

(2019) 05 RAJ CK 0255

In the Rajasthan High Court

Case No : Special Appeal Writ No. 642, 644 Of 2019

Management Committee And Ors

APPELLANT

Vs

Asman Rathore And Ors

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Rajasthan Non Government Educational Institutions Act, 1989 — Section 18, 18(ii)
Rajasthan Non Government Educational Institutions (Recognition, Grant-in-Aid And
Service Conditions etc.) Rules, 1993 — Rule 39

Citation : (2019) 05 RAJ CK 0255

Hon'ble Judges : Sangeet Lodha, J;Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Mahaveer Bishnoi, Nitin Trivedi

Final Decision : Dismissed

Judgement

1. These two special appeals are directed against order dated 15.4.19 passed by the learned Single Judge of this Court, whereby the writ petitions preferred by the respondents against the order dated 12.4.17 passed by the Rajasthan Non-Government Educational Institution Tribunal ('the Tribunal'), Jaipur, setting aside their oral termination from service and directing reinstatement with all consequential benefits, have been dismissed.

2. Learned counsel appearing for the appellants contended that the respondents were employed as Primary Teacher in the appellant Institution on adhoc temporary basis from time to time and lastly, they were employed for the period from 1.3.16 to 31.3.16. According to the learned counsel, after expiry of the term of appointment, the services of the respondent had come to an end automatically and therefore, the question of the appellants terminating their services does not arise and for this reason the provisions of Section 18 of the Rajasthan Non Government Educational Institutions Act, 1989 ('the Act of 1989') and Rule 39 of Rajasthan Non Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions etc.) Rules, 1993 ('the Rules of 1993') are

not attracted in the matter. Learned counsel would submit that without appreciating the factual matrix of the case in correct perspective, the learned Single Judge has seriously erred in upholding the order passed by the Tribunal relying upon a Bench decision of this Court in the matter of Bhopalwala Arya Higher Secondary School Vs. Mr. Nand Lal Saraswat & Ors : D.B. Special Appeal (Writ) No.860/08, decided on 28.11.08.

3. On the other hand, the counsel appearing for the respondents while supporting the order impugned submitted that the respondents were in continuous employment of the appellants for more than 6 years. Learned counsel submitted that though fresh appointment was offered to the respondents every year but the fact remains that they were paid salary for whole of the year and there was no break in service. Learned counsel submitted that as laid down by this Court in Bhopalwala Arya Higher Secondary School's case (supra), by virtue of provisions of Section 18 of the Act of 1989, no employee of recognized institution can be terminated from service except in case of removal or dismissal after disciplinary inquiry, without giving him six months notice or salary in lieu thereof and the consent of Director is obtained in writing and thus, the learned Single Judge has committed no error in dismissing the petitions relying upon the said decision. Learned counsel submitted that by virtue of Rule 39 of the Rules of 1993, even the services of an employee appointed temporarily by the recognized institution for a period of six months cannot be terminated by the management without giving one month's notice or one month's salary in lieu thereof and thus, viewed from any angle, the termination of the services of the respondents by the appellants stands vitiated.

4. We have considered the submissions of the learned counsel for the parties and perused the material on record.

5. Indisputably, the respondents were in continuous employment of the appellants for more than 6 years. It is true that every year fresh appointment orders were issued by the appellants appointing the respondents for the term specified but the fact remains that treating them in continuous employment, they were paid salary for whole year and thus, there was no break in service. In any case, any such break in service as laid down by this Court in Bhopalwala Arya Higher Secondary School's case (supra) has to be ignored and the respondents have to be treated in continuous employment of the appellants.

6. As noticed by the learned Single Judge in identical fact situation a Bench of this Court in Bhopalwala Arya Higher Secondary School's case (supra) has categorical held that the definition of the 'employee' under the Act of 1989 and the Rules made thereunder includes even 'temporary employee' and if an employee has continued in service of recognized institution governed by the provisions of Act of 1989 and the Rules of 1993, even on temporary basis for years together, his services otherwise by way of disciplinary proceedings can be terminated by the Management Committee of the Institution on the existence of the contingency provided under clause (iii) of second provision to Section 18 of

the Act of 1989, after giving six months notice or salary in lieu thereon and obtaining the consent of Director of the Institution.

7. We are of the considered opinion that the controversy involved in the present case is squarely covered by a Bench decision of this Court in Bhopalwala Arya Higher Secondary School's case (supra). The services of the respondents, who were in continuous employment of the appellants for a period more than 6 years, could not have been terminated without fulfillment of the conditions precedent as provided under clause (iii) of second proviso to Section 18 of the Act of 1989 and therefore, the order impugned passed by the learned Single Judge upholding the decision of the Tribunal setting aside the termination of the respondents from service and directing reinstatement with consequential benefits, does not warrant any interference by us in exercise of intra court appeal jurisdiction.

8. In the result, the appeals fail, the same are hereby dismissed. No order as to costs.