
(2015) 05 RAJ CK 0139
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7064 of 2008

Shashi Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2015) 05 RAJ CK 0139

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : H.S. Shekhawat, for the Appellant; Dinesh Mehta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.

1. Heard learned counsel for the parties.
2. By way of the instant writ petition, the petitioner has approached this Court praying for the following relief:--

"(A) That the respondents may kindly be directed to absorb the petitioner in service with retrospective effect.

(B) That the respondents may kindly be directed to pay entire back wages and other consequential benefits to the petitioner.

(C) That the respondents may kindly be directed to give all retirement benefit as the petitioner has attained the age of superannuation.

(D) Any other relief which this Hon"ble Court may deem fit may kindly be granted in favour of the petitioner;

(E) Cost of the writ petition may kindly be awarded to the petitioner."

3. Facts in brief are that the petitioner was appointed as a Trained Graduate Teacher in the Rajasthan Atomic Power Project English Medium School, Rawatbhata (referred to herein after as "RAPP School") being run and operated by Atomic Energy Education Society (referred to herein after as "AEES"). In the year 1981, the authorities took a decision to close the RAPP school. Numerous teachers of the school including the petitioner preferred writ petitions before the Hon''ble Supreme Court under Article 32 of the Constitution of India against the above decision. The Hon''ble Supreme Court stayed the order of closure of the school in the year 1981.

4. The respondents filed an undertaking dated 27.7.1984 (Annex.2) before the Hon''ble Supreme Court setting out certain proposals for all teachers of the RAPP school including those who had approached the Hon''ble Supreme Court. Proposal No. 3 of the letter Annex.2 has a material bearing on the fate of the instant writ petition and is thus, reproduced herein below for the sake of ready reference:--

"(3) The Government of India in the Department of Atomic Energy will use their good offices with the Atomic Energy Education Society which is substantially financed by the Government, to help find appropriate employment to the petitioners and other teachers of the RAPP Higher Secondary School (English Medium) and protection of their existing designation, grade, pay and allowances."

(Emphasis Supplied)

5. In pursuance of the said undertaking, the S.L.Ps. were disposed of by the Hon''ble Supreme Court by order Annex.4 dated 8.5.1987 observing that in view of the letter dated 27.7.1984, the writ petitions had become infructuous as the grievance of the petitioners would be fully met by the assurance contained in the letter.

6. On 3.8.1987, the respondents finally closed the RAPP school. A certificate Annex.8 dated 3.8.1987 was issued by the respondent No. 4 to the petitioner appreciating her services as an extremely devoted, sincere and hardworking teacher.

7. When, inspite of the assurance given before the Hon''ble Supreme Court, the respective petitioners before the Hon''ble Supreme Court including the present petitioner were not provided appropriate employment after closure of the school, they filed a contempt application No. 6148/1987 before the Hon''ble Supreme Court. The contempt application was disposed of by the Hon''ble Supreme Court by order Annex.9 dated 10.8.1987 directing the respondents to consider and to absorb all the teachers after examining the feasibility and in accordance with law. Despite this direction, the undertaking given by the respondents before the Hon''ble Supreme Court that the teachers of the RAPP school shall be absorbed elsewhere on the same terms and conditions, was not fulfilled on which numerous Misc. Applications before the Hon''ble Supreme Court with the petitioner's misc. application being registered as No. 16047/84. The A.S.G.

appearing on behalf of the respondents in those misc. applications gave an assurance before the Hon''ble Supreme Court that his clients would absorb all the five petitioners on the same footing as others. Accordingly, the application filed by the teachers including petitioner were disposed of by order dated 25.4.1988 on the basis of the assurance given by the learned A.S.G. Rather than fulfilling the assurance, the respondents filed an application for recalling the undertaking given by the learned A.S.G. which was taken up by the Hon''ble Supreme Court on 10.5.1988 and following order was passed:--

"The undertaking given by Mr.G.Ramaswami, A.S.G. on behalf of his clients is recalled. Having considered the facts and circumstances of the case the respondents authorities will consider the case for absorption of the five petitioners who have not yet been absorbed in the new school or Society. In case it is not possible to absorb them all in the new school or Society the respondents will indicate the reasons of non absorption within six weeks from today why in view of what had happened before it was not possible for them to absorb the five petitioners in the new school or Society."

8. Thereafter, the respondents constituted a Selection Committee and the cases of the respective teachers including the petitioner Smt. Shashi Mishra were examined by the selection committee in its meeting dated 31.10.1988 and the performance of all the candidates was rated as unsatisfactory. The list of marks awarded by the selection committee to the five interviewed candidates is noted herein below:--

9. The selection committee resolved that none of the candidates could secure 50% marks in the interview which was the basic requirement of employment and as such, they were not suitable for being appointed. However, Shri B.L. Mandawat, who was having 22 years of service experience in RAPP school, was given relaxation of 2% so as to bring his marks to 50%. Shri Ganeshi Lal who had secured 40% marks was given relaxation of 10% looking to the fact that he belonged to Scheduled caste category. However, it was specifically mentioned in the interview committee's report that the other candidates had secured too low a percentage of marks so as to merit any condonation. The report of the selection committee was placed before the Hon''ble Supreme Court in another I.A. No. 1/91 (B.L. Mandawat and others. v. The Union of India and others.). The said I.A. was disposed of by the Hon''ble Supreme Court by order dated 16.8.1993 [reported in 1993(5) SLR 29]. Some of the relevant observations of the Hon''ble Supreme Court in the aforesaid order are reproduced herein below for the sake of ready reference:--

"10. Respondent-6 (the AEE Society) was in no mood to fulfill the assurance of the Respondents contained in the letter dated 27th July, 1984 placed before this Court leading to the dismissal of the writ petition and subsequent orders made by this Court, becomes obvious from its Chief Administrative Officer's letter dated 4th August, 1989 which reads:

"Reference is invited to this office circular No. AEES/A(1.46) 89/2573 dated 20.3.1989 wherein the Ex-teachers of the RAPP Higher Secondary (E.M.) School, Ravat Bhata who were retrenched from service on the closure of the school, were requested to exercise their option either to retain the retrenchment and other terminal benefits received at on their retrenchment from RAPP School, in which even their past service in RAPP School will not count for pension under AEES, or

(b) to refund the retrenchment and other terminal benefits received by them at the time of their retrenchment from RAPP administration with interest thereon.

(c) 6% from the date of receipt of those benefits till the date of refund of the amount to AEES either in lumpsum or in monthly installments not exceeding thirty six and count the service rendered in RAPP School for pension under AEES."

Non-fulfilment of the assurance contained in the letter dated 27th July, 1984 on the footing of which this Court dismissed the main writ petition resulting in dismissal of other writ petitions including that of the writ petitioner (Smt. Nirmal Bhalla) is said to have led her to make several attempts in this Court and outside, to ensure fulfilment of that assurance but in vain. With no alternative left, she is said to have made the present application praying for issue of a direction to Respondents to fulfil the assurance of her absorption in service of the AEE Society Schools, which are run by the AEE Society.

18. Coming now to the second ground of refusal of absorption of the petitioner as a teacher in the schools of the AEE Society for not securing 50 per cent marks in the interview held by the Selection Committee of the AEE Society, we feel that the same cannot be allowed to be put-forward by Respondent-6 as a ground to refuse absorption as teacher in its schools, of the petitioner who had admittedly rendered creditable service as a teacher of the RAPP School for over 18 years. Absorption of petitioner and persons similarly situated as teachers of the AEE Society Schools by a Selection Committee as if they were recruiting them afresh, was not a condition of the assurance of absorption of teachers of the RAPP School contained in the letter dated 27th July, 1984 of the Joint Secretary to the Government of India placed before this Court. Subsequently, whenever this Court, has made orders as to absorption of teachers of the RAPP School in the AEE Society's schools, it has sought, as already pointed out, to impress upon the Respondents of the need to fulfil the assurance given by them to this Court. The tenor of the orders makes it obvious that they were never intended to enable Respondent-6 (the AEE Society) to put-forward a plea, that the assurance was not possible of compliance on account of teachers of the RAPP School not being given 50 per cent marks by the Selection Committee. We have, however, gone through the proceedings of the Selection Committee which had interviewed the petitioner along with others who were seeking absorption as teachers in the schools of the AEE Society. The sheet of bio-data of candidates called for interview on 31.10.1988 (RAPP candidates) no doubt mentions percentage of marks given to them but marks given to all candidates fall short of 50 per cent, the marks required for selection. It is difficult to comprehend how 5 Selection

Committee members could give the common percentage of marks for each candidate. Criteria, if any, which formed the basis on which marks had come to be allocated by the members of the Selection Committee is not indicated in the marks-sheet. Further, the requirement of minimum marks for selection as teachers has been relaxed by the Management of the AEE Society in case of two candidates, showing thereby that the requirement of minimum marks was not a rigid rule of selection. While the earlier selection was given up by the AEE Society as quite unsatisfactory, the selection resorted to for the second time, is in no way better. The impression created on our minds by the selection process, thought of by the AEE Society, is to somehow wriggle out of the assurance contained in the letter dated 27th July, 1984 produced for getting the writ petition dismissed and not to carry out that assurance, on which this Court acted in dismissing the writ petition.

19. Thus, we have the least hesitation in concluding that the second ground put-forth on behalf of Respondent-6, the AEE Society, as a ground for refusal of absorption of the petitioner in one of its schools, is wholly unsustainable and warrants rejection.

20. If we have regard to the facts and circumstances of the case and the orders made by this Court from time to time in the writ petitions as well as contempt petitions, there could be no justification for us to entertain the pleas put-forth as excuses by the AEE Society to wriggle out of the assurance contained in the letter dated 27th July, 1984. Further, we are satisfied, in the facts and circumstances of the case that the least we should do is, to direct the Respondents to carry out the assurance contained in the letter dated 27th July, 1984 on the basis of which they got the writ petition dismissed, inasmuch, such direction could make the Respondents realise, that this Court will not hesitate to do what is necessary to meet the ends of justice.

21. Hence, we allow this application, direct Respondent-6, the AEE Society, to absorb the petitioner as a Trained Graduate Teacher in its school at Rajasthan Atomic Energy Project site and if there is no school there, in any other of its schools by protecting her designation, grade, pay and allowances retrospectively from the date of her termination as a Trained Graduate Teacher of the RAPP School, if unavoidable, by creating a supernumerary post for the purpose. The Central Government, as said in the letter containing the assurance, shall meet the expenditure needed for absorption of the petitioner in a school of the AEE Society with retrospective effect. Respondent-6 must, in absorbing the petitioner in its school pay her all the benefits of the post to which she would have been entitled as if her services as a teacher were not terminated. The Respondents are given as a last chance, two months' time from today, to comply with these directions."

(Emphasis Supplied)

10. From the above observations, it is evident that the Hon''ble Supreme Court

expressed serious reservations on the manner in which the matter was dealt by the respondents and held that it amounted to a deliberate attempt to wriggle out of the undertaking given before the Supreme Court. While deciding the application, the Hon''ble Supreme Court specifically directed that the respondents shall carry out the assurance given in the letter dated 27.7.1984, on the basis of which they got the writ petitions dismissed.

11. The respondents filed a review petition against the above order, pleading in the prayer clause (iv) that the Hon''ble Court be pleased to observe that its order dated 16th August, 1993 shall not be treated as precedent in any other matter. In the prayer clause (v), it was requested that the applicants be permitted to comply with the orders of this Hon''ble Court by absorbing the original applicant, Mrs. Nirmal Bhalla only, in a non-teaching post, subject to such protection of her salary and emoluments as the Hon''ble Court may be pleased to order. The said review petition was dismissed by the Hon''ble Supreme Court by order dated 11.2.1994.

12. The petitioner submitted a detailed representation to the Secretary, Department of Atomic Energy praying that her case be also considered and decided in light of the order passed by the Hon''ble Supreme Court in Smt. Nirmal Bhalla's case.

13. The respondents, in turn issued a letter Annex.17 dated 14.6.1993 conveying that the petitioner's case attracted only grant of salary benefits and nothing beyond that but inspite thereof, no payment was actually made to her.

14. By communication Annex.20 dated 2.9.1994, the respondents repelled and rejected the prayer of the petitioner mentioning that Smt. Nirmal Bhalla had been granted relief in the peculiar facts and circumstances of her case and that the order passed by the Hon''ble Supreme Court was specific for Smt. Nirmal Bhalla alone and did not apply mutatis mutandis to all the litigants.

15. Thereafter, the petitioner continued to submit representations to the respondents praying for a similar treatment as had been extended to Smt. Nirmal Bhalla. On 8.4.1997, the Project Director responded to the prayer made by the petitioner and submitted a proposal to the Secretary, Government of India conveying that the petitioner's case may be reviewed and considered sympathetically so as to avoid further litigation. Ultimately, the respondents issued a conditional appointment order Annex.22 dated 9.5.2001 to the petitioner at the Atomic Energy Central School (AECS), Kalpakkam totally disregarding their own assurance as well as the directions given by the Hon''ble Supreme Court in the case of Smt. Nirmal Bhalla. It was stipulated in the order that the petitioner will be treated as a fresh appointee in the pay scale of Rs. 5500-9000 and her appointment will take effect from the date, she assumed charge at the Atomic Energy Central School (AECS), Kalpakkam. It was further ordered that she would be entitled to fixed pay as per the existing rules etc. It was further stipulated that the petitioner would not be entitled to any back

wages (pay and allowances) from the date of her retrenchment from the ex-RAPP school and that the seniority of the petitioner for all future promotions would be counted from the date she joined the school at Kalpakkam. The petitioner was directed to furnish an undertaking and to concede to the terms and conditions of the appointment order only whereupon she could be allowed to join the school at Kalpakkam in pursuance of the order Annex.22. The order further spelt that the detailed terms and conditions of the petitioner's appointment and fixation of her pay in AECS as trained teacher graduate would be issued in due course if she reported for duty at Kalpakkam. Thus, for all purposes, the order Annex.22 offered a fresh appointment to the petitioner on a fixed salary basis with no pay protection, seniority etc. and that too on conditions which amounted to nothing less than extortion.

16. Rather than agreeing with the unreasonable and coercive terms and conditions of the so-called offer of appointment, the petitioner submitted a representation dated 31.8.2001 to the Secretary, Atomic Energy Education Society praying for total compliance of the Hon''ble Supreme Court's orders. The respondents rather than accepting the petitioner's lawful prayer, cancelled the appointment order Annex.22. Thereafter, also, the petitioner continued to submit representations to the respondents. However, the authorities did not accede to the repeated representations made by the petitioner, upon which, she has approached this Court by way of the instant writ petition praying for the above relief.

17. The respondents have filed a reply to the writ petition wherein the basic plea for opposing the prayer made in the writ petition is that the petitioner has approached this Court after an unexplained and undue delay of 16 years and thus, she is not entitled to the claimed relief. Along with the reply, a copy of the order dated 16.8.1995 passed by the Central Administrative Tribunal, Jodhpur Bench in the case of similarly situated employees Smt. Kamla Gupta and Bhagirath Parihar, the petitioner's peers in the Rawatbhata school, has been placed on record whereby, the Tribunal, whilst accepting the Original Applications filed by these teachers, directed that they shall be absorbed on the post they held prior to the issuance of the termination order. However, back wages for the period they did not work were denied.

18. I have heard and considered the arguments advanced at the bar and perused the material available on record.

19. The right of the petitioner to be reappointed in pursuance of the undertaking given by the respondents before the Hon''ble Supreme Court cannot be disputed, denied or challenged. The resistance offered by the respondents to the petitioner's claim is solely founded on the objection of delay. Learned counsel for the respondents was himself unable to controvert the fact that the Central Government authorities considered the order Annex.16 dated 16.8.1993 passed by the Supreme Court to be a general order applicable to all the effected teachers and rightly so in this Court's opinion. Since the authorities were not

satisfied with the binding and precedential nature of the directions, a review petition was filed before the Hon'ble Supreme Court praying that the order should not be treated to be in the nature of general direction covering the cases of all the litigants. The review petition was dismissed by the Hon'ble Supreme Court on 11.2.1994. As a matter of fact, it was incumbent upon the respondents to have complied with the undertaking given before the Hon'ble Supreme Court forthwith and even, more so, after the review application was dismissed by the Hon'ble Supreme Court. The action of the respondents in virtually coercing the petitioner who had been illegally terminated from service into approaching the Courts for seeking redressal of her grievances, even after conclusive orders being passed by the Supreme Court laying the controversy to rest beyond all manner of doubt, was absolutely unreasonable, oppressive and vindictive in nature and is nothing less than travesty of justice. After appointment of Smt. Nirmal Bhalla in total adherence to the aforequoted undertaking given before the Supreme Court, the petitioner submitted repeated representations for being extended similar treatment. The project director wrote a letter Annex.21 dated 8.4.1997 wherein it was clearly mentioned that the petitioner's case stood on a better footing than that of Smt. Nirmal Bhalla in as much as, the petitioner had been awarded 35% marks as against Smt. Nirmal Bhalla who had secured just 32% marks in the interview conducted by the Selection Committee. The petitioner was admittedly senior to Smt. Nirmal Bhalla. The repeated representations submitted by the petitioner ultimately resulted into an arbitrary and unreasonable order Annex.22 dated 9.5.2001 virtually derogatory of the directions given by the Supreme Court being passed, whereby the petitioner was offered appointment on very unreasonable and harsh terms. The order stipulated that the petitioner will be given a fresh appointment as a trained graduate teacher and would be entitled to fixed salary only. The terms of the appointment order Annex.22 were in total disregard to the orders passed by the Hon'ble Supreme Court in the litigation filed by the various teachers including the petitioner and as a matter of fact amounted to making a mockery of the Hon'ble Supreme Court's orders. The order virtually amounted to adding insult to injury and was nothing short of rubbing salt in the petitioner's wounds. Thus, the petitioner was indeed justified in refusing to join ACES, Kalpakkam in terms of the order Annex.22 which was absolutely illegal, contemptuous and arbitrary. The order was later on rescinded.

20. On the aspect of delay, this Court is of the opinion that as the petitioner continued to press the respondents for complying with the Supreme Court's directions till the year 2001 and the authorities responded too howsoever hesitantly it may be, that would definitely entitle the petitioner, to claim that she was pursuing her cause with due diligence till that time. However, there does not appear to be any justification for the petitioner's hesitancy in approaching the Court after being served with the illegal order Annex.22 dated 9.5.2001 and more so, after the appointment offered to her at Kalpakkam was withdrawn and cancelled by order Annex.26 dated 12.9.2001. The petitioner as a matter of fact should have rushed to the Court after the issuance of the appointment letter

dated 9.5.2001 (Annex.22) by which she was offered fresh appointment on fixed salary and the intention of the respondents, to treat the petitioner with discrimination as compared to Smt. Nirmal Bhalla who had been given appointment treating her to be in continuous service and on the same terms on which she was working in the RAPP school, became known to her. The silence of the petitioner between the period of 9.5.2001 to September, 2008 i.e. the date when the petitioner approached this Court by way of the instant writ petition is considered and held to be a period of unexplained delay and would have an impact on the monetary benefits accruing to the petitioner.

21. During the course of arguments of the instant writ petition, learned counsel for the respondents requested this Court on 19.2.2015 that a proposal to offer a lumpsum compensation to the petitioner in lieu of the relief prayed for in the instant writ petition could be considered by the authorities. However, when the matter was finally heard on 24.3.2015, learned counsel informed this Court that the proposal could not be carried through.

22. In view of the aforesaid factual scenario, this Court has no hesitation in arriving at the conclusion that as the petitioner's case stands on a better footing than Smt. Nirmal Bhalla, therefore, she is entitled to the same treatment as was extended to her by the authorities pursuant to the orders passed by the Hon'ble Supreme Court. Admittedly, Smt. Nirmal Bhalla was junior in length of service to the petitioner and had also secured lesser number of marks in the so-called interview conducted by the Selection Committee. In this view of the matter, the respondents were under an obligation per force of law to give appointment to the petitioner in the same terms as Smt. Nirmal Bhalla. However, it is noteworthy that by the time the petitioner preferred the instant writ petition, she had crossed the age of superannuation. Thus, the prayer for reappointment of the petitioner has been rendered otiose. Therefore, now the only relief which can be granted to the petitioner can be in monetary terms.

23. As a result of the aforesaid discussion, the instant writ petition deserves to be and is hereby allowed. The respondents are hereby directed to grant all monetary benefits accruing to the petitioner treating her to be in continuous service right from the date of her illegal termination by order dated 3.8.1987. The petitioner shall be paid all service and pensionary benefits treating her to be in continuous service and as if her services were never terminated. However, in view of the fact that this Court has concluded that the petitioner has not offered a reasonable explanation for the delay in approaching the Court between the period of 9.5.2001 to September, 2008, she will not be entitled to the actual pay, salary and emoluments which she would have drawn during this period. For this period, she will be entitled only to notional benefits.

24. The due amount shall also carry simple interest at the rate of 6% per annum. The amount accrued shall be paid to the petitioner within a period of three months from the date of this order, failing which the interest shall stand enhanced to 9% per annum.

25. No order as to costs.