
(2000) 05 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Petition No. 2171 of 1999

Mohan Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 2 WLC 100 : (1999) WLC 274 : (2000) 2 WLN 310

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Judgement

B.S. Chauhan, J.—A large number of writ petitions have been filed challenging the process of selection, i.e. constitution of the selection committee and giving preference to the local residents as "Shiksha Sahyogi" in Rajiv Gandhi Swaran Jayanti Pathshalas under the Policy framed by the respondent-State vide order dated 23.4.1999 (Annx. 1). For the purpose of arguments, writ petition No. 2171/1999, Motion Lal v. State of Rajasthan and Ors., is taken to be a leading case.

2. Petitioner claims that he was better qualified than respondent No. 6 but ignoring his claim, the appointment had been given to her vide order dated 27.5.1999 (Annx. 8). Hence this petition for quashing her appointment and giving appointment to the petitioner.

3. This Court, prima facie, was not satisfied with the terms and conditions incorporated in the State Policy (Annx. 1) and, thus, issued notice to the learned Advocate General for examining the correctness of the selection process on 24.6.1999 as it provided for constituting the selection committee headed by the Sarpanch and also provided for preference to the local residents.

4. Even if the Government Order has been issued for any institution under a particular project funded by the Central Government and it has any element of public employment, the aforesaid clauses of the Circular (Annx. 1) would be

violative of Clause (2) of Article 16, which prohibits any kind of discrimination on the ground of residence. Moreover, another substantial question of law involved herein is: if the post of Shiksha Sahyogi involves any element of public employment, whether appointment can be made without advertising the post as it will be violative of Articles 14 and 16 of the Constitution and the law laid down by the Supreme Court in *State of Haryana and others Vs. Piara Singh and others* etc. etc., wherein, in para 47, Hon''ble Supreme Court has held that any employment in public office without issuing advertisement, would be violative of Articles 14 and 16 of the Constitution as it violates the rights of other eligible persons to be considered for the said post. The same view has been reiterated in *Prabhat Kumar Sharma and others Vs. State of U.P. and others*, and *J.A.S. Inter College, Khurja, Uttar Pradesh and others Vs. State of Uttar Pradesh and others*,

5. Even if it is accepted that it is not an employment under any Rule or "appointment" in strict legal sense and it is any kind of stipend, honorarium or remuneration for rendering assistance etc., the problem would be that this definitely involves public element and as held by the Hon''ble Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, that there can be no arbitrariness or discrimination in State actions as the Hon''ble Supreme Court, in the said case, has held as under:

The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Exclusion of Article 14 in contractual matters is not permissible in constitutional scheme. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, it can be said that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. Therefore it would be difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

Recently, in *Indira Sawhney Vs. Union of India and Others*, the Hon''ble Supreme Court reiterated the law laid down by it time and again and held that Articles 14 and 16(1) of the Constitution provide for rule of equality and, therefore, form the part of basic feature of the Constitution which cannot be altered or infringed while framing any law, statutory rules or taking a policy decision. Therefore, whatever may be the nature of the service rendered by the Shiksha Sahayak, it cannot be held in flagrant violation of mandatory provisions of Article 14 of the Constitution and if it is included in employment then the mandatory provisions of Article 16(1) cannot be violated.

6. In S.B.C.W.P. No. 1321/2000, *Ashok Kumar v. State of Rajasthan and Ors.*, decided on 10.5.2000, this Court, after placing reliance on a large number of

judgments of the Hon"ble Supreme Court, particularly in Purushottam Vs. Chairman, M.S.E.B. and Another, ; Ajit Singh and Others Vs. The State of Punjab and Others, A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, has held that every State act/action in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and based on rule of law.

7. Thus, in view of the above, the Scheme does, not meet the requirement of Article 14 of the Constitution. Moreso, a Full Bench of this Court, in Deepak Kumar Suthar v. State of Rajasthan and Ors., 2000 (1) WLC 1, has categorically held that no preference can be given to any person on the ground of residence etc. either for admission or for employment or in any other field as it will be violative of Articles 14 and 16 of the Constitution. Thus, the Scheme providing preference to the local residents and making the selections without any advertisement, cannot be up-held.

8. Today, learned Advocate General has produced two orders before this Court, issued on 15.5.2000, wherein the Government has taken a decision substituting the said clauses of the impugned Scheme and providing for a mode of selection after advertising the vacancies prescribing the minimum qualification of the candidates and it also provides that persons knowing the local language may have a preference.

9. So far substitution of the said clauses in the impugned Scheme is concerned, it is up-held with the further direction to the State to fix the norms of selection providing marks for educational qualification, sports, experience etc. as proposed by the learned Advocate General. So far as mode of constitution of the Selection Committee is concerned, Mr. Mehta has suggested the Court to give an opportunity to the State to consider the issue. Thus, the State is requested to look into the matter and fix a committee consisting of appropriate persons including the representative of the Panchayati Raj Department and the Education Authority under the Panchayati Raj. The State Government is also requested to take a decision on above issue as early as possible. However, it is clarified that without taking such a decision, advertising the post and making proper selection, no appointment will be made. In case the appointments made earlier are challenged before this Court and the selectees are impleaded herein, their appointments are declared void being violative of Article 14 of the Constitution but where appointments have not been challenged, they may not be disturbed.

10. In view of the above, all the writ petitions, relating to Rajiv Gandhi Swaran Jayanti Pathshalas, stand disposed of.