

(2002) 11 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2714 of 2001

Raje Singh

APPELLANT

Vs

Ajmer Vidhyut Vitarn Nigam Ltd. and Others

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 254

Citation : (2003) 4 WLC 326 : (2003) 2 WLN 441

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioners against the respondents on 11.7.2001 with a prayer that by an appropriate writ, order or direction the impugned Order dated 1.7.2001 (Annex. 12) passed by the Assistant Engineer (O & M), Ajmer Vidhyut Vitaran Nigam Ltd. be quashed and set aside and services of the petitioner be regularised and further the respondents be directed to pay the petitioner his emoluments from 1.9.2000.

2. At the very outset, it may be stated that originally this writ petition was filed before Division Bench of this Court as provisions of Rajasthan (Regulation of Appointment in Public Service and Rationalisation of Staff) Act, 1999 (hereinafter referred to as the Act of 1999) were challenged and since the Division Bench of this Court in the case of Bhawani Singh v. State of Rajasthan, D.B. Civil Writ Petition No. 3271/2001 decided on 23.7.2002 (reproted in 2002(3) WLC (Raj.) 728, has declared Sections 9, 11 & 19 of the Act of 1999 as unconstitutional and, therefore, Division Bench of this Court through order dated 13.8.2002 ordered that this case be listed before Single Bench and hence this case has been listed before this Court.

3. The facts of the case as put forward by the petitioner are as under:

(i) That the petitioner was initially appointed as Casual worker on 24.5.1994 for 60 days and his services were further extended by order dated 3.8.1994 for 60 days following by order dated 21.10.1994 (Annex. 1) whereby the services of the petitioner were again extended for 3 months w.e.f. 1.10.1994.

(ii) That thereafter the order dated 2.12.1994 (Annex. P/2) was passed by the Chief Engineer (O & M), Rajasthan State Electricity Board by which the services of the petitioner were again extended for six months.

(iii) That the services of the petitioner were ordered to be terminated through order dated 20.4.1995 (Annex. P/3) passed by Assistant Engineer (LD), Ajmer Vidhyut Vitaran Nigam Ltd., Rawatbhata (respondent No. 4).

(iv) That the further case of the petitioner is that despite passing of order dated 20.4.1995 (Annex. P/3), the petitioner continued in service and discharged his duties as helper on consolidated salary of Rs. 1000/- per month.

(v) That thereafter through order dated 18.3.1996 (Annex. P/4), the petitioner was declared as work charged helper, but his salary was not changed and he was paid consolidated salary of Rs. 1000/- per month which was being paid to him earlier.

(vi) That thereafter the order dated 20.12.1996 (Annex. P/5) was passed by the Assistant Engineer (LD), Ajmer Vidhyut Vitaran Nigam Ltd., Rawatbhata (respondent No. 4) whereby the petitioner was re-appointed as work charged helper.

(vii) That through order dated 23.7.1996 (Annex. P/6) services of the petitioner were again ordered to be extended. This order was followed by another order dated 23.1.1999 (Annex. P/7) which was passed after a lapse of approximately 3 years whereby the services of the petitioner were again ordered to be extended. Thereafter through order dated 30.6.2000 (Annex. P/8) the services of the petitioner were again ordered to be extended.

(viii) That after passing the order dated 30.6.2000 (Annex. P/8) no order was passed extending the services of the petitioner, but the petitioner was allowed to continue in service, but, he was not paid salary with effect from 1.9.2000. The petitioner submitted representation to the respondents for payment of his salary. Ultimately, the petitioner served a legal notice (Annex. P-9) through his advocate on 22.6.2001.

(ix) Further case of the petitioner is that through impugned order dated 1.7.2001 (Annex. P/12) passed by Assistant Engineer (O & M), Ajmer Vidhyut Vitaran Nigam Ltd., Rawat Bhata, the services of the petitioner were terminated keeping in mind provisions of Section 9 of the Act of 1999.

(x) In this writ petition, the impugned order dated 1.7.2001 (Annex. P/12) passed by Assistant Engineer (O & M), Ajmer Vidhyut Vitaran Nigam Ltd., Rawat Bhata has been challenged along with the provisions of Act of 1999 on various

grounds.

4. Reply to the writ petition was filed by the respondents.

5. I have heard the learned Counsel for the parties and perused the record.

6. Before proceeding further it may be stated that Sections 9, 11 & 19 of the Act of 1999 have been declared ultra vires and unconstitutional by Division Bench of this Court in the case of Bhawani Singh v. State of Rajasthan, D.B. Civil Writ Petition No. 3271/2001 decided on 23.7.2002. In the case of Bhawani Singh, (supra) Division Bench of this Court held as under:

(i) Sections 9 & 11 read in light of Section 19 of the Act of 1999 are declared ultra vires the Constitution being violative of Articles 14, 16 & 21 read with Articles 39, 41 & 42 of the Constitution.

(ii) The said provisions are otherwise inoperative for the reason of their apparent repugnancy with I.D. Act, 1947, which is a law made by Parliament in respect of subject matters enumerated in entries 22, 23 and 24 of the Concurrent List, and field is exhaustively occupied by existing law and the State Legislation has not been reserved for consideration of the President and has not received his assent as required under Article 254(2) of the Constitution.

(iii) The following part of Clause (e) of Section 2(v) is also declared ultra vires:

a society registered under any law relating to the registration of societies for the time being in force and receiving funds from the State Government either fully or partly for its maintenance, or any educational institution whether registered or not but receiving aid from the State Government.

(iv) As a consequence of declaration of Section 9 to be ultra vires, any direction or order issued solely on the basis of and with reference to Section 9 for non-regularisation or consequential termination of services cannot be sustained.

(v) Any order refusing claim to regularisation and consequent termination as well as any claim to regularisation can be made subject to remedial forums for adjudication as may be available under law. Section 11 being held ultra vires such claims cannot be refused to be adjudicated by the concerned forum by invoking Section 11.

7. When this being the position, the impugned order dated 1.7.2001 (Annex. P/12) passed by the Assistant Engineer (O & M), Ajmer Vidhyut Vitaran Nigam Ltd, which has been passed placing reliance on Section 9 of the Act of 1999 cannot be sustained and is liable to be set aside. The learned Counsel for the respondents has not controverted this aspect of the matter.

8. For the reasons mentioned above, the order dated 1.7.2001 (Annex. P/12) passed by the Assistant Engineer (O & M) is liable to be quashed and set aside and this writ petition deserves to be allowed.

Accordingly, the present writ petition is allowed and the order dated 1.7.2001

(Annex. P/12) passed by the Assistant Engineer (O & M), Ajmer Vidhyut Vitaran Nigam Ltd., Rawatbhata by which the services of the petitioner were terminated is quashed and set aside and the respondents are directed to take back the petitioner in service immediately with all consequential benefits and the respondents are further directed to make payment of salary to the petitioner with effect from 1.9.2000 if not paid so far and further pass appropriate order on the point of regularisation of services of the petitioner keeping the law laid down by this Court in the case of Bhawani Singh, (supra) in mind.

Cost made easy.