
(2001) 01 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1220 of 2000

Smt. Pushpa Lodha

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 2 RLW 814 : (2001) 2 WLC 307 : (2001) 2 WLN 420

Hon'ble Judges : H.R. Panwar, J;B.J. Shethna, J

Bench : Division Bench

Advocate : S.N. Trivedi, for the Appellant; S. Bhandawat, for the Respondent

Judgement

Shethna, J.

(1). This special appeal is directed against the order dated 21.9.2000 passed by the learned single Judge dismissing the writ petition no. 131/2000 filed by the appellant/petitioner on the ground that the controversy involved in this case was fully covered by the judgment of Jaipur Bench of this Court in case of Smt. Vimla Kumari Bhargava etc. vs. State of Rajasthan and Others (1).

(2). Yesterday, on 23.1.2001, when this special appeal was placed before us, learned counsel Mr. Trivedi for the appellant submitted that no such judgment or order passed by the Jaipur Bench of this Court on 22.10.96, was produced by the learned AAG Mr. S.S. Bhandawat who appeared before the learned Single Judge in the writ petition and the learned Single Judge simply on the oral submission made by learned AAG Mr. Bhandawat dismissed the writ petition. In view of this, we have asked Mr. Sandeep Bhandawat, who is not appearing before us to produce before us the aforesaid copy of judgment and order dated 22.10.96 by the Jaipur Bench of the Court.

(3). Today, he produced before us a photostat copy of the judgment and order dated 9.1.98 passed by the learned Single Judge of this Court dismissing another writ petition no. 5076/97 on the basis of division bench judgment of this Court in

D.B. Civil Special Appeal No. 18/96 and 920/95. For our purpose, it is meaningless because the learned Single Judge has dismissed the present writ petition on the basis of judgment of Jaipur Bench in another writ petition no. 5606/92.

(4). Learned counsel Mr. Trivedi submitted that in absence of the aforesaid judgment of Jaipur Bench, he is unable to make any submission as to whether the present matter was squarely covered against him by the aforesaid judgment or not. However, he submits that the case of the present appellant is easily distinguishable on the basis of the averments made by her in paras 12 and 14 of the main writ petition. He submitted that one Miss Madhubala Lodha who was appointed as Prachayta under the District Woman Development Agency, Udaipur under the same set up of the Rules, is continuing till today since her appointment in 1985. He also submitted that in pursuance of the order dated 2.2.99 one Smt. Chandra Agarwal, who was appointed in the office of respondent no. 3 in the year 1993, her services were also terminated on the ground that she had completed 6 years but later on, she was once again reinstated in service on the ground that her appointment was prior to 1992. In support of this submission, the appellant has also produced a letter dated 10.5.95 (Anex. 10). Thus, it was submitted by learned counsel Mr. Trivedi that the learned Single Judge committed grave error in dismissing the writ petition on the basis of the aforesaid judgment of Jaipur Bench in Vimla Kumari's case, which was not even placed on record by the other side. He submitted that it was not open for the respondents to give different treatment to different persons.

(5). It is strange that the specific averments made by the appellant in paras 12 and 14 of her petition have been dealt with in reply affidavit by the respondents in a very casual manner. In para 12 of the reply, it is stated that whether Miss Madhubala Lodha is allowed to continue since 1985 till today is not at all relevant for the just decision of this writ petition. In para 14 of the reply affidavit, they come out with a bold stand that "It is the discretion of the concerned department to terminate the services or reinstate in service on any count."

(6). Learned counsel Mr. Bhandawat tried to support the order passed by the learned Single Judge as well as the termination order of the appellant on the ground that she had completed 6 years, therefore, there was no need to extend her services as per the government order dated 2.2.1999.

(7). In our considered opinion, it does not lie good in the mouth of the respondents that it is their discretion to terminate the services of some one or to reinstate some one. There cannot be a better example of violation of Articles 14 and 16 of the Constitution than the one in hand before us. It is not open to the respondents to act arbitrarily to terminate the services of one on the ground that he/she was appointed prior to 1992 and reinstate a person after the termination on the ground that he/she was appointed prior to 1992.

(8). If the services of a person is to be discontinued on the ground that he/she

has completed six years of service, then that rule must apply in case of one and all who are appointed prior to 1992 but the authority cannot act arbitrarily in picking and choosing some one and terminate his/her services appointed after 1992 and retain the services of persons who were appointed prior to 1992 or reinstate the services after terminating their services on the ground that they completed six years.

(9). Under the circumstances, the judgment of the learned Single Judge which is based on a division bench judgment in case of Smt. Rajesh vs. State of Rajasthan (2), has no application whatsoever on the peculiar facts of this case. 00). At the cost of repetition, we may state that the judgment of Jaipur Bench in case of Vimla Kumari, which has been relied upon by the learned Single Judge for dismissing the writ petition filed by the appellant, is not to be found on the record of the case nor it has been produced by Mr. Bhandawat before us though he was asked to bring the same. Therefore, we are unable to deal with the judgment of Jaipur Bench which has been relied by the learned Single Judge.

(11). In view of the above discussion, this special appeal is allowed, the order dated 21.9.2000 passed by the learned Single Judge dismissing the writ petition no. 131/2000 filed by the appellant/petitioner is hereby set aside. The writ petition filed by the appellant is accepted and the impugned order terminating her services in pursuance of the order dated 2.2.1999 is hereby quashed and set aside. Accordingly, the judgment and order passed by the learned Tribunal on 29.12.99 is also hereby quashed and set aside and it is declared that the services of the appellant was never discontinued and she may be treated in service as if no order of termination was ever passed against her and she shall be given all other benefits of service including the back wages. The respondents are directed to reinstate the appellant forthwith and in any case not later than 28.2.2001.

(12). Stay petition is also disposed of.