
(2019) 08 RAJ CK 0322
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1097 Of 2019

Prakita Kumari

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 19-08-2019

Acts Referred:

Citation : (2019) 08 RAJ CK 0322

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Abhishek Pareek

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner aggrieved against the order dated 26.10.2018 (Annex.9), whereby, the appointment granted to the petitioner as Teacher Gr.III Level-I has been cancelled.

The petitioner who had obtained 41.33% marks in Rajasthan Teacher Eligibility Test, 2012 (RTET) applied for recruitment by application dated 3.9.2013 indicating her category as OBC widow. By order dated 10.11.2017 (Annex.4), she was accorded appointment as probationer. The order of appointment indicated that appointments were provisional and would not create any right in favour of the appointees.

Pursuant to the order of appointment, the petitioner joined on 12.10.2017. On 20.7.2018, the petitioner was called upon to produce her original mark-sheet of RTET, to which the petitioner responded and claimed that she had specifically indicated in her application form that she has obtained 41.33% marks in RTET and as she had failed in RTET the marks-sheet is not issued and as the petitioner has already served for 10 months the respondents should not take any action against her.

On 7.8.2018 (Annex.7), a notice was issued to the petitioner indicating that she

was ineligible for appointment on account of her obtaining 41.33% marks in RTET despite relaxation available to widows and, therefore, she was called upon to show-cause as to why her appointment be not canceled.

The petitioner approached this Court by filing SBCWP No.12542/2018, which petition was disposed of by a Coordinate Bench of this Court on 29.8.2018 with the following directions:-

"Order

29/08/2018

1. Issue notice. Mr. Vikas Choudhary accepts notice on behalf of respondents.

With the consent of counsel for the parties the matter is decided finally at this stage itself.

2. At the outset, learned counsel for the petitioner submits that he is approaching this Court against the notice of termination dated 07.8.2018 (Annex.9), as the petitioner already stands appointed on the post of Teacher Grade-III while participating in Direct Recruitment Competitive Examination-2013.

3. However, on perusal of record, this Court finds that the writ petition is premature, as petitioner's service is being questioned by the respondents by giving her a notice only and the consideration of reply is awaited.

4. In light of this finding, this Court deems it appropriate to dispose of the instant writ petition with a direction to the respondents to consider representation of the petitioner by passing a detailed speaking order after giving an opportunity of hearing to the petitioner. In case the speaking order is of termination, then any termination whatsoever and whenever passed shall remain stayed for fifteen days from the date of passing of such order."

Though again a notice dated 10.9.2018 (Annex.8), was issued to the petitioner pursuant to the directions issued by this Court by order dated 29.8.2018, the petitioner apparently did not file any reply to the said show-cause notice.

The respondents by order impugned dated 26.10.2018 (Annex.9) came to the conclusion that the petitioner was ineligible for appointment as Teacher Gr.III Level-I on account of her not possessing the requisite marks despite relaxation provided to her and consequently cancelled her appointment on the post of Teacher Gr.III Level-I.

Learned counsel for the petitioner though did not dispute the fact that the petitioner in terms of the eligibility as per the advertisement and the provisions of the Rajasthan Panchayati Raj Rules, 1996 ('the Rules of 1996') was ineligible for appointment, attempted to make submissions that as despite her ineligibility, she was accorded appointment, now it was not open for the respondents to cancel her appointment after she has served for 11 months and, therefore, the

order impugned deserves to be quashed and set aside.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

It is not in dispute that the petitioner was ineligible for being accorded appointment pursuant to the advertisement and as per the requirements of the Rules of 1996, however, she was wrongly accorded appointment despite her ineligibility.

The plea raised by the petitioner invoking principles of estoppel on account of according appointment to the petitioner despite her ineligibility cannot be accepted in view of the settled legal position.

Hon'ble Supreme Court in Mohd. Sartaz & Anr. v. State of U.P. & Ors.: (2006)2 SCC 315 inter alia laid down that in such cases even hearing was not required. It was observed as under:-

"In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and therefore no hearing was required before the cancellation of their services. In the present case, the cancellation order has been issued with a very short span of time giving no probability for any legitimate expectation to the appellants regarding continuation of their services."

Hon'ble Supreme Court in State of Gujarat v. Arvind Kumar T. Tiwari: AIR 2012 SC 3281 held as under:-

"A person who does not possess the requisite qualification cannot even apply for recruitment for the reasons that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court."

Further it was observed by Hon'ble Supreme Court in Rakesh Kumar Sharma v. Govt. of NCT of Delhi : (2013) 11 SCC 58 as under:-

"There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance."

In view of the above legal position, wherein, the petitioner cannot claim any estoppel and/or right to continue despite her admitted ineligibility, no case for

interference in the present writ petition is made out. The same is, therefore, dismissed.