regular selection along with other candidates. None of the candidate were found suitable for the said post, therefore respondent No. 4 was allowed to continue till the end of session 1980-1981. Since respondent No. 4 did not fulfil the minimum qualifications for the appointment on the post of Lecturer in Political Science, the University of Rajasthan on 20.4.1981 had objected to his appointment. The term of respondent No. 4 came to an end on 31.5.1981. The petitioner-society also initiated process of selection and Respondent No. 4 applied for therein but his application itself was rejected on the ground that he was not eligible for selection to the post of Lecturer in Political Science. Respondent No. 4 approached the Deputy Director, College Education, who in turn, directed that the respondent No. 4 be treated as eligible and be called for an interview. Respondent No. 4 was interviewed and his name was placed in the panel by the Selection Committee in its meeting dated 10.8.1981. The respondent No. 4 on coming to know that he was not in the final merit list, filed a suit on 28.8.1981 in the court of Additional Munsif(East), Jaipur City seeking a declaration and injunction against the petitioner with a prayer that he may be allowed to continue in service. The learned trial court vide order dated 15.10.1981 passed an order in favour of respondent No. 4 granting him temporary injunction. The petitioner challenged the order before the District Judge, Jaipur and the appellate court vide its order dated 1.3.1982 set aside the order passed granting temporary injunction and remanded the case back for trial. The trial court came to a conclusion that respondent No. 4 was not continuing in service of the petitioner-society after 31.5.1981 and declined to grant temporary injunction. Thereafter, the matter was finally disposed of and the suit of respondent No. 4 was dismissed vide a detailed judgment and decree dated 30.4.1986. Respondent No. 4 preferred an appeal before the District Judge, Jaipur and it was during the pendency of the appeal that Rajasthan Non-Government Educational Institutions Act, 1989 (for short "the Act of 1989) was enacted wherein Section 27 barred the jurisdiction of the Civil Court to try and decide cases pertaining to educational institutions. An application was moved by respondent No. 4 to transfer the appeal to the Tribunal which was unopposed. The Tribunal at Jaipur vide order dated 9.6.1997 allowed the appeal filed and decreed the suit of respondent No. 4 with a direction to treat

him in continuous in service from 31.5.1981 with all consequential benefits. Aggrieved against the said order dated 9.6.1997 passed by the tribunal , the present writ petition has been preferred.

5. Mr. M.S. Singhvi, learned Senior Counsel appearing on behalf of petitioner-society has assailed the order passed by the Tribunal. It has been argued that respondent No. 4 was not qualified to hold post of Lecturer, Political Science as per the qualifications prescribed for appointment of teachers in various faculties in the colleges affiliated to the University of Rajasthan. Respondent No. 4 had obtained second Division from the University of Rajasthan in his Bachelor of Arts Examination securing 824 marks out of 1650 marks, that is one mark less than 50% and had passed M.A. Examination in second Division with less than 50% aggregate. As per the qualifications prescribed, any candidate not holding M.Phil. Degree or a recognised degree beyond the Master's level but possessing a second class Master's degree should have obtained in the first degree (B.A./B.Sc./B.Com.). In the present case, the petitioner was not qualified since he had a second degree in his B.A. Respondent No. 4 had been conscious of the fact that he did not possess the requisite qualifications, since he had applied to the petitioner-society on 15.1.1980 seeking permission to improve his Division in his M.A. Examination, which he was unable to do. Under the orders of the District Education Officer, the name of respondent No. 4 was considered for regular appointment but he was not selected on account of the fact that University itself had held that he did not possess the requisite qualifications as per Ordinance 65 of the Hand Book of University of Rajasthan.

6. Another contention raised by the counsel for the petitioner is that the Tribunal did not have the jurisdiction to decide the matter and the order of the Tribunal is non-est, and as such, any direction passed by it is illegal and deserves to be set aside. It is also submitted that the order of the Tribunal has been obtained by concealment of true facts. After the disposal of the case by the Tribunal, the petitioner has been able to obtain certificates from various educational institutions showing that respondent No. 4 remained an employee of the said institutions. By not pleading these facts before the Tribunal, respondent No. 4 is guilty of practicing fraud. It has been further contended that the Tribunal is in error in holding that respondent No. 4 is entitled to appointment to the post of Lecturer ignoring the fact that he does not possess the requisite qualifications. It is submitted that the petitioner-society is bound to adhere to the qualifications as specified by the University of Rajasthan and when respondent No. 4 did not possess the requisite qualifications, the order directing the appointment with continuity and all benefits, is unsustainable.

7. Respondent No. 4 has filed its reply and has controverted the stand of the petitioner-society. It has been submitted by Mr. P.S. Chundawat, counsel appearing for respondent No. 4 that the Tribunal has rightly appreciated the case holding that respondent No. 4 did possess the requisite qualifications and the termination itself is bad. It has been argued that the Tribunal had the jurisdiction

to entertain the appeal filed which was transferred from the court of Additional District Judge, Jaipur to it. Reliance has been placed upon the judgment of this Court reported as Suresh Chand Garg. v. Shri Sanatan Dharam Uchha Madhyamic Vidyalaya and ors., 1997(1) WLC (Raj.) 303, to contend that after coming into force of the Rajasthan Non-Government Educational Institutions Act, 1989, there is a specific bar under Section 27 of the Act of 1989 which mandates that "no civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tribunal". Since an appeal before the District Judge is in continuation of the suit, the appeal would also have to be decided by the Tribunal itself. The pleas of estoppel would also be raised since the petitioner did not object to the transfer of the proceedings from the District judge to the Tribunal.

8. It has been further argued that the respondent No. 4 had the qualification to be appointed as a lecturer. As per the Hand-Book of University of Rajasthan, the minimum qualifications for the teachers in various faculties in the colleges affiliated to the University of Rajasthan were specified in Ordinance 65, which had a note appended to it which reads as under:-

"(iii) The above condition may be relaxed in the case of those temporary lecturers who were in service of an affiliated college concerned on the 30th November, 1978 or on the last working day of the session 1978-79 i.e. on the 14th June, 1979 subject to the condition that they fulfilled at the time of their first appointment, the minimum eligibility qualifications which were in force at that time. This relaxation shall be in force only upto the session 1980-81." 9. According to the learned counsel for respondent No. 4, this relaxation remained in force till 1981 and was further extended upto 31.12.1982. Respondent No. 4 had the necessary qualifications at the time of initial appointment of 1977 and as per the Ordinance itself, relaxation was to be granted in the case of all those temporary Lecturers who were in service on 30.11.1978.

10. I have heard learned counsel for the parties and have perused the record of the case.

11. Admittedly the Respondent No. 4 was appointed as Lecturer, Political Science in the year 1977 on an ad hoc basis for a fixed term. At the time of appointment he possessed a Second Division from the University of Rajasthan in his Bachelor of Arts Examination securing 824 marks out of 1650 marks, that is one mark less than 50% and had passed M.A. Examination in second Division with less than 50% aggregate. The qualifications required for appointment as prescribed by the ordinance are as under:

"(a) An M.Phil degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work: and

(b) Good academic record with at least a second class(C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent

degree from a foreign university.

Provided that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard, it may relax any of the qualifications prescribed in (b) above.

Provided further that if a candidate possessing the qualifications as at (a) above is not available or not considered suitable, the college on the recommendation of the Selection Committee may appoint a person possessing a good academic record on the condition that he will have to obtain an M.Phil Degree or a recognised degree beyond Master's level within eight years of his appointment, failing which he will not be able to earn further increments till he obtains that degree or gives evidence of equivalent published work of high standard. Note:-

A candidate possessing M.Phil. Degree of the University in South Asia studies or Gandhian Studies or in any other such multi-disciplinary course shall be deemed eligible for appointment to the post of Lecturer in the subject of his Master's degree in more than one subject he shall be deemed eligible for appointment to the post of Lecturer in the subject(s) of his Master's degree which is/are relevant to his M. Phil. Degree.

Explanation:-

"Good academic record" wherever occurring in this part of the Ordinance means:-

(i) A candidate holding an M.Phil. Degree or a recognised degree beyond the Master's level should possess at least a second class Master's degree: or

(ii) A candidate not holding an M.Phil. Degree or a recognised degree beyond the Master's level should possess a high second class Master's degree and a second class in first degree(B.A./B.Sc./B.Com.) examination: or

(iii) A candidate not holding an M.Phil degree or a recognised degree beyond the Master's level but possess a second class Master's degree should have obtained first class in the first degree (B.A./B.Sc./B.Com.).

(iv) "High Second Class" wherever occurring in this Ordinance means a candidate should have obtained more marks than the mid-point of the minimum marks prescribed for passing an examination in second division and first division."

12. A perusal of the said Ordinance clearly shows that a teacher should possess the qualifications of a good academic record with at least a high school class (with minimum of 54% marks) Master's degree in the subject concerned of an Indian University or equivalent degree of a foreign University. Admittedly, the respondent did not possess the necessary qualifications even at the time of his initial appointment in the year 1977. He was to have had "a second class Master's degree should have obtained first class in the first degree (B.A./B.Sc./B.Com.)". It may be kept in mind that the initial appointment was on ad hoc basis for a fixed time period till such time as another person would be appointed through regular selection. The name of respondent No. 4 was considered for

regular appointment and was rejected by the University on the ground that he did not possess the requisite qualifications to be appointed. The argument raised by the counsel for the respondent No. 4 that minimum eligibility qualifications stood relaxed upto the session of 1981-1982, of those temporary Lecturers who were in service of the college concerned on 30.11.1978, is not sustainable since the explanation itself stipulates that subject to the condition that they fulfilled at the time of their first appointment, the minimum eligibility qualifications which were in force at that time. It is noted that the University itself vide its letter dated 20.4.1981 had categorically held that respondent No. 4 was not qualified to hold the post of Lecturer in Political Science as per the qualifications specified in the Ordinance 65 of the University. Since the petitioner-society was affiliated to the University of Rajasthan, it was bound to adopt and adhere to the minimum qualifications as set up in the Ordinance and once the approval of the appointment of respondent No. 4 was not forthcoming from the University itself, the petitioner-society was not in position to give him appointment.

13. Reliance has been placed by the counsel for the respondent on a judgment rendered by this court in Suresh Chand Garg (supra) to contend that the civil court had no jurisdiction to entertain any such matter after coming into force of the said Act and the Tribunal had been vested with the jurisdiction to hear the appeal. On the other hand, counsel for the petitioner-society has relied upon a judgment of the Hon"ble Supreme Court reported as Himachal Pradesh State Electricity Regulatory Commission and Another Vs. Himachal Pradesh State Electricity Board, , to submit that in case there is no specific provision in the Act itself providing for transfer of pending proceeding to the newly constituted Tribunal or Appellate Forum, mere creation of another Tribunal does not imply an automatic transfer of all pending appeals. The facts before Hon"ble the Supreme Court were that a Commission was established under the Electricity Regulatory Commissions Act, 1998 for rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies. In a case pending before it, certain directions were issued by the Commission while discharging its regulatory functions. Being aggrieved by the order passed by the Commission, the Board preferred an appeal under Section 27 of the Act of 1998 before the High Court of Himachal Pradesh which formed the subject matter of FAO No. 489/2002. However, during the pendency of the appeal, the Act of 1998 was repealed and a new Act, namely, Electricity Act, 2003 came into force. The new Act also provided for the establishment of an Appellate Tribunal. With the setting up of an Appellate Tribunal under the Act of 2003, it was contended that the High Court would have no jurisdiction to hear appeals under the Electricity Regulatory Commissions Act, 1998. The High Court at Himachal Pradesh held that the appeal before it, under the Act of 1998 was maintainable. Aggrieved against the order of the High Court at Himachal Pradesh, continuing to exercise jurisdiction as an Appellate Forum under the Act of 1998, Special Leave Petition was preferred in the Hon"ble Supreme Court. Considering the question of jurisdiction of the High Court to hear

the appeals after coming into force of the Act of 2003, the Hon''ble Supreme Court came to the conclusion that there must be a direct legislative mandate to hold that the new enactment of 2003 did not intend to take away a vested right of appeal prescribed under the old Act of 1998. A perusal of "the Act of 1989" shows that there is no specific mandate that all pending matters are to be transferred to the Tribunal.

14. Moreover the Tribunal has been empowered to deal with the question related to removal, dismissal or reduction in rank of employees under Section 18 of the Act of 1989. In the present case, respondent No. 4 being on ad hoc appointment was not given appointment after 31.5.1981. As such it cannot be said that such action amounted to removal, dismissal or reduction in rank as per the Act of 1989. Since there is no termination/removal or reduction in rank as envisaged under Section 18 of the Act, the Tribunal had no jurisdiction to entertain the appeal. In *Shri Jain Swetambar Terapanthi Manav Hitkari Sang and ors. v. The Rajasthan Non-Government Educational Institutions Tribunal and ors.*, D.B. Civil Writ Petition No. 3610/2003 decided on 29.4.2014 by this Court, it was held that:-

"In view of the above pronounced judicial enunciation, we are of the firm opinion that the challenge to the maintainability of the appeal of the respondent No. 2 before the learned Tribunal against the order of termination of his services on the ground of ineligibility has to be sustained. As in the present conspectus of facts, the termination of services of the respondent No. 2 can by no means be construed to be one of dismissal or removal or reduction in rank, having regard to the clearly outlined jurisdictional contour of the learned Tribunal as enjoined by Section 19 of the Act, his appeal was clearly not maintainable in law. By the analogy of reasons, the respondent No. 2's appeal before the learned Tribunal against the termination order dated 15.7.1998 is held to be not maintainable in law. The impugned judgments and orders dated 26.3.2003 are thus axiomatically rendered non-est." 15. The judgement rendered in *Suresh Chand Garg (supra)* is not applicable to the facts of the present case. The question before the High Court in *Suresh Chand Garg (supra)* was limited to the question of civil suits pending at the time of the Act of 1998 coming into force. In the present case, respondent No. 4 had filed a civil suit challenging his termination and seeking an injunction allowing him to continue in service. Respondent No. 4 who was on ad hoc appointment, was not given any regular appointment after his term came to an end. The civil suit had already been decided and the matter was pending before the District Judge in appeal. As held by a Division Bench of this Hon''ble High Court, when there is no question of reduction in rank, removal or dismissal of an employee, the Tribunal does not have the jurisdiction to entertain the matter. Similarly, in the present case, no jurisdiction was vested with the Tribunal to decide the appeal. As held by the Hon''ble Supreme Court in *Himachal Pradesh State Electricity Regulatory Commission and anr. vs. Himachal Pradesh State Electricity Board,,* until and unless there is specific provision in the Act providing for transfer of pending matters, the newly constituted Tribunal set up do not get

vested with jurisdiction over pending matters. The Tribunal did not have any jurisdiction to entertain the appeal as the question of either removal, dismissal or reduction in rank was not before it.

16. The contention raised by counsel for respondent No. 4 that the petitioner-society cannot be allowed to raise the question of jurisdiction since he had not raised any such plea before the District Judge at the time when an application was moved for transfer of the appeal to the Tribunal, cannot be sustained. It is a well settled proposition of law that jurisdiction cannot be conferred against the statute. Therefore, even though no objection was raised to transfer of the appeal from the District Judge to the Tribunal as set up under the Act of 1998, the orders passed by the Tribunal being without jurisdiction, cannot be upheld.

17. Lastly, the contention raised by Mr. M.S.Singhvi, Senior Counsel for the petitioner-society that respondent No. 4 should not be entitled to the benefit of employment as has been directed by the Tribunal since fraud has been played upon it, is to be upheld. Counsel appearing for the respondent has contended that he only worked for a very short period and took a few lectures and thus, it cannot be said that he was in regular employment and argued that no fraud has been played upon the petitioner-society. A perusal of the record shows that respondent No. 4 was gainfully employed during the interim period and was teaching in various institutions. This fact was not brought to the notice of the Tribunal and the order has been obtained on concealment of facts. On this ground too, respondent No. 4 is not entitled to the benefits of a order passed by the Tribunal.

18. Therefore I am of the opinion that respondent No. 4 did not possess the requisite qualifications to be appointed to the post of Lecturer, Political Science and the University held that his appointment was in violation of Ordinance 65. The relaxation as sought for, could not be made available to respondent No. 4 since at the time of initial appointment itself, the respondent did not have the requisite qualifications. The Tribunal erred in relying on the rule of relaxation in coming to the conclusion that the qualification of 1997 should be made applicable to respondent No. 4 in the year 1981.

19. The Tribunal did not have jurisdiction to entertain the appeal in so far as respondent No. 4 was neither removed nor was he reduced in rank or dismissed from service. Moreover, as has been held by the Hon"ble Supreme Court, until and unless there is specific provision in the Act providing for transfer of pending matters, the newly constituted Tribunal set up do not get vested with jurisdiction in pending matters. No such condition is provided in the Act of 1998 for transfer of matters pending in civil courts.

20. In view of the above, the above noted writ petition is allowed and the order passed by the Tribunal is set aside. No order as to costs.