
(2014) 08 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 273/2014

Nirmala Choudhary

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Citation : (2014) 08 RAJ CK 0020

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Mirza Rehman, Child Development Project Officer, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—The lawyers are observing strike which is contrary to various Supreme Court decision.

2. Heard the petitioner and the Officer-in-Charge of the case, who are present in person. The case is listed at serial number 125 in today's cause list in hearing category.

3. The petitioner was appointed as "Anganwadi-Worker" on 09.09.2011 and was working as such for last more than two years, however, when suddenly her contractual employment was terminated/discharged by the impugned order dated 18.09.2013 (Annex. 6) on the alleged ground that she undertook the course of B.S.T.C. without proper permission of the respondents and without leave of the Chief Development Project Officer. The services of the petitioners were terminated while relying upon the Circular dated 12.07.2013 referred to in the impugned order (Annex. 6) dated 18.09.2013.

4. In the reply to the writ petition, the respondents have reiterated the same stand, which they have given in the impugned order dated 18.09.2013.

5. Having heard the petitioner and the Officer-in-Charge, this Court is satisfied

that the impugned discharge order dated 18.09.2013 (Annex. 6) is not sustainable and cannot be allowed to stand. The court of BSTC, undertaken by the petitioner for seeking employment opportunity as teacher to further career but as "Aanganwadi-Worker", this course of BSTC is not even the qualifying examination, however, her contractual employment has been discharged on wholly extraneous considerations of undertaking course of BSTC by her without due permission. The petitioner while refuting the said stand has argued that she applied for such permission before the respondents, however, she was never communicated either rejection of such permission or refusal of such permission.

6. A coordinate bench of this Court vide the order dated 06.08.2014 directed that if the vacancies are still exists, the case of the petitioner may be considered by the respondents in accordance with law, however, no order has been passed by the respondents so far.

7. Recently, this Court in the case of Rohit Kumar Bhatt Vs. State of Rajasthan & Ors. (SBCWP No. 28/2012, decided on 11.08.2014) relying upon the judgment of a coordinate bench of this Court in the case of SBCWP No. 691/2011-Prabhu Ram & Ors. Vs. State of Rajasthan & Ors., decided on 11th May, 2011, held as under:-

"3. He submits that vide the impugned order (Annex. 5) dated 07.05.2010 the respondent-Sanskrit Education Department, refused to record his qualification of B. Ed. obtained by him on the ground that the said course was undertaken by him without proper sanction from the Department as his service in the State was less than 3 years. The impugned order dated 07.05.2010 is quoted herein below for ready reference:-

4. He further submitted that in an identical matter being SBCWP No. 691/2011-Prabhu Ram & Ors. Vs. State of Rajasthan & Ors., decided on 11th May, 2011, a coordinate bench of this Court has allowed the writ petition filed. The said order of the coordinate bench of this Court is quoted herein below for ready reference:-

"Admittedly, the petitioners were not required to attend any class for acquiring B.Ed. qualification because the petitioners obtained the said degree through correspondence, therefore, the reason for denial of entry of the said qualification in service record is not tenable. More so on one hand, the Government is making efforts for educating the citizens but here in this case the application made by the petitioner who acquired B.Ed. qualification to enter that qualification in service record but the same has been denied solely on the ground petitioners did have not complete three years of service.

Upon perusal of order, it emerges that while passing order impugned, there is no mention of any rule under which the respondents can deny to enter the educational qualification which is acquired by the employee through correspondence course in service record. The rule of not completing three years for granting permission is for the qualification in which employee is required to attend regular classes.

In this view of the matter, while quashing all impugned orders Annex. 5, the respondents are directed to enter qualification of B.Ed. course of the petitioners in their service records which they acquired through correspondence course forthwith.

With above directions, this writ petition is allowed."

5. None is present on behalf of respondents. The respondents despite service have not cared to file any reply to the writ petition.

6. After hearing the petitioner and upon perusal of the order afore-quoted, this Court is satisfied that the petitioner's case is similar to that of Prabhu Ram (supra) and the qualification acquired by the petitioner of B. Ed., deserves to be recorded in the service record.

7. Accordingly, the present writ petition filed by the petitioner deserves to be allowed and the same is allowed in the same terms. No costs. A copy of this order be sent to the concerned parties forthwith."

8. Having heard the petitioner and the Officer-in-Charge, this Court is of the opinion that contractual employment of the petitioner as "Anganwadi-Worker" cannot be discharged on this hyper technical ground, therefore, the writ petition deserves to be allowed.

9. The writ petition filed by the petitioner is accordingly allowed. The order impugned (Annex. 6) dated 18.09.2013 is quashed and set aside and the respondents are directed to re-employ the petitioner immediately. No costs. A copy of this order be sent to the concerned parties forthwith.