
(2016) 12 RAJ CK 0069

In the Rajasthan High Court

Case No : Special Appeal Writ No. 735, 764, 807, 808 of 2005

Khetri Vikas Samiti

APPELLANT

Vs

Non Government Educational INS

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 18

Citation : (2017) 1 WLCRajUC 320

Hon'ble Judges : Mr. K.S. Jhaveri and Mr. Dinesh Mehta, JJ.

Bench : Division Bench

Advocate : Mr. R.P. Garg, Advocate, for the Appellants; Mr. M.S. Gurjar, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Jhaveri, J.—By way of these appeals, the appellants have challenged the judgment and order of the learned Single Judge whereby he has dismissed the writ petitions preferred by the appellants.

2. The case of the appellants- petitioner is that because of heavy financial burden and abolition of posts, the services of the respondents was not required and they were removed after following the provisions of Section 18 of the Rajasthan Non Governmental Education Institution Act, 1989 (in short Act of 1989), after paying six months' salary. However, a dispute has been raised before the Tribunal and the Tribunal after hearing both the sides has set aside the order of the authority on the ground that the necessary previous approval of the competent authority- Director of the Education was not taken. As such order(s) of removal of all the respondents- original applicants before the Tribunal were set aside. The order came to be challenged before the learned Single Judge, who has also upheld the order of the Tribunal.

3. Mr. Garg, appearing for the appellants mainly contended that in case of abolition of posts, the compliance of Section 18 of the Act of 1989 is not

mandatory.

4. It will not be out of context to reproduce Section 18 of the Act of 1989, which reads as under:

"Removal, dismissal or reduction in rank of employees- Subject to any rules that may be made in this behalf, no employee of a recognized institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or any officer authorised by him in this behalf has been obtained:

Provided further that this section shall not apply,-

(i) to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or

(ii) where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the action is taken, or

(iii) where the managing committee is of unanimous opinion that the services of an employee can not be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.

5. Mr. Garg argued that previous approval is not required under the provisions of the Act, since Institution has paid six months salary and it was not a case of removal but a case of abolition of posts. For the same, he has relied upon decision in *Ramanatha Pillai v. The State of Kerala* and another, AIR 1973 Supreme Court 2641 wherein it has been held as under:

"By an order dated 24 February 1970 the Government of Kerala stated that the post of Vigilance Commissioner sanctioned was temporary and the ... Present sanction for the post of Vigilance Commissioner will expire on 28 February, 1970 and that for the staff of the Commission will expire on 28 February, 1971". The order further stated that the Government having considered all aspects of the matter came to the conclusion that there was no need to have a Vigilance Commissioner. The Government, therefore, ordered that the post of Vigilance Commissioner would be abolished with effect from 28 February, 1970. The continuance of the staff of the Commission upto 15 March, 1970 was sanctioned to enable the office of the Commission to wind up its work. It may be stated her-- that ill the Government Order dated 3 December, 1969 sanction for the continuance of the staff in temporary posts from 1 March, 1970 to 28 February, 1971 was accorded. The affidavit evidence of the Government of Kerala about

the continuance of the temporary posts in the staff of the Vigilance Commission till 28 February, 1971 is that the budget for 1970-71 was prepared in advance of the presentation of the"-proposal in the Legislature. At the time when the proposals were forwarded by the Administrative Departments concerned with the establishment of the Vigilance Commissioner no decision had been taken regarding the abolition of the post of the Vigilance Commissioner. After taking the decision to abolish the Vigilance Commission the Government considered the feasibility of omitting the provisions in the budget, but it was found to be too late to make any changes. The post of Vigilance Commissioner was sanctioned upto 28 February, 1970.

12 The contentions on behalf of the appellant Ramanatha Pillai were these. First, the order abolishing the post is vitiated by mala fides of respondent No. 2. Second, the abolition of the post does not terminate the agreement, dated 20 December, 1968. Third, the abolition of the post has the effect of terminating the services of the appellant, and, therefore, it is invalid by reason of non-compliance with the provisions of Article 311 of the Constitution. Fourth, the order of the Government was made without giving an opportunity to the appellant and thereby violated the principles of natural justice. It was said that the order of Government entailing the civil consequences of loss of service could be made only after observing the principles of natural justice. Fifth, the principle of estoppel applies to the case that it was not lawful for the Government to terminate the services of the appellant."

5.1. Judgment of this Court in *Alka v. State of Raj.*, 1998 (1) SLR 675:

8. From the pleadings and the record, it is clear that even though initially there was some correspondence between the petitioner and the department in regard to the submission of medical certificates etc. when the petitioner was on leave but the reasons which has come out from the office record for terminating the services of the petitioner, as brought out is that the Government of India did not extend the continuation of this post and, therefore, the services of the petitioner were terminated from the date of passing the order Annexure 13. The post itself has been abolished for the Scheme where the petitioner was working, the Government had thought it fit not to continue this post, no fault can be found with such an action of the Government. The only relief the petitioner could be granted in the present writ petition is that the petitioners shall be paid the salary of the leave period if the leave is due to her or any notice period for termination the services, if under the rules or any instructions or letter of appointment any notice is required to be given till the date of termination of the services. If any arrears of salary become due up to 23.12.1989, that shall be calculated by the respondents and paid to the petitioner and if it found that the petitioner is not entitled to any leave salary on account of any lawful reason, in that situation, the petitioner would be informed of such decision which shall be a speaking order.

9. However, it is made clear that if any post of Lady Extension Worker or Programme Officer which post the petitioner was holding had ever been created

or is created in future after the date of termination, the petitioner shall be at liberty to move this Court for appropriate relief by filing a writ petition to this effect and claiming her right on the post so created or to be created. In case the post is created in future, the petitioner shall have a prior right of consideration against that post."

6. Learned counsel for the appellant further placed reliance on the judgment of Jaipur Bench in *Managing Committee and ors. v. Ram Phool Meena and ors.*, 2009 (4) RLW 2997 holding as under:

7. After having considered the submissions made on behalf of the counsel for the parties, we have carefully gone through the material on record, the relevant provisions of the Act and the Rules made thereunder as also the judgments cited at bar and in our opinion, the submissions made by counsel for the respondent-employee are only misconceived and cannot be accepted.

8. The Hon'ble Supreme Court in the case of *Bhikha Ram Sharma (supra)* on the same facts and circumstances has clearly held that on abolition of the post, the existing holder of the post ceases to continue from the date of abolition of the post and that since the termination of the service of the respondent employee is only due to abolition of the post, the question of conducting the enquiry under Rules as directed by the High Court does not arise.

10. In view of the judgment of Hon'ble Supreme Court in case of *Bhikha Ram Sharma (supra)* and judgment of Division Bench of this Court in case of *Mahendra Kumar Rana (Supra)* on exactly same indetical facts, in our opinion, the impugned judgment passed by the learned Single Judge cannot be sustained in the eyes of law. Accordingly, both the appeals are allowed. The impugned order dated 22nd January, 1997 passed by the learned Single Judge is quashed and set aside. Consequently, the writ petition No. 277/1995 filed by the appellant Management is allowed and the impugned order passed by the Tribunal is also set aside. The writ petition No. 2592/1995 filed by the respondent-employee also stand dismissed."

7. He also relied on judgment of Madras High Court in *M.S. Loganathan and Anr. v. Chairman, Tamil Nadu Small Industries Development Corporation Ltd., & Anr.*, 1997 (8) SLR 8

"10. The learned senior counsel relying on a decision reported in *Ratilal B. Soni v. State of Gujarat*, 1990 Supplement SCC 423 : [1991(3) SLR 77 (SC)] submitted that the deputationists could be reverted to their parent cadre and if that is so, there is no need to pass the impugned order terminating the petitioners. No doubt, in the said decision, the Apex Court has held that deputationists could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. In other words, the deputationists cannot claim right to absorb their services along with the existing persons. Only in that context the Supreme Court has held that the deputationists could be reverted to their parent cadre at any time. The respondents have

already explained that the deputationists will be sent back as soon as their work is over or on the expiry of the period of deputation.

13. Looking at any angle, I do not find any error in the impugned orders passed in all the above cases and the writ petitions are liable to be dismissed. Before parting with these cases I want to bring it to the notice of the respondents their Annual Reports for the year 1992-93, 1993-94 and 1994- 95 wherein a number of existing as well as new projects have been catalyzed. They also reveal bright prospects in future also. However, the respondents in their counter affidavit as well as in the argument it is made clear that they have no funds for taking up any large scale construction activity in the next couple of years and works about Rs.7.48 crores have been deferred on account of funds constraint and lack of demand. This shows the contradictory stand taken in their Annual Reports for the years referred above and in counter as well as in the argument before this Court. Since the termination were in pursuance of abolition of posts as seen from the Office Order of the respondent dated 9.9.1996, in view of the constitutional Bench decision in AIR 1973 SC 2641 cited supra, there is no need to investigate further, except pointing out the above contradictory stand of the Responding."

8. He has also relied upon Shri Maheshwari Senior Higher Secondary School and Anr. v. Bhikha Ram Sharma and ors., (1996) 8 SCC 22 wherein it has been held as under:

"2. This appeal by special leave arises from the order of the Rajasthan High Court made in D.B. Special Appeal (Writ) No. 492 of 1995. The short question is: whether the respondent can be permitted to continue in a post that stands abolished? It is not in dispute that the respondent was appointed as stenotypist on ad hoc basis w.e.f. 15.7.1992. While he was continuing, the Management had passed a resolution on 21.5.1994 stating that there was no necessity to continue the ad hoc post of stenotypist. Consequently, the post stood abolished. Thereafter, the impugned order was passed on 31.5.1994 terminating the service.

When the appellants had proceeded to the Tribunal and then to the High Court, the High Court came to the conclusion that termination is not according to rules and directed to conduct an enquiry according to rules and to take a decision. The approach adopted by the High Court is wholly erroneous. It is settled law that on abolition of the post, the existing holder of the post ceases to continue from the date of abolition of the post. Since the termination of the service of the respondent is only due to abolition of the post, the question of conducting the enquiry under the Rules does not arise."

9. Counsel for the respondents contended that none of the contentions being raised in the present appeal has been raised before the Tribunal or the learned Single Judge and more so, no reply has been filed. He has relied upon following judgments to contend that requirement of approval of the Director of Education is mandatory:

Central Academy Society v. Rajasthan Non Government Educational Institutions

Tribunal, Jaipur reported in 2010 (3) WLC (Raj.) 21; Dr. Kripa Nidhi Tiwari v. Khetri Vikash Samiti and Ors. D.B. Civil Special Appeal (W) No.36/2013 decided on 29.10.2014; State of Haryana and Ors.v. Navneet Verma 2004 (5) SLR 242; Saint Meera Brotherhood Society v. State of Raj. and Ors. 2006 (1) WLC (Raj.) 677; Raj Kumar v. Director of Education and Ors. Civil Appeal No.1020/2011 decided on 13.4.2016; Janta Balika Senior Secondary School and Ors. v. Smt. Manju Sharma and Ors. 2012 WLC (Raj.) UC 696 and Bishwambharlal High School (Bagar) Trust and Ors. v. The Rajasthan Non-Government Educational Institution 2016 (1) WLC (Raj.) 608.

10. We have heard Mr. Garg at length and also Mr. Gurjar.

11. Taking into consideration the provisions of Section 18 of the Act of 1989, in our view, the abolition of posts will not confer any power upon the employer to remove the service, without prior approval of the Director. Abolition of posts also results into termination or removal from service or brings to an end relationship of master and servant.

12. Taking into consideration the mandate of Section 18, action of the appellants cannot be justified, as the appellant has not taken prior approval of the Director, Education which is sine qua non.

13. On account of the abolition of posts, the competent authority may decide to terminate the services of an employee, but in any event, consent of the Director is required in view of the decision cited by the respondents.

14. From perusal of the record, we find that no such contention was raised before the Tribunal nor before the learned Single Judge and it has been raised for the first time. However, taking into consideration the provisions, we are of the opinion that conclusion reached by both the authorities that abolition of post is bad in law and deserves to be quashed and set aside.

15. We are in complete agreement with the view taken by the Tribunal as upheld by the learned Single Judge. The termination order came to be passed on 29th July, 2003 and the respondents are suffering for last 13 years. The respondents have been wrongly deprived of their legitimate dues and right on account of this frivolous writ petition.

16. In that view of the matter, we are of the opinion that the appeals deserve to be dismissed with costs of Rs. 10,000/- (Rs. Ten thousand) each. The costs will be paid to the private respondents. All other applications are also dismissed.

17. A copy of this judgment be placed in each file.