
(2001) 04 RAJ CK 0099
In the Rajasthan High Court
Case No : Civil Writ Petition No. 457 of 2000

Smt. Sharmila Pandya

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 265, 274, 296

Citation : (2001) 3 RLW 1630 : (2002) 1 WLN 244

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : M.S. Singhvi, for the Appellant; Kusum Rao and L.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Prasad, J.—The petitioner was given appointment as untrained teacher on 21.12.1988. Pursuant to appointment aforesaid, the petitioner worked upto 13.5.1989 when her services were terminated. The petitioner claims that presumably as per the decision of this Hon"ble Court and as per the directions of the Government of Rajasthan, the petitioner was sent for training by correspondence for the purpose of undergoing School Teaching Course specially meant for teachers appointed on contract basis. The petitioner underwent the course during the Sessions 1993-94 and 1994-95 and completed the training in the year 1995.

(2). It is claimed by the petitioner that Administration Secretary, Panchayati Raj wrote to all the Chief Executive Officers of Zila Parishads, including Dungarpur by communication dated 9.12.1999 in relation to the appointment to contract/vocational education passed candidates. The communication has been produced herewith as Annex. 1. By this communication it was communicated that under advertisement No. 98 on the sanctioned posts of teachers appointments to only those candidate have to be given who are in merit and have undertaken this course. This was expressed in terms of those teachers who had passed the

vocational course and had remained on contract basis. It was stated that if they have acquired the minimum requisite qualifications they are to be appointed. A copy of the list of contract/vocational teachers was attached directing that they are the teachers to be appointed in the districts referred to in the letter. In all 252 posts were required for such candidates. The bifurcation was 221 removed and 31 in another category. Pursuant to the direction contained in Annex. 1, an order Annex. 2 was passed whereby the petitioner was allotted Dungarpur Panchayat Samiti and was ordered to be appointed. Order Annex.3 came to be passed by the respondent Zila Parishad and the petitioner was appointed on 2 years probation. After passing of the order of appointment of the petitioner Annex.3 a communication dated 8.2.2000 produced alongwith the writ petition as Annex.4 was issued which in its paragraph 4, stated that only those candidates will be regularized who stated that only those candidates will be regularized who had completed 240 days service. The communication has been produced as Annex. 4. The petitioner pleaded in the writ petition that the petitioner's services are expected to be terminated thereafter by the respondents. Against the action, the petitioner preferred the present writ petition.

(3). The writ petition was contested by the State and a reply was also filed on behalf of the respondents. A preliminary" objection in the reply was taken to the effect that the essential requisite for regularization on the post was that the candidate should complete 240 days service. This was also pleaded that the petitioner has remedy before the Rajasthan Civil Services Appellate Tribunal. Alternative remedy being available the writ petition should not be entertained. It was pleaded in defence that it is a policy decision of the State that the services of petitioner was not liable to be regularized. It was also pleaded that if the appointment granted to petitioner is regularized then the candidates who are eligible and trained as well as meritorious will suffer irreparable loss because they will be deprived of the same and they will also have to suffer pain and agony of being unemployed. In reply it was further emphasised that initially petitioner was given temporary appointment and her appointment was only on contractual basis. The policy was only to give appointment to only those who comes within the criteria fixed by the State Government. No right had accrued to petitioner. She was given appointment on contractual basis and was paid in terms of the contract and only those teachers who had completed 240 days were desired to be taken back in service. The writ petition was heard by a learned Single Judge of this Court. The learned Single Judge dismissed the writ petition by observing as under: -

"The statutory provisions provide that the select list prepared by the District Establishment Committee shall remain in force generally for a period of one year and upto the end of the academic session for teachers. On the analogy of the principles referred to above, the life of the select list cannot be extended contrary to the statutory provisions and while extending the life of the select list, the Statutory Authorities have exceeded their jurisdiction for the reason that the statute does not confer any power to relax the said provisions of rule 274 of the

Rules. The State Government has been conferred with the power of relaxation of rules only in respect of age and experience in a particular case and not even in general by rules 265 and 296. Therefore, the extension of the life of the select list is invalid as being in flagrant violation of the Statutory Rules. Select list expires automatically by efflux of time by virtue of the deeming clause contained in Rule 274. Moreso, extending the life of the select list, after the period provided by the Statute itself, violates the fundamental rights of the candidates who became eligible subsequent to the last advertisement made on 15.6.98 (Annex. 1). By adopting this oblique and illegal method, if the select list in this case is kept alive for several years without resorting to the fresh selection process, the candidates who have attained the eligibility subsequent to the last advertisement, would be deprived of their fundamental right being considered for the vacancies which came into existence subsequent to the said advertisement. Select list prepared In pursuance of the said advertisement cannot be used as a reservoir to fill up the vacancies whenever they come to the existence. Therefore, the order dated 29.6.99 (Annex.6) is also illegal and has been passed without having any consideration to the statutory provisions. Moreso, normally the respondents have no power to fill-up the vacancies more than advertised and and it can be done only in exceptional circumstances, where the decision is taken by the Government considering the exigency. (Vide Surinder Singh vs. State of Punjab & Ors. (AIR 1998 SC 18).

There can also be no quarrel to the legal proposition that no appointment can be made after expiry of the select list. (Vide J. Ashok Kumar Vs. State of A.P. and Others, State of Bihar and others Vs. Md. Kalimuddin and others, State of U. P. and others Vs. Harish Chandra and others, and Dr. Surinder Singh Jamwal and another Vs. State of Jammu and Kashmir and others,

(4). An appeal was preferred against against this decision by the petitioners and the State Government. By consent of the parties, i.e. the petitioner and the Government Advocate, the impugned order was set aside and the matter was remanded back for hearing to a Single Bench. Curiously the State Government who had won before the learned Single Judge also agreed to give up the advantage gained by it before the learned Single Judge.

(5). Before the points raised by the learned for the parties are considered In this writ petition in re-hearing, it would be in the interest of justice to recall the controversy in relation to the persons concerned. This Court and the Hon''ble Supreme had in a number of cases dealt with the controversy and such facts were noticed by this Court in a batch of writ petitions which was heard by it and decided by its order dated 15.5.1997 vide Dinesh Kumar vs. State of Rajasthan (1). This was noticed by this Court as under:-

2. In the first instance, a Division Bench of this Court in D.B. Civil Writ Petition No. 2795/87/- Chanda Tamboli vs. Panchayat Samiti Mandal & Ors.etc. decided a bunch of 76 writ petitions. In those writ petitions, case of untrained teachers who were recruited by the Panchayat Samities was under consideration. Services of

those teachers were terminated. While deciding the controversy, this Court held: "In the result, all these writ petitions are allowed and the direct that all the petitioners whose services have been terminated shall be entitled to one month's salary in the minimum pay scale admissible to the cadre with Dearness Allowance or Additional Dearness Allowance admissible in accordance with law but will not be entitled to grade increment and they will be continue till the regular selections take place (of course subject to availability of vacancies). Amongst these class of persons if trained teachers are available then priority shall be given to the trained teachers. Those teachers who are already serving shall be paid the minimum of pay scale admissible to the particular cadre concerned with Dearness Allowance or Additional Dearness Allowance admissible according to law. They will continue till regular selections take place. They will not be entitled to any grade increments. However, they will be entitled to salary for vacation period as well. The State Government is also directed to get the untrained teachers trained in view of the communication referred to above so that these lowly paid teachers may improve their prospects for the employment in phased programme. No orders as to cost."

3. The writ petitioners in chanda Tamaboli's case were not satisfied with the decision of this Court and the matter was taken to Hon"ble Supreme Court and the Hon"ble Supreme Court by its judgment, reported in Ram Sukh and Others Vs. State of Rajasthan and Others, held that there is no warrant for getting the untrained teachers continued, it is also not obligatory for the State to continue the untrained teachers till they are properly trained. Hon"ble Supreme Court held that untrained teachers can never be proper substitute for trained teachers. It was further observed by the Apex Court that we can not at any rate direct the Government to put back the petitioners into service till they are trained.

4. The purport of the judgment in Ram Sukh's case (supra) was that those who are untrained are not entitled to any relief. Only trained teachers are required to be recruited. However, Hon"ble Supreme Court was of the opinion that in the process of service some petitioners had acquired the age, therefore, it was though proper to give them relaxation in age, to the extent of service rendered by those teachers.

5. With this authoritative pronouncement of the Hon"ble Supreme Court, the matter should have rested but those who were in service is untrained teachers, continued to pursue the path of litigation and in another bunch of writ petitions came to be decided by this Court in S.B. Civil Writ Petition No. 1656/89 "Kanti lal & Ors. vs. State of Raj. & Ors. etc., alongwith 22 other writ petitioners, wherein the untrained teachers sought a direction of this court that they should be imparted training through correspondence course by the State Government. This Court observed in its judgment to those writ petitions in the following terms:-

"I am firmly of the view that untrained teachers whose services have been terminated, are not entitled to any training through the government Actually, the untrained teachers Association went up before their Lordships of Supreme Court

u/s 32 of the Constitution and claimed this very relief which has been refused to them by their Lordships of the Supreme Court. Neither they were allowed the relief of joining back their services nor they were granted the relief of getting themselves training through the agency of the Government."

This was further held by this Court:

"It has been ordered by this Court that trained teachers should be preferred to untrained teachers and, therefore, these teachers whose services have been terminated because selected teachers or trained teachers have been made available, have no right to get themselves trained through the agency of the Govt. They must take their training alongwith of the students in the institution which are open for that purpose and compete with them because they cannot form a class separately from others who are not in service."

6. However, this Court was pleased to order that those who are in service may be provided for training in phased programmes. Nonetheless, this Court was categorically of the opinion that the order of imparting training to the untrained teachers will be subject to the condition that those persons who will get such training shall have no right to continue in case trained teachers are made available to the Panchayat Samities and appointed by them.

7. In this view of the matter, it can be inferred that this Court while ordering the State to impart training to those candidate, made it clear that such candidates will no be entitled to be kept in service and have to compete with others, invariably, for regular appointment by this judgment this court held that the training which is being imparted would not entail such incumbents for extra consideration for being offered appointment.

8. The judgment in Kanti Lal's case was again subject matter of consideration before this Court in S.B. Civil Writ petition No. 1056/94-Amra Ram & ors vs. State of Raj. & Ors., wherein it was explained that in Kanti Lal's case (supra) this has been observed that it would not matter whether they are in service or not. They would be considered for the purpose of employment only when they would have undergone the requisite training.

9. The purport of all these cases was clear and unambiguous whereby the law was enunciated even upto the Apex Court that a person who is untrained is not entitled to be appointed as Teacher if trained Teachers are available. So long as trained persons are available they alone will be considered for appointment in the Panchayat Samities. Training and suitability were the considerations which were to be kept in view for all eligible candidates. At no point of time any special status was conferred on such untrained personnel who had been in service for some time and acquired training in this process, some of them at the partial expenses of the State."

(6). In the aforesaid back-ground it was clearly dealt with and held by the

Hon"ble Supreme Court that no preferential treatment is permissible to the teachers who were kept in service on contract or were appointed being possessed of vocational training, yet the State Government curiously has taken a stand that those candidates have to be given service and, thus, the present controversy has arisen.

(7). After remand the petitioner amended her writ petitions and in the amended writ petition produced Annex. 4A by virtue of which an order was passed for terminating the services of the petitioner. Annex. 4B and 4C were the executive instructions to the respondents. Annex. 4D is an annexure which says that the State Government has considered the decision dated 10.5.2000 rendered in Ashok Kumar vs. State of Rajas-than and Others (2), and the State Government has also perused the various instructions issued in this regard and it has been stated in this communication that this clarifications issued that those candidates, who have passed this course and find mention in the select list of 1998, they can be appointed in accordance with seniority. This is also stated in this notification that the condition of 240 days is removed.

(8). Counsel for the State was specifically asked about the stand of the answering respondents by virtue of which it was submitted that the embargo of 240 days service on contract teachers stands removed and it was disclosed that the appointments are being made under the provisions of the relaxing power of the State Government under Rule 2% as brought on the statute book on 16.11.1999,

(9). Counsel for the petitioner submitted that since the State Government has relaxed the conditions of service such relaxation permits for the appointment of the petitioner notwithstanding that she does not fulfil those conditions which are laid down in the rules. The requirement of fulfilling such conditions cannot be enforced against the persons like the petitioner because they formed part of a special category and such kind of categorisation is permissible and cannot be said to be violative of Article 14 of the constitution of India. Thus, the petitioner states that the termination of the petitioner be revoked and she be reinstated in service. The State has also supported the case of the petitioner.

(10). After remand whatever has been urged hereinabove before this Court, It has not been called upon to adjudicate upon any controversy in between the parties. This Court has only been asked to put a stamp on the action taken by the respondents in favour of the petitioner. The action of the respondents in based on a power of relaxation u/Rule 296. Such orders are sought to be validated by the orders of this Court.

(11). In the meanwhile a litigation in relation to the controversy, which is in terms similar to the present one, has been decided by this Court at its Jaipur Bench in Renu Sharma vs. State of Rajasthan and others (3). This Court has struck down the notification dated 16.11.1999 amending Rule 296 of the Rules of 1996. The rule has been held to be ultra vires, unconstitutional and conferring

unbridled power upon the executive to appoint any person even if he is ineligible and has not even applied for the post.

(12). The power of the State Government under Rule 2996 has not been seen to be a power available to the State Government. Rule 296 has been struck down. The present writ petition is, therefore, to be decided in the back-ground where the petitioner claimed relaxation/appointment on the basis of powers of the State Government to relax the rules. The State Government has also supported the case of the petitioner that it deserves appointment as relaxation is desired to be given to the petitioner and this Court has struck down the power of relaxation.

(13). If the power of relaxation is not available to the State Government as Rule 296 is not available on the statute book then the whole exercise of the State Government and claim of the petitioner is not liable to be considered favourably. While observing this this Court feels that the observations of the Hon''ble Supreme Court in Ram Sukh''s case (supra) and the observations of this Court in Kanti Lal''s case (supra) have not been kept in mind by the State functionaries while dealing with the controversy. There appears to be a lack of coordination between the Law Department of the State and the Panchayati Raj Department. Law has been clearly stated by this Court and the Hon''ble Supreme Court in relation to the candidates in question, yet the State Government made an attempt to short circuit such decision without taking recourse to the permissible parameters of law. Such method has been adopted which only smacks of arbitrariness on the pan of the State Government officials and lack of imagination in dealing with the controversy like the present one.

(14). The following points stand out boldly in the facts and circumstances of this case that:

I. Ashok Kumar''s case (supra) was decided by this Court on 10.5.2000. Amended Rule 296 which has been sought to be invoked by the State vide Annex. 4D came on the statute book on 16.11.1999, This fact was not pressed into service at that stage by either of the parties. The respondent State then vehemently contested the case of the petitioner. How the wisdom has dwell upon the respondent State after this is not clear and no explanation is forth coming as to why the respondent State did not bring this fact to the notice of this court before the hearing has been concluded in the matter of Ashok Kumar (supra).

II. The appeal was decided by a Division Bench of this Court on a concession being given by the respondent State, which had gained advantage before the Single Judge. Such a course of action shows lack of bona fides on the part of the respondents. The power of amendment can never been seen in the power of relaxation of the rules. Rule 296, as amended on 16.11.1999, gave such power to the respondent authorities which had the effect of nullifying the whole structure of the rules. Thus, the exercise of power cannot be said to be legitimate exercise of sovereign power. The right gave a scope of misuse of the provision and exercise colourable jurisdiction.

111. The law laid down by the Hon"ble Supreme Court this Court in Ram Sukh's case (supra), Kanti Lal's case (supra), Dinesh Kumar's case (supra) and Ashok Kumar's case (supra) was after conscious consideration of the stand of the State Government. While the courts considered the case of the candidates like the petitioner, the State consciously contested their case. What factors have brought the change, in attitude of the Government, have not been explained by the State authorities. The State has been contesting the case of the candidates like the petitioner with complete vehemence at its command. In past State maintained that teachers who had served as teachers for brief period in the year 1988-1989 cannot be held entitled to be accommodated in service. Why in the year 2000, all of a sudden some one has thought in the State to do something in favour of these candidates is not clear. This course shows an arbitrary nature of stand. A consistent and conscious stand taken by the State Government in past has been given up such kind of change in the attitude of the State authorities, without taking recourse to legitimate legislative power by executive fiat, smacks arbitrariness. It shows that how casually the respondent authorities have taken the court decisions, delivered in their favour, after contest. The State has lightly permitted them to get thinned away.

(15). The stand of the respondent State can be viewed from another point of view. Teachers had to their credit some period of teaching in the year 1988-1989. The training was undertaken in the year 1995 and appointment has been given in the year 1999. There is nothing on record to suggest that such teachers were in teaching jog. Any qualification acquired and experience gained not only loses its sharpness but becomes out of date if not put in use. There was no factual foundation put forward at any point of time that these teachers were in touch with the teaching at all.

(16). The power of the State Government under Rule 296 has been derecognised as the rule has been struck down. The action of the respondents in permitting the candidates to be appointed by relaxation stands nullified. In absence of such power, no orders can be passed in favour of the petitioner, thus, all the rights of the petitioner come to an end with the cessation of the authority of the State Government to relax the rules under the Act.

(17). In view of the above, the statutory authorities cannot be permitted to act in contravention of the Rules as it would not only render the action of the State arbitrary but also violate the equality clause enshrined in Articles 14 and 16 of the Constitution of those eligible candidates who are waiting in queue for employment.

(18). In the peculiar facts of the case as provisions of Rule 296 do not exist in the statute, petitioner cannot claim any relief nor the State can exercise such powers for want of competence.

(19). In the result, the petition lacks merit and accordingly dismissed. No orders

as to costs.