
(2012) 02 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6519 of 2011

Nirmala and Others

APPELLANT

Vs

State (Education) and Others

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Citation : (2012) 02 RAJ CK 0094

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari

1. Appearance having been put for all the respondents, service is complete.
2. These petitions involving similar and akin issues have been considered together; and are taken up for disposal by this common order.
3. The learned counsel for the parties are ad idem that the issue involved in these petitions filed by the petitioners working as Vidhyarthi Mitras under the Vidhyarthi Mitra Yojna is covered by the decision of this Court in a batch of petitions led by CWP No. 9240/2011 Paras Ram Gurjar & Ors. Vs. The State of Rajasthan & Ors., decided on 10.01.2012.
4. The said batch of petitions was decided with reference to an order dated 20.10.2011 as passed by a co-ordinate Bench of this Court at Jaipur Bench in CWP No. 4559/2011 Khushbu Sharma & Ors. Vs. State of Rajasthan & Ors., which reads as under:-

Learned counsel for the petitioners has challenged the order dated 29.06.2011 orally.

Learned counsel for petitioners submits that the aforesaid order dated 29.6.2011 has been passed in violation of the judgment of this Court in S.B. Civil Writ

Petition No. 4731/2009 and the Division Bench's judgment in D.B. Civil Special Appeal (Writ) No. 574/2010 decided on 7.12.2010. In those cases, a direction was issued that Vidhyarthi Mitra can be discontinued only when regularly selected candidates become available and even while doing so it should be based on state level seniority list.

Learned counsel for petitioners further submits that by virtue of the impugned order dated 29.6.2011, the respondents are asking for the bond from the petitioners, which seems to be with an intention to discontinue them or to reckon their seniority again from the date of fresh appointment. If the petitioners are given seniority now as per the new appointment order, it may have consequential effect, thus the impugned order may be set aside.

I have considered submissions aforesaid.

It is a matter where number of writ petitions were earlier decided by the learned Single Judge by a detailed judgment and therein it was directed that Vidhyarthi Mitra may not be replaced unless regularly selected candidates either by way of recruitment or promotion become available. In the event of termination, it should be based on the principle of "last come first go" after drawing state-level seniority list. The judgment of the learned Single Judge was challenged by the State. In the appeals, judgment of the learned Single Judge was maintained but with some modifications that seniority list may be prepared at the level on which seniority of such incumbents is maintained under the Rules and thereby principle of "last come first go" be applied. After the judgment of the Division Bench, matter again came up before the Coordinate Bench and therein referring to the Rules, determination of seniority was ordered to be maintained at the district level. The grievance of petitioners is now that in the garb of the impugned order dated 29.6.2011, their seniority would be affected and thereby in the event of termination, they would go out first.

I have considered the aforesaid and perused the impugned order dated 29.6.2011, which is quoted hereunder for ready reference:-

Perusal of the order quoted above shows that pursuant to the judgment of this Court sanction has been granted to continue the contractual employees who were working in the session of 2010-2011 and it has further been directed to sign the agreement containing the same terms and conditions as were existing in the original agreement. Much objection has been raised for signing of the agreement though it has not been disputed that petitioners were initially engaged on the contract basis and they had signed agreement also. Even as per the judgment of the Division Bench, contractual employees cannot be replaced by another set of contractual employees but then petitioners being contractual employees are under an obligation to sign the agreement. The impugned order does not show that the seniority position of the petitioners would be affected or is to be counted from the date of agreement rather judgment of this Court in the case supra directs for application of "last come first go" and petitioners having

been continued in service, are wrongly apprehending any effect on their seniority. Mere submission of agreement for the present session is not going to affect them rather rights settled in favour of the petitioners in the judgment supra still hold field though with a clarification as given by the Division Bench. Thus, I find that the present writ petition has been filed only on the apprehension and thus are not maintainable. In any case, while dismissing the writ petition, it is clarified that submission of agreement will not affect the continuance of the petitioners' service and his rights as settled by the Division Bench of this Court in the case supra. No action should be taken by the respondents in violation of the direction given by the learned Single Judge and as upheld by the Division Bench though with some modifications.

The petitioners are accordingly directed to submit an agreement pursuant to the circular dated 29.06.2011 and they would not be debarred to continue merely for the reason that the agreement was not signed on or before 4.7.2011. However, petitioners should sign the agreement within a period of two weeks from today.

Learned counsel further submits that petitioners have not been paid salary for want of signing of agreement, thus a direction may be given to the respondents for release of salary. For that purpose, the petitioners are ready to sign the agreement for the aforesaid year.

The prayer aforesaid is accepted. If the petitioners sign the agreement then respondents are directed to release their salary forthwith, if they have worked for the period in question.

In case, the respondents find any difficulty in carrying out the order or any clarification, they would be at liberty to move an application for modification or recalling of the order.

This disposes of the stay application also.

(emphasis supplied)

5. In Paras Ram Gurjar's case, this Court, while taking note of the doubts and apprehensions stated by the petitioners about likely prejudice upon execution of the new agreement, observed and directed as under:-

After having heard the learned counsel for the parties and having perused the material placed on record, this Court finds that the doubts or apprehensions as suggested in these petitions about any likely prejudice upon execution of new agreement have already been held non-existent by the co-ordinate Bench; and, even while dismissing the writ petitions for having been filed only on apprehension, the co-ordinate Bench has made the necessary observations so as to obviate the likelihood of any prejudice where it has been observed and clarified that execution of the new agreement will not affect continuance of the petitioners' services and their rights, as settled by the Hon'ble Division Bench of this Court in SAW No. 574/2010, decided on 07.12.2010. It has also been observed that the impugned order does not show that the seniority position of

the petitioners would be effected and is to be counted from the date of new agreement; and the petitioners having been continued in service, were wrongly apprehending any adverse affect over their seniority with mere submission of the new agreement.

In view of the observations and directions in the case of Khushbu Sharma (supra), it is also clear that in case of any petitioners' salary being withheld, the respondents shall release the same upon signing of the agreement provided such person has worked for the period in question. The said directions, for all practical purposes, apply to the present cases too.

In view of the above, though these writ petitions are dismissed as being based on rather misplaced apprehension but, subject to the observations and directions as contained in the said order in Khushbu Sharma's case (supra). The rights of the parties shall be governed accordingly.

In the last, the learned counsel appearing for the petitioners made a submission that in Khushbu Sharma's case, the Court granted two weeks' time for submission of the requisite agreement but a large number of persons involved in these petitions are posted in remote villages and, therefore, some extra time for submission of agreement may be allowed.

6. It has also been pointed out that another similar matter, being CWP No. 7076/2011 Bharat Singh & Anr. Vs. State of Rajasthan & Ors. has been decided by this Court on 06.02.2012 with similar observations and directions.

7. The propositions aforesaid, for all practical purposes, apply to the present cases too and these petitions are also dismissed subject to the observations aforesaid and in the same terms. However, having regard to the other circumstances, the petitioners herein are allowed to sign and submit their respective agreements by 29.02.2012.

8. There shall be no order as to costs.