
(1988) 12 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1879 of 1987

Miss Rekha Mathur

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-12-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1988) 2 WLN 559

Hon'ble Judges : Shyam Sunder Byas, J;D.L. Mehta, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the parties.
2. The service of the petitioner has been terminated according to the petitioner by verbal order on 1-8-1987, by the respondents.
3. Learned counsel for the petitioner submits that original writ petition was filed by the petitioner to vindicate her right to claim equal pay. Learned counsel for the petitioner further submits that being aggrieved with the writ petition filed by the petitioner, the State Government, has terminated the service of the petitioner. He further submits that the duly selected candidates have not been appointed so far and the posts are lying vacant. Learned counsel for the petitioner does not want to press at this stage the point whether the office of the D.R.D.A. Jaipur, is an industry or not. As such we are not deciding this point at this stage.
4. It is true, that pick and choose policy of ad-hoc appointment is persistently followed by number of officers of the State in various departments including present department. This Court in the case of B.B. Sharma v. The State of Rajasthan, D.B. Civil Writ Petition No. 235/1987, decided on Nov. 17, 1988, (reported in 1988 (2) RLR at page 327) has also considered this matter.
5. To appoint any person on ad-hoc basis against a vacancy is the right of the Government and the Government can appoint any person to meet the urgent

needs.

6. We feel that the Government machinery should not take undue advantage in the matter of ad-hoc appointment by continuing them in-definitely. Appointing a person for 3 months or till further orders on ad-hoc basis and continuing him/her for years together without taking note of the fact that regular appointment should be made is really an arbitrary act, as such the practice cannot be allowed to be continued. The right to appoint any person on ad hoc basis equally creates a duty on the appointing authority, to fill-up the post within a reasonable time by regular appointment. The system of regularising of service after years together and to appoint fresh persons on ad-hoc basis results in depriving rightful person from the appointment. We are therefore, of the view that reasonable time is 6 months and in any case it should not be exceeded 240 days in all. If ad-hoc appointment is continued beyond that limit Articles 14 and 16 can be invoked. We are in agreement with the petitioner that it is a case in which there may be a spirit of vindictiveness. The petitioner was appointed vide (Annexure-1) dated 16-2-1985 on ad-hoc basis, and the appointment was continued upto 31-7-1987. Thus the petitioner has served for more than two and half years. No appointment has been made so far on regular basis. The directions have already been given in the case of B.B. Sharma v. The State of Rajasthan (*supra*) that the respondents should make the regular selections within 3 months, according to rules if the posts are to be filled. Further directions have been given that they should not continue the ad-hoc appointment.

7. We are, therefore, of the view, that the same directions should also be issued in this case. Not only to this department but also to the State of Rajasthan through the Chief Secretary, for issuing similar directions to other departments so that there may not be any grievance of pick and choose and there may not be any violation of Articles 14 and 16 of the Constitution of India. Apart from that it will not be in the interest of State itself that the persons selected on merit will be available and definitely they will be better than those persons appointed on ad-hoc basis. We hereby direct the State of Rajasthan, also to follow the directions given in this case.

8. Learned counsel for the petitioner further submits that in the case of Bhagwan Das v. The State of Haryana and Ors. D.B. Writ Petition No. 12311 of 1985, decided on 31-7-1987, in which their Lordships held as under:

We hope and trust that the State of Haryana will not show displeasure at the petitioners who have approached this court in order to vindicate their right to claim equal pay and that service of no petitioner would be terminated except on reaching the age of superannuation or by way of appropriate disciplinary action or on abandonment of the scheme. For the sake of abundant caution we direct accordingly.

9. We feel that the termination order may be passed on account of displeasure as such the petitioner earlier filed the writ petition to claim equal pay and that writ

petition was allowed by the court. We here by direct that if the post is to be filled then petitioner should be appointed on ad-hoc basis. How ever, the respondents will be at liberty to keep the post vacant. We further directed that the regular appointment should be made within 3 months and in case the regular appointments are not made within 3 months, the post should be kept vacant but no ad-hoc appointment shall be made. It will be open for the petitioner to apply for competitive test for regular appointment. How ever, it is expected that the displeasure of the department will not come in her way. The writ petition is partly allowed and disposed of accordingly.