
(2014) 11 RAJ CK 0159

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 602/2014

Manjula Maheshwari

APPELLANT

Vs

State of Raj.

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2014) 11 RAJ CK 0159

Hon'ble Judges : Gopal Krishan Vyas, J;Atul Kumar Jain, J

Bench : Division Bench

Advocate : R.S. Saluja, Advocate for the Appellant

Judgement

1. The instant special appeal has been filed by the appellant-petitioner Smt. Manjula Maheshwari under Section 18 read with Rule 134 of the Rajasthan High Court Rules against the judgment dated 23.1.2014 passed by the learned Single Judge of this Court in SBCWP No. 4291/2000 whereby the writ petition filed by the petitioner-appellant was dismissed.

2. As per the brief facts of the case, the appellant-petitioner at the first instance preferred SBCWP No. 1998/1993 before this Court for regularization of her services on the post of Teacher in accordance with sub-rule (3) of Rule 6 of the Rajasthan Panchayat Samiti Zila Parishad Service Rules, 1959 (hereinafter referred to as the Rules of 1959 for short), so also, challenged the termination of services.

3. The learned Single Judge of this Court finally decided the said writ petition vide judgment dated 25.2.1998 in which following directions were issued, which reads as under:-

"Admittedly the petitioner possessed the requisite diploma in 1979 and the said diploma was derecognized in 1987. It is settled law that qualification cannot be derecognized with retrospective effect unless authority comes to the conclusion that the institution which issued the diploma or certificate was a bogus institution and never existed in reality. Thus, there is no dispute regarding this proposition

that her termination on the ground that qualification possessed by her was derecognized by subsequently, cannot be sustainable in law vide State of Haryana Vs. Suresh Pal AIR 1987 SC 2027 Gokul Ram Vs. State. D.B.C. Writ No. 439/87 decided by the Division Bench on 18.8.87 and Hari Ram Vs. State D.B.C. Writ Pet. No. 2859/97 decided by Division Bench on 25th July 1990. Thus, in view of the above, the termination order cannot be sustained on the ground that the petitioner did not possess the requisite qualification. But holding so will not serve the purpose so far as the petitioner is concerned, as the issue whether person appointed on temporary basis on a tenure post has any right to hold the post. In the writ petition a specific averment has been made by the petitioner and reliance has been placed on certain circulars/Government orders providing for regularization for service of the petitioner like other. More over Rajasthan Panchayat Samities and Zila Parishad Service Rules, 1959, were amended by notification issued on 28th of August 1989 wherein a proviso was added to sub-rule (3) of Rule 6 being for screening the persons appointed prior to 31st of December 1985 and who was in continuation of service on the date of issuance of such Notification i.e., 28th of August 1989. Thus, in view of the above, the petitioner was entitled to be screened for regularization under the said rule. This petition is disposed of finally with the direction that the petitioner may apply to the Competent Authority. If the petitioner makes representation to the respondent No. 3 for giving benefit of the said rules, the respondent No. 3 is directed to refer her case to the competent authority and the competent authority is directed to consider her claim by fiction whether on the date of termination of her serviced, she was entitled and fit to be regularization, with expeditiously and preferably within a period of four months and while considering it, the Authority will consider the petitioner possessing the requisite qualification and if the authority accepts the claim of the petitioner, her services would be regularized and she will be entitled for back wages with all other consequential benefits by a committed."

4. The case of the petitioner was considered as per the direction issued by this Court in aforesaid writ petition and rejected by the respondents vide order dated 15.4.1999 in which it was observed that petitioner appellant Smt. Manjula Maheshwari did not work continuously w.e.f. 31.12.1985 to 24.8.1989, therefore, she is not entitled for regularization.

5. The petitioner-appellant again preferred writ petition before this Court for the prayer of regularization and said writ petition was registered as SBCWP No. 4291/2000 and the said writ petition was come up for final hearing before learned Single Judge on 23.1.2014. The learned Single Judge while considering the entire facts of the case dismissed the writ petition on the ground that this writ petition is found to be laconic and without proper factual foundation laid in the same and particularly in absence of any proper challenge laid to the order (Annex.4) dated 15.4.1999, the writ petition deserves to be dismissed and accordingly, the writ petition was dismissed.

6. The learned counsel for the petitioner-appellant vehemently argued that although the order dated 15.4.1999 (Annex.4) of SBCWP No. 4291/2000 was not challenged but specific prayer was made for regularization of the petitioner, therefore, the learned Single Judge ought to have consider the case for the purpose of molding the relief in favour of the petitioner-appellant.

7. The learned counsel for the appellant further submitted that as per sub-rule (3) of Rule 6 of the Rules of 1959 the petitioner-appellant was very much entitled for the benefit of regularization but it is denied on wrong premises, therefore, the respondents are under obligation to regularize the services of the petitioner-appellant and to grant all service benefits.

8. After hearing the learned counsel for the appellant although the order dated 15.4.1999 (Annex.4) was not challenged by the petitioner-appellant, in our view, when petitioner-appellant's case does not fall under sub-rule (3) of Rule 6 of the Rules of 1959 and his appointment was not as per rule 23(3) of the Rules of 1959, then obviously no error has been committed by the learned Single Judge in dismissing the writ petition of the petitioner-appellant because regularization on the post of Teacher cannot be claimed as a matter of course. The case is to be considered as per the factual position of the service period.

9. In view of the above, we see no reason to interfere in the order impugned. Hence, this special appeal is hereby dismissed.