

(1998) 01 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1270 of 1997

Smt. Aqeela

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 RLW 497 : (1998) 2 WLC 321 : (1998) 1 WLN 33

Hon'ble Judges : V.S. Kokje, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant appeal has been filed against the common judgment and order of the learned Single Judge dated 2.12.1997 passed in S.B. Civil Writ Petition No. 5592/92 challenging the termination of the services of the petitioner-appellant vide order dated 27.3.1991 and also claiming regularisation of her service, and in S.B. Civil Writ Petition No. 3461/1994 challenging the order dated 12.5.1994 terminating the services of the appellant as the appellant had been reinstated in terms of the interim order of this Court dated 22.10.1992.

2. The facts, giving rise to this appeal, are that the appellant passed her Secondary School examination in the year 1975 from the Board of Secondary Education, Rajasthan, Ajmer and obtained the Diploma in Needle Work and Tailoring from the Rajasthan Mahila Vidhyalaya, Udaipur in the year 1977. The appellant was appointed on the post of Primary School Teacher by the Panchayat Samiti, Jhadol vide order dated 26.9.1984 on temporary basis for a period of six months and her services were extended from time to time, but the same came to an end in the year 1985. She was again re-appointed on temporary basis vide order dated 28.6.1985. The appellant was informed, vide order dated 14.9.1988 contained in Annexure P. 5 to the writ petition, that since the Diploma possessed by the appellant had not been recognised by the Government for appointment on the post of primary school teacher and she was not eligible to be appointed, she

would be allowed to continue but her pay scale would be reduced. However, the said order was subsequently withdrawn vide order dated 7.1.1989. The appellant applied for regular selection on the post in question. However her claim was rejected vide order dated 14.8.1988 as she was not possessing the requisite qualification and her Diploma in Needle Work and Tailoring was not the required eligibility and her services were terminated vide order dated 27.3.1991 with effect from 1.4.1991 on the ground that duly selected candidates had become available and her services were not more required.

3. Being aggrieved and dissatisfied from the order dated 27.3.1991, the appellant preferred S.B. Civil Writ Petition No. 5592/92 and this Court passed the interim order on 22.10.1992 directing the respondents to reinstate the appellant and pay her the salary regularly and this interim order was complied with by the respondents. The services of the appellant petitioner were again terminated by the respondents vide order dated 12.5.1994, contained in Annexure 18 to the writ petition, on the ground that the Hon"ble Supreme Court had decided the aforesaid Civil Appeal No. 7031/93, State of Rajasthan Vs. Shri Shyam Lal Joshi and others, ; according to which the appellant was not possessing the requisite qualification and, thus was not eligible for the said post. The said order was, however, passed terminating the services of a large number of teachers. Being aggrieved and dissatisfied, the appellant-petitioner challenged the said order dated 12.5.1994 by filing S.B. Civil Writ Petition No. 3461/94 and this Court, vide Order dated 27.7.1994, directed the respondents to take the appellant-petitioner in employment until further orders. Respondents filed an application on 5.12.1994 under Article 226(3) of the Constitution of India. However, this Court extended the interim order passed earlier without considering the application under Article 226(3) and both the matters were ultimately finally heard and dismissed by a common judgment dated 2.12.1997. Hence this appeal.

4. As the matter relates to temporary services of the appellant, who had been allowed to continue in service for several years by the interim orders of this Court, the learned Counsel appearing for the parties requested the Court to dispose of the appeal at the Admission Stage hence the appeal was finally heard.

5. Heard Mr. M.S. Singhvi learned Counsel for the appellant and Mr. Vijay Bishnoi learned Counsel for the respondents.

6. Mr. Bishnoi learned Counsel for the respondents has raised several preliminary objections regarding maintainability of the writ petitions and the interim orders passed by this Court. He has vehemently argued that the appellant had been informed vide order dated 14.8.1988 that she was not possessing the requisite qualification and she did not challenge the said order. Her services were terminated vide order dated 27.3.1991 and the same was challenged by the appellant by filing the writ petition in the month of October, 1992 and her first petition ought to have been rejected by this Court only on the ground of delay and laches as the same had been filed after the lapse of one year and seven months and there was no satisfactory explanation for such a delay and laches.

Moreover, the interim order passed by this Court directing the respondents to take the appellant in employment even at such a belated stage, amounts to giving final relief and was not justified. The learned Single Judge has not taken into consideration these issues and dismissed the petitions filed by the appellant on merit, but after bestowing our consideration to the rival contentions raised by both the sides on these two issues, we are of the view that the first petition of the appellant-petitioner ought to have been dismissed only on the ground of delay and laches.

7. The issue of application of Limitation in writ jurisdiction is not *res integra*. It has been held time and again by the Courts that though the Law of Limitation does not apply to the writ jurisdiction, however, the principles enshrined therein are fully applicable and the Court should not entertain the stale claims unless there are some compelling circumstances and the explanation for the same has been provided for. (Vide : *State of Mysore and Others Vs. V.K. Kangan and Others*, ; *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, ; *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, ; *K.R. Mudgal and Others Vs. R.P. Singh and Others*, ; *R.S. Makashi and Others Vs. I.M. Menon and Others*, : Full Bench Judgment of Kerala High Court in *M.P. Raghavan Nair Vs. State Insurance Officer and Others*, ; *Union of India and Ors. v. Athos C.J.P. Fernadiz and Ors.* AIR 1977 Goa 14; AIR 1941 6 (Privy Council) *Rajendra Singh and Ors. v. Shanta Singh and Ors.* AIR 1973 SC 2437 : *Smt. Sudama Devi Vs. Commissioner and Others*, ; and *Laxman Singh Kawadiya v. State of Rajasthan and Anr.* RLW 1997(3) 1560).

8. The party aggrieved by the impugned order is under legal obligation to approach the Court within a reasonable time and his claim at a belated stage is not worth considering as the object of the Law of Limitation/delay and laches is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have lost by a party on unoccasioning, negligence or laches.

9. The Hon''ble Apex Court has consistently and persistently observed that the Court of Law should not pass an interim order which amounts to a final relief. *State of Jammu & Kashmir Vs. Mohd. Yaqoob Khan and Others*, ; *U.P. Junior Doctors Action Committee and Ors. v. Dr. B. Shital Nandwani* 1992 Suppl. 1 SCC 680 ; *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, ; *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.*, ; *Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa Bank of Maharashtra Vs. Race Shipping and Transport Co. Pvt. Ltd. and another, Commissioner/Secretary to Government Health and Medical Edu. Deptt. Civil Sectt., Jammu Vs. Dr Ashok Kumar Kohli, Union of India (UOI) and Another Vs. Shree Ganesh Steel Rolling Mills Ltd. and Another*, ; and AIR 1997 993 (SC) .

10. The logic behind this remains that the ill-conceived sympathy masculates as inter-locutary judgment exposing judicial discretion to criticism to de-generating

private benevolence and the Court should not be guided by misplaced sympathy, rather it should pass interim orders making accurate assessment of even the prima facie legal position. The court should not embrace the Authorities under the statute by taking over the functions to be performed by the statutory Authorities.

11. There can be no quarrel on the legal proposition that no party can suffer by the action of the Court and when the High Court is exercising its powers under Article 226 of the Constitution of India, the interest of justice requires that any un-deserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised. The institution of litigation by a party should not be permitted to confer an unfair advantage on the party responsible for it. Vide : Grindlays Bank Limited Vs. Income Tax Officer, Calcutta and Others, ; Ram Krishna Verma and Others Vs. State of U.P. and Others, ; State of Madhya Pradesh v. M.V. Vyasaya & Company (supra); and Smt. Rampati Jayaswal and Ors. v. State of Uttar Pradesh and Ors. AIR 1997 All 171).

12. It is, also, settled law that no litigant can derive any benefit from mere pendency of case in a Court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curie neminem gravabit" is applicable in such a case, which means that the act of the Court shall prejudice no-one. In such a situation the Court is under an obligation to undo the wrong done by a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. A.R. Sircar (Dr) v. State of U.P., 1993 Supp.(2) SCC 734 Shiv Shanker and Ors. v. Board of Directors, Uttar Pradesh State Road Transport Corporation and Anr. 1996 Supp. 2 SCC 726 ; M/s. Kanoria Chemicals and Industries Ltd. Vs. U.P. State Electricity Board and other, ; and Ugam Singh v. State of Rajasthan and Ors. RLW 1997 (3) 1517). Therefore, we are of the view that the appellant cannot get any benefit of the interim orders passed in her favour as ultimately she had been found not entitled for any relief on merit at the time of final disposal of the cases.

13. It has been next submitted by the learned Counsel for the respondents that the appellant does not possess the requisite qualification: she had never been appointed on regular basis nor had her services been regularised, however, she had been permitted to continue in service only on the basis of the interim orders passed by this Court to provide her employment after termination of her services twice and the appellant cannot be permitted to hold the post dehors the statutory rules as she does not possess the requisite qualification even today.

14. We find that the submission made by Shri Bishnoi are full of substance. The issue of eligibility has been considered by the Supreme Court in : Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, Smt. Herpal Kaur Chahal v. Director, Punjab Industries 1996 Supp. (4) SCC 706 ; State of M.P. and Others Vs. Shyama Pardhi etc. etc., ; Dr. S.K. Kacker Vs. All India Institute of Medical Sciences and Others, and AIR 1998 91 (SC) ; wherein it has been categorically held that appointments made in contravention of the recruitment Rules are illegal and persons so appointed, have been found ineligible even to continue after completing several years in services. In Herpal Kaur Chahal's case (supra), the Hon'ble Supreme Court rejected the contention of the petitioner therein that she had already worked for sixteen years under the interim orders passed by the Court from time to time and should be allowed to continue on the post she was holding.

15. The rules providing the mode of recruitment/promotion have to be followed and cannot be ignored. In: Sirsi Municipality v. Cocelia Kom Frtancis Tellis AIR 1973 SC 856, the Supreme Court observed that "the ratio is that the rules or the regulations are binding on the authorities."

16. Similarly, the Constitution Bench of the Supreme Court, in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . has observed as under:

The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies, it has been held that the element of public employment or service and the support of statute require observance of rules and regulations.

17. It has been canvassed on behalf of the appellant that in a case, like instant, the Court should have some sympathetic view towards the appellant. In: Hitendra Kumar Bhatt's case (supra), the Apex Court has observed that in a case where a person, not eligible to hold a post, is holding a post under some peculiar circumstances, he cannot be given any sympathetic treatment, as it is settled law that relaxing the prescribed requirements in a case of one individual, may cause grave injustice to others. Similarly, in the case of Gurdeep Singh Vs. State of Jammu and Kashmir and others, the Supreme Court observed as under:

We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of the justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself, endanger, cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped.

18. The mandate issued by the Hon"ble Supreme Court from time to time does not permit this court to adopt any lenient view in this matter.

19. While deciding an identical and similar issue in: D.B. Civil Special Appeal No. 776/1997, Deen Bandhu Parmar v. Rajasthan State Mineral Corporation Ltd., on 9.9.1997, the Division Bench of this Court did not accept the similar averments made on behalf of the appellant therein. Therefore, we find no force in the submission made by Mr. Singhvi that the appellant-petitioner had continuously worked under the orders of the court and, thus, the issue of requisite qualification become irrelevant today. As the law laid down by the Hon"ble Supreme Court in: Bhagwati Prasad v. Delhi Mineral Development Corporation Ltd. AIR 1970 SC 371 , does not hold any water today in view of the judgments referred to above and the court, exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, being a Court of equity, is obliged to do justice by promotion of good faith as the equity is known "to prevent the law from crafty evasions and sub-lets inviting to evade law." Even if a wrong order has been passed, it becomes the solemn duty of the Court to rectify it at the earliest; as the Hon"ble Supreme Court, in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., , has observed as under:

To perpetuate an error is not heroism. To rectify it is the compulsion of judicial conscience.

20. The learned Single Judge, while deciding the said petitions filed by the appellant has taken into account all the judgments touching the merit of the case and has held against the appellant. We had been taken by the learned Counsel appearing for the parties again through all these judgments, particularly the Division Bench judgment of this Court in: State of Rajasthan v. Babu Lal, D.B. Civil Special Appeal No. 739/97 decided on 5.11.1997, wherein it has been held that a person cannot be allowed to hold the post if he had never faced the selection and this Court refused to issue any direction in favour of the appellant therein because he was not a trained teacher. The aforesaid case has been decided following the judgment of the Hon"ble Apex Court in: State of Rajasthan

v. Shyam Lal Joshi (supra) wherein it has been held in unambiguous terms that "Diploma-holders in Crafts are untrained and unless they acquire training in General Teaching, they are not entitled to be kept in service."

21. Moreover, the State has, also, relied upon a Division Bench judgment of this Court in: D.B. Civil Special Appeal No. 795/95 decided on 11.10.1996, wherein this Court has rejected the similar contentions raised on behalf of the appellant therein, in view of the judgment in Shyam Lal's case (supra). Further, reliance has been placed by the State on the judgment of the learned Single Judge in S.B. Civil Writ Petition No. 1763/93, Ramlal Jat v. State of Rajasthan and Ors. decided on 4.4.1994, wherein, also the similar contentions have been rejected.

22. In view of the above, we do not find any substance in the averments made by Mr. Singhvi in favour of the appellant and the appeal deserves to be dismissed being devoid of any merit. The first writ petition, i. e., S.B. Civil Writ Petition No. 5592/92 filed by the appellant-petitioner ought to have been rejected only on the ground of delay and laches and had it been done so, there could have been no occasion for the appellant to file second writ petition, i. e. S.B. Civil Writ Petition No. 3461/94, as the second writ petition seems to have been entertained by this Court only on the ground that the services of the appellant had been terminated inspite of the interim orders of this Court continuing in her favour. The appellant cannot be given any benefit of the interim orders passed in her favour as her petitions had no merit and have rightly been rejected by the learned Single Judge vide impugned judgment and order dated 2.12.1997. Mr. Bishnoi learned Counsel appearing for the respondents, in all fairness, has conceded that at the most the appellant may be given the benefit of the judgment of the Hon'ble Supreme Court in Shyam Lal's case (supra).

23. Thus, the appeal is dismissed with the observation that if the appellant acquires the requisite qualification within a period of three years, she would be eligible to be considered for regular appointment whenever the vacancies are advertised by the respondents and she would be entitled for relaxation of age. In the facts and circumstances of the case, we leave the parties to bear their own costs.