

(2017) 02 RAJ CK 0003
In the Rajasthan High Court
Case No : 12364 of 2016

Rajesh Sharam S/o Rajpat Sharma

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 21-02-2017

Acts Referred:

Citation : (2017) 02 RAJ CK 0003

Hon'ble Judges : Nirmaljit Kaur

Bench : SINGLE BENCH

Advocate : S.D. Purohit, Rakesh Arora, S.K. Verma, Ajeet Singh Shekhawat,
Neeraj Kumar Jain

Final Decision : Disposed

Judgement

1. All the above mentioned writ petitions shall stand decided by this common order.
2. The prayer in the present petition is to set aside the impugned order vide which the services of the petitioners have been terminated. The arguments raised by the learned counsel for the petitioners are inter alia as under:-
 1. The impugned order cannot be sustained in the eyes of law as no reason for terminating their services has been given.
 2. The same is arbitrary inasmuch as persons junior to the petitioners are still continuing in service and the respondents have adopted pick and choose policy while retaining them in service.
 3. It is evident from the reply itself that the respondents are

replacing the petitioners by similar set of employees through a different placement agency by the name of REXCO and that they have not followed the policy of last come first go.

4. Further, the posts on which the petitioners were working have not been abolished till date. The ratio of the non-teaching staff should be to the tune of 3:1. Since the cadre of permanent teaching staff of the respondents is more than 120, the number of non-teaching post staff should be somewhere between 300 to 350. There is no reason to discontinue the services of the 150 out of 455 non teaching employees.

5. The petitioners are working since last 3 to 9 years. It is further stated that the Committee formed by the Department of Technical Education had submitted its report on 22.07.2013 whereby it was recommended that the employees who have completed the services of 08 years or more and were eligible as per their qualification and experience for the post, they should be regularised but instead of regularisation, their services have been terminated without any ground or reason.

3. Reply has been filed. As per the reply, "there were 445 non- teaching staff working in the answering respondents college and there are only about 3500 students. There is annual intake of 634 students in the academic year 2016-17 only. There are 117 seats left vacant and the answering respondent college is running only 8 batches out of 10 batches. The answering respondent college is self financed institution. The building of the answering respondent college is 10 years old and requires renovation. There are 60 to 70 laboratories which also require upgradation. The total income of the answering respondent no.2 & 3 is received by way of fee paid by the students and annual receipts of the answering respondent no.2 & 3 for year 2015-16 were to the tune of Rs.19 crores. Out of

total income of Rs.19 crores, approx. Rs.15.50 crores were spent in payment of salary to the teaching and non-teaching staff and approximately Rs.2 Crores was expenditure for basic amenities like light, water etc. Only an amount of Rs.60 to 70 lakh was spent by the answering respondent No.2 and 3 for providing adequate infrastructure and facilities to the students. Now, the strength of students has also decreased as two institute of polytechnic and ITI has been closed. Financial position of the answering respondent No.2 and 3 for this year is such that not a single penny is available with the management to take care of interest of the students and institution." The answering respondent No.2 and 3 are under obligation to implement CAS for this year, which would increase the expenditure to the extent of 10% of salary. The respondents have also placed on record Annex.R-2 & 3/1 which is the copy of income and expenditure account of the answering respondent No.2 & 3 which reveals that in the past, approximate 80% of annual receipt was spent for salary and due to low intake of new students, closure of two institutions, the expenditure in salary is going to be 90% of annual receipt.

4. However, taking into account the arguments raised by the learned counsel for the petitioners that the stand of the respondents was contradictory inasmuch as they have specifically stated in their reply that answering respondent was in fact required to take services of non-teaching manpower through placement agency on need analysis basis and they are likely to replace them through placement agency REXCO as well as taking into account the argument that juniors have been retained, this Court vide order dated 30.01.2017 directed the respondents to file affidavit explaining the same.

5. The additional affidavit has been filed. It is specifically stated

in the additional affidavit that out of 171 non-teaching employees, only 21 persons have been retained who are only the drivers and technical staff and are needed and having more qualification than the petitioners. This Court may also notice that out of 171 non teaching employees, only 81 have challenged the order of termination. Moreover, learned counsel for the answering respondents stated at bar that the respondents are not and shall not keep any person on contractual basis or through the placement agency. As and when their financial position is stable, according to staffing pattern available with them, at the given time, they shall employ the non-teaching staff only through the regular selection as also as and when the posts are advertised for regular appointment, the petitioners will be duly considered and preference will be given to them. It is further stated that relaxation in age shall be given to those who are overage by computing the number of years of experience in accordance with law.

6. It is a well settled proposition of law that the contractual employees cannot claim continuation in service unless and until they are being replaced by similar set of employees. Therefore, in view of the undertaking given by the learned counsel for the answering respondents after taking instruction from respondent No.3, this Court need not to go into the disputed question as to the staffing pattern available with the respondent institution.

7. Suffice it to say that the respondents shall not replace the petitioners by similarly set of employees and they will be bound by the statement made before this Court by the learned counsel for the respondents that as and when the respondent decides to fill the posts from regular selection process, the petitioners will be duly given the preference and also age relaxation as stated before

this Court.

8. The writ petitions are disposed of with the above observations.