

(2019) 04 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5314, 5315 Of 2017

Management Committee And Ors

APPELLANT

Vs

Rajasthan Non Government Educational Institution Tribunal
And Ors

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

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

Citation : (2019) 04 RAJ CK 0076

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Hemant Jain, Nitin Trivedi

Final Decision : Dismissed

Judgement

These writ petitions have been filed by the petitioners-Institution aggrieved against orders dated 12.04.2017 passed by Rajasthan Non-Government Educational Institution Tribunal, Jaipur ('the Tribunal'), whereby the Tribunal while allowing the appeals filed by the respondents, have set aside the oral termination of the respondents-teachers with consequential benefits and reinstatement.

The Tribunal, while deciding the appeals, after noticing the facts of the case relied on judgment of this Court in Bhopalwala Arya Higher Secondary School v. Mr. Nand Lal Saraswat & Ors.: DBSAW No. 860/2008, decided on 28.11.2008.

The Division Bench in the case of Bhoplwala Arya School (supra), after dealing with the matter, facts whereof were similar in nature as with the present cases, came to the conclusion after referring to the provisions of Section 18 of the Rajasthan Non-Government Educational Institutions Act, 1989 ('the Act of 1989') and Rule 39 of the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Other Service Conditions etc.) Rules, 1993 ('the

Rules of 1993'), that the definition of 'employee' includes even a 'temporary employee', and that if an employee has continued in service of an Educational Institution governed by the provisions of the Act of 1989 and the Rules of 1993 even on temporary basis for years together, his services otherwise than 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 proviso to Section 18 after giving six months' notice or salary in lieu thereof and obtaining the consent of the Director of Education in writing.

The Bench thereafter came to the conclusion that the action of the Institution therein in giving appointment to the respondents therein in each academic session for a fixed term by giving artificial break was ex-facie illegal and arbitrary and those artificial breaks were to be ignored and the employee was to be treated in continuous service since his initial appointment and ordered that the service could be brought to an end only after complying with the provisions of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993.

The provisions of Section 18 and Rule 39 have been dealt with by the Larger Bench of this Court in relation to Unaided Non-Government Educational Institution in Central Academy Society v. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur & Ors.: 2010(3) RLW 2326 (Raj.), wherein it was, inter alia, laid down as under:-

"45. In view of what has been discussed above, our answer to this reference is that the first proviso to Section 18 of the Act of 1989 does not apply in relation to the disciplinary action by private unaided recognised institution but the other provisions of Section 18 including the second proviso do apply to such unaided private recognized educational institution too."

Learned counsel for the petitioners after making vehement attempt to make submissions seeking to distinguish the judgment in the case of Bhopalwala Arya School (supra), ultimately confined his submissions that in the case of Bhopalwala Arya School (supra), the Tribunal after granting relief to the employee had left it open for the Institution to proceed in accordance with law, which liberty has not been granted to the petitioner.

Learned counsel for the respondents made submissions that such a liberty is not required, inasmuch as, the law has to take its own course as interpreted by this Court and, therefore, no direction needs to be issued in the present cases.

Having considered the submissions made by learned counsel for the parties and in view of the fact that the order passed by the Tribunal relying on judgment in the case of Bhopalwala Arya School (supra), does not call for any interference as the facts of the present cases are almost identical to the case of Bhopalwala Arya School (supra) and the law laid down by the Division Bench is squarely applicable to the facts of the present cases.

So far as the plea regarding the liberty raised by the learned counsel for the

petitioners is concerned, once the law as applicable has been interpreted in a particular manner by the Division Bench as well as Larger Bench of this Court, it is always open for the petitioner-Institution to act in accordance with law as the earlier action of the Institution has been held to be contrary to the provisions and, therefore, struck down.

With the above observations, no interference is called for in the orders passed by the Tribunal.

Consequently, there is no substance in the writ petitions, the same are, therefore, dismissed.