
(2016) 12 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Special Appeal (W.) No. 717 of 2002

S.S. Jain Subhodh Shiksha Samiti

APPELLANT

Vs

Seema Daya

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 18

Citation : (2017) 1 WLCRajUC 209

Hon'ble Judges : Mr. Ajay Rastogi and Mr. Sanjeev Prakash Sharma, JJ.

Bench : Division Bench

Advocate : Mr. N.K. Maloo, Senior Advocate assisted by Mr. Ajit Maloo, Advocate, for the Appellant; Mr. Kshitiz Sharma, Advocate On behalf of Mr. J.M. Saxena Additional Advocate General, for the Respondents

Final Decision : Allowed

Judgement

Mr. Sanjeev Prakash Sharma, J.—The case come up for hearing as the appeal belong to Year 2007, and no one has been appearing for the contesting respondent No.1 till dates.

2. We have taken up the matter for hearing as counsel for the appellant as well as Mr. Kshitiz Sharma learned counsel appears on behalf of Mr. J.M. Saxena, learned Additional Advocate General for the State are present.

3. The case set up by the appellant in circumspect is that the respondent Ms.Seema Daya was holding the post of Lab Assistant in S.S. Jain Subhodh Shiksha Samiti through its Secretary, Bhawani Singh Marg, Jaipur. The post of Lab Assistant is required for conducting practicals in subject of Biology and holding the students of Class 11th and 12th. Vide Circular dated 31.03.1998, the requirement of practical and dissection of animals in subject of Biology for Class 11th and 12th was done away by the Central Board of Secondary Education, Delhi. Accordingly, the Executing Committee of the institution in its meeting held on 31.03.1998 took a decision to abolish the post of Lab Assistant w.e.f.

01.04.1998. In consequence thereof, the services of respondent No.1 Ms. Seema Daya were dispensed with.

4. From perusal of the record, it is seen that respondent No.1 Ms. Seema Daya, filed an application u/Sec. 21 of the Non-Government Educational Institution Act, 1989 (hereinafter for short "the Act of 1989") before the Non Government Educational Institution Tribunal, Jaipur (hereinafter referred as "the Tribunal"). The contention of the respondent No.1 Ms. Seema Daya while assailing the order dated 01.04.1998 and the order and decision of the Executing Committee dated 31.03.1998 was that the order has been passed and her termination order is in violation of Section 18 Proviso VIII and prior permission from the Competent Authority has not been obtained and that it vitiates their action with a further prayer that she may be reinstated with all consequential benefits.

5. The Tribunal after hearing both the sides and after having discussed the facts of case reached to the conclusion that the order terminating her services was illegal and in contravention of Section 18 of the Act of 1989 and vide its order dated 24.04.2002 set-aside the order of termination of the respondent No.1 with a direction to reinstate her in service with all consequential benefits.

6. The appellant challenged the order of learned Tribunal before the High Court by filing S.B. Civil Writ Petition No.4342/2002. The learned Single Bench while upholding the necessity to follow Section 18 of the Act of 1989, dismissed the writ petition vide its order dated 24.07.2002. It was held that even in the case of abolition of post, necessary approval is required to be taken in view of the mandate of Section 18 of the Act of 1989 from the Director (Education).

7. The appellant has come in appeal before us and while admitting the appeal, the effect and operation of the order of Tribunal as well as the order of learned Single Bench were stayed vide order dated 16.09.2005 and confirmed the same vide order dated 15.02.2006.

8. Before we deal with the arguments and submissions, it would be useful to look into the relevant provisions of the Act of 1989.

Section 2. Definitions - In this Act, unless the context otherwise requires-

(b) "aided institution" means a recognised institution which is receiving aid in the form of maintenance grant from the state Government;

(c) "Board" means the Board of Secondary Education, Rajasthan or the Central Board of Secondary Education, Delhi and shall include the Council for the Indian School Certificate Examinations;

(p) "Non-Government educational institution" means any college, school, training institution or any other institution, by whatever name designated, established and run with the object of imparting education or preparing or training students for obtaining any certificate, degree, diploma or any academic distinction recognised by the State or Central Government or functioning for the

educational, cultural or physical development of the people in the State and which is neither owned nor managed by the State or Central government or by any University or Local Authority or other authority owned or controlled by the State or Central Government;

(q) "Recognised institution" means a Non-Government Educational Institution affiliated to any University or recognised by the Board, Director of Education or any officer authorised by the State Government or the Director of Education in this behalf; Section 18. Removal, dismissal or reduction in rank of employees- Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained-Provided further that this section shall not apply-

(i) to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or

(ii) where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the action is taken, or

(iii) where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.

Section 21. Application to the Tribunal - (1) Where there is any dispute between the management of a recognised institution and any of its employee with respect to the conditions of service, the management of the employee may make an application in the prescribed manner to the Tribunal and the decision of the Tribunal thereon shall be final.

(2) Any dispute of the nature referred to in sub-section (1) and any appeal of the nature referred to in Section 19, pending before the State Government or any officer of the State Government immediately before the commencement of this Act, shall, as soon as may be after such commencement; be transferred to the Tribunal for its decision.

9. Mr. N.K. Maloo, learned Senior Counsel appearing for the appellant has sought to challenge the clauses of the Act of 1989 as also the findings of the learned Tribunal & the findings of the learned Single Bench and raised two issues for adjudication before this Court:

(a) That as the appellant's institution is a non-aided/recognised institution by

the Central Board of Secondary Education, it would not be governed by the Act of 1989 and;

(b) Even if, it is presumed that the Act of 1989 would be applied on the recognised institution, the institution was not required to follow Section 18 of the Act of 1989 for dispensing with the services of respondent No.1 on the count of abolition of the post.

10. On first count, we are unable to agree with the submissions of learned Senior counsel. A look at the definition Clause of the Act of 1989 would show that the same takes into consideration two types of institutions of Non-Government Educational Institutions namely aided institution as per Section 2 (b) (Supra) and recognised institution as defined in definition Clause under 2 (p) &(q) of the Act of 1989. Thus, an institution which is a recognised institution may not necessarily be an aided institution, however, aided institution has to be recognised institution too.

11. A look at Section 18 of the Act of 1989 would reveal that the same applies to recognised institutions as well and, therefore, it has taken into its ambit aided and unaided institutions.

12. Admittedly, the appellant's institution i.e. Subhodh Shiksha Samiti, Jaipur where the respondent No.1 was holding the post of Lab Assistant was a recognised institution by the Central Board of Secondary Education, Delhi as defined under Section 2 ? of the Act of 1989, the provisions of the Act of 1989 and that of Section 18 of the Act of 1989 would apply to the institution and the Tribunal would have jurisdiction under Section 21 of the Act of 1989 to hear an appeal for any grievances, which may be raised before it with regard to service conditions of an employee as against the management.

13. In view of the provisions, the first issue stands decided against the appellant. The second issue raised in the present appeal and the submission of the Senior Counsel has ample force.

14. A look at the provisions of the Act of 1989 reveals that there is no provision in the Act relating to a situation where a sanctioned post is abolished.

15. We are in agreement with the submissions made the learned Senior Counsel that the abolition of post and termination of the services consequent thereto do not carry any stigma. Nor the same can be said to be penal in character.

16. Section 18 of the Act of 1989 lays down the procedure and conditions under which an employee may be removed, dismissed or reduced in rank i.e. in circumstances wherein an employee is imposed with any kind of penalty or removal, dismissal or reduction in rank or such removal or dismissal or reduction is on account of any other reason, provisions of Section 18 would apply.

17. Since the order of termination has been on account of abolition of post, we are in agreement with the submissions that Section 18 of the Act of 1989 and

provisions thereto, relating to removal, dismissal or reduction in rank would not apply in the instant case where the post has been abolished and the services of an employee is dispensed with in consequence thereto.

18. It is also an admitted position that the institution is a nonaided institution though recognised, the posts are not created in the institution with the permission of the Government/authorities and, therefore, for abolition, permission would not be required from the Government. It is a settled position of law that abolition does not amount to dismissal, removal or reduction in rank explaining this, the Constitutional Bench in the case of *N. Ramanatha Pillai v. State of Kerala* and *Anr.* 1973 (2) SCC 650 in which in Paras No.19, 21 and 23 it has held as under:-

"19. When Article 311 states that no person shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him it affords a protection and security of Government service. Article 311 applies to all Government servants holding permanent, temporary or officiating post. The protection afforded by Article 311 is however limited to the imposition of three major penalties. These are dismissal, removal or reduction in rank. The words, "dismissed", "removed" and "reduced in rank" are technical words. Both in the case of removal or dismissal there is a stigma. It also involves loss of benefit. There may also be an element of personal blame-worthiness. of the Government servant. Reduction in rank is also a punishment. The expression "rank" in Article 311(2) has reference to a person's classification and not to his particular place in the same cadre in the hierarchy of the service to which he belongs. Merely sending back a servant to his substantive post has been held not to be a reduction in rank as a punishment since he had no legal right to continue in officiating post. The striking out of a name from the panel has been held to affect future rights of promotion and to be a reduction in rank.

21. Any and every termination of service cannot amount to dismissal or removal. A termination of service brought about by the exercise of contractual right is not by itself dismissal or removal. (See *Satish Chandra Anand v. The Union of India* (1953 S.C.R. 665). Again, termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to infliction of a punishment and does not attract Article 311(2). (See *Shyam Lal v. State of U.P. and the Union of India* (1955 1 S.C.R. 26). Similarly the retirement of a permanent servant on his attaining the age of superannuation does not amount to his removal within the meaning of Article 311(2). In these cases the termination of service does not carry with it the penal consequences of loss of pay or allowances.

23. A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311 (2)."

19. Admittedly the abolition of post in the present case cannot be said to be on account of any penal action or malice or arbitrariness and would therefore, not attract the provisions of the Article 311 (2) of the Constitution of India and would also not within the scope of Section 18 of the Act of 1989.

20. Our view is fortified further by the view taken in the case of Shri Maheshwari Senior Higher Secondary School v. Bhika Ram Sharma reported in 1996 (8) SCC 22 wherein the short question examined by the Supreme Court was whether the respondent therein could be permitted to continue on a post that stands abolished. In somehow the similar circumstances, the respondent therein had been terminated from service on account of abolition of post of Steno/Typist while the Tribunal and High Court came to the conclusion that the termination is not in accordance with Rules and directed to conduct an inquiry according to Rules and to take a decision, the Hon"ble Supreme Court set aside the orders and held as under:-

"It is settled law that an abolition of the post, the existing holder of the post ceases to continue from the date of abolition of the post. Since the termination of the service of the respondent is only due to abolition of the post, the question of conducting the enquiry under Rules does not arise."

21. The Division Bench of this Court has also been taken a consistently similar view in Agarwal Shiksha Samiti v. State of Raj. in D.B. Special Appeal (Writ) No.549/1995 decided on 04.03.1998 in which it is observed:-

"The only point to be considered in this case is that what was the nature of appointment of respondent No.4 and what was his right to continue on that post, and whether the order of termination was bad.

Relying upon there decisions, we are of the view that the respondent No. 4 has no right to continue on the post and he has no right to be heard as the order was a simple order of termination which did not cause any stigma on him."

22. The Division Bench of this Court in Shri Gurunanak Education Society and Anr. v. State of Rajasthan and Ors. in D.B. Civil Special Appeal No.1564/1999 decided on 16.07.2009 also held as under:-

"From reading of the provisions of Section 18 of the Act of 1989 and Rule 39 (2) of the Rules of 1993, it is apparent that these provisions relate to imposition of penalty i.e. of dismissal, removal or reduction in rank. In the case in hand the employee was neither dismissed nor removed from service but was terminated due to non-availability of adequate funds. Such discontinuation from service is nothing but termination simpliciter and, therefore, no need was there for the appellants to adhere the provisions of Section 18 of the Act of 1989 read with Rule 39 (2) of the Rules of 1993. The error, therefore, is apparent in the order passed by the learned Tribunal while holding that termination of the respondent employee was bad being in violation of Section 18 of the Act of 1989 read with Rule 39 (2) of the Rules of 1993. Learned Single Judge also failed to appreciate

that the provisions aforesaid are having no application in the present case.

23. Considering the above position of law, we are of the firm view that the order impugned deserves to be set aside and accordingly, we set aside the order dated 24.04.2002 passed by the Tribunal as well as the order passed by the learned Single Judge dated 24.07.2002 and hold that the decision to terminate the services of the respondent w.e.f. 01.04.1998 in consequence of abolition of post was in continuity in the law and does not call for any interference.

24. The appeal is, therefore, allowed in aforesaid terms with no costs.