

(2009) 02 RAJ CK 0149
In the Rajasthan High Court

Managing Committee (The) and Others	APPELLANT
Vs	
Ram Phool Meena and Others	RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

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

Citation : (2010) 124 FLR 332 : (2009) 4 RLW 2997

Hon'ble Judges : G.S. Sarraf, J; Ashok Parihar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Parihar, J.—Since on similar set of facts, the common judgment passed by learned Single Judge is under challenge, both the appeals have been heard together and are being decided by this common order.

2. As has come on record, the respondent-employee was appointed on temporary basis as a Gardner by the appellant Management. A decision was taken by the Managing Committee on 21.5.1994 to abolish three adhoc posts including, Steno Typist, Assistant and that of Gardner. Consequently, a notice was issued to all the three employees including the respondent-employee as well who was working on the post of Gardner on 1.7.1994 in regard to termination of their services w.e.f. 31st July, 1994.

3. The respondent-employee challenged the order dated 1.7.1994 before the Rajasthan Non-Government Educational Institutional Tribunal ("the Tribunal" in short). In view of the interim order passed by the Tribunal, the respondent-employee was continued in service. The Tribunal finally allowed the appeal filed by the respondent-employee vide order dated 18.10.1994 and quashed the notice dated 1.7.1994 mainly on the ground of non compliance of Section 18 of the Rajasthan Non-Government Educational Institutions Act, 1989 ("the Act of 1989" in short) and the respondent employee was ordered to be continued in service with all consequential benefits. Challenging the order dated 18.10.1994

passed by the Tribunal, a writ petition was filed by the appellant before this Court. In S.B. Civil Writ Petition No. 277/95 filed by the appellant Management, an interim order came to be passed by the learned Single Judge on 3.4.1995 staying the operation of order of the Tribunal. The services of the respondent-employee were consequently discontinued vide order dated 24.4.1995.

4. During pendency of the writ petition filed by the appellant Management, as referred above, the respondent-employee filed a separate Writ Petition No. 2592/95 challenging the order dated 24.4.1995. The learned Single Judge stayed the operation of order dated 24.4.1995 vide order dated 23.6.1995 in Writ Petition No. 2592/1995. It may also be noted here that the learned Single Judge while vacating the interim order passed in Writ Petition No. 2592/95 also confirmed the interim order passed by the Court earlier on 3.4.1995 in S.B. Civil Writ Petition No. 277/95 on 20.11.1995. The second stay application filed by the respondent-employee in the subsequent writ petition also came to be dismissed by the learned Single Judge vide order dated 15.12.1995. Both the writ petitions, referred above, one filed by the appellant Management and the other filed by the respondent-employee, came to be decided by the learned Single Judge by a common order dated 22nd January, 1997. While dismissing the writ petition filed by the Management, the writ petition filed by the respondent-employee was allowed, the order passed by the Tribunal was affirmed and the order dated 24.4.1995 was also set aside.

5. Learned Counsel for the appellant submitted that against the decision of the Management taken on 21.5.1994 in regard to abolition of three posts as referred above and the consequential orders of terminations came to be challenged by respective concerned employees before the Tribunal. The Tribunal allowed all the three appeals filed by respective employees on the ground of violation of Section 18 of the Act of 1989. The order of the Tribunal came to be challenged by the appellant Management before this Court. So far as one of the concerned employee Bhikha Ram Sharma who was working as Steno Typist after appeal being allowed by the Tribunal, the order of the Tribunal had further been affirmed by the learned Single Judge as also Division Bench of this Court. However, on further leave to appeal before the Hon''ble Supreme Court, the order of the Tribunal, order of the Learned Single Judge as also the Division Bench in case of Bhikha Ram Sharma had been set aside by the Hon''ble Supreme Court in case of 1996 II AD 238 (SC) Relying on judgment of the Hon''ble Supreme Court, as referred above, the Division Bench of this Court in case of Mahendra Kumar Rana who was working on the post of Assistant, allowed the writ petition filed by the appellant Management and set aside the order passed by the Tribunal. Learned Counsel for the appellant submitted that in view of the judgment of Division Bench of this Court in case of Mahendra Kumar Rana (supra) as also judgment of Hon''ble Supreme Court in case of Bhikha Ram Sharma (supra), judgment of Tribunal as also learned Single Judge in the present case cannot be sustained in the eyes of law.

6. Learned Counsel for the respondent-employee on the other hand submitted that the concerned employee though had been appointed on the post of Gardner however in fact he should have been appointed on regular basis on the post of Peon, since he was asked to perform different duties by the appellant Management from time to time. In view of the provisions of the Act of 1989, the respondent-employee should have been treated as substantive employee and his services could not have been terminated without complying with the provisions of the Act of 1989 and the Rules made thereunder. It has also been submitted by the learned Counsel for the respondent-employee that the Management could not have abolished the post of a substantive employee without prior sanction of the Government and even went to the extent that even the resolution passed by the Management on 21.5.1994 was a fabricated one. It has also been submitted by counsel for the respondent-employee that by an interim order dated 3.4.1995 passed by the learned Single Judge in S.B. Civil Writ Petition No. 277/95 filed on behalf of the Management only the operation of the order of the Tribunal was stayed. However, until and unless the order of termination is not set aside, the consequential order passed on 24.4.1995 is of no consequence and it should be treated as having given a fresh cause of action to the concerned employee.

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.

9. While replying on the observations made by the Hon'ble Supreme Court in case of Bhikha Ram Sharma (supra), the Division Bench in case of Mahendra Kumar Rana (supra) further observed that right of creation and abolition of posts is an inherent right of the Management and such right does not come from any statutory provision until unless specifically provided. The Tribunal and the Learned Single Judge in the present case however has observed that since the word "ad hoc" was not mentioned in the letter of appointment as also subsequent letters issued by the Management, it cannot be treated as abolition of ad hoc posts. The Tribunal also observed that work of Gardner is an essential part of the working of an Institution and should be treated on a permanent job. However nothing has been placed on record that particular post of Gardner had in fact been created and sanctioned by the Management on permanent and substantive basis and the grant and aid for the same have also been received from the State Government. Furthermore, the order dated 24.4.1995 was only a consequential

order after interim order passed by this Court staying the operation of judgment of Tribunal and by no stretch of imagination could be treated as a fresh termination order which could be challenged by the respondent-employee directly before trial Court more so when main writ petition filed by the appellant management was still pending before this Court. In our opinion the course taken by the respondent employee was sheer misuse of due process of law.

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 identical 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.