

(2003) 02 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2801 of 1995

S.S. Jain Subodh Shiksha Samiti, Subodh College

APPELLANT

Vs

Rajasthan Non-Government Educational Institutions Tribunal
and Another

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc. Rules, 1993 — Rule 39

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

Citation : (2003) 2 RLW 1234 : (2003) 2 WLC 16

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : Mahendra Singh, for the Appellant; Ashok Gaur, for the Respondent

Final Decision : Allowed

Judgement

Parihar, J.—Respondent No. 2 (the concerned employee) was initially appointed as Teacher in S.S. Jain Subodh Balika Senior Secondary School, Jaipur till the end of session vide order dated 1.7.1987. Against a fresh appointment was given on the post of Teacher vide order dated 1.7.1988 and thereafter, the concerned employee was further given appointment on the post of Teacher till 16.5.1990 vide order dated 12.7.1989 which was lastly continued upto 31.8.1990 vide order dated 18.7.1990.

2. Subsequently, the concerned employee was given adhoc appointment on the post of Lower Division Clerk for the period from 1.7.1991 till 16.5.1992 vide order dated 26th September, 1991 in another institution i.e. S.S. Jain Subodh Balika Senior Secondary School, Jaipur. The respondent employee continued to get such adhoc appointment on the post of Lower Division Clerk till the end of session of the year 1992-93 also and lastly, the concerned workman was appointed on the post of Lower Division Clerk purely on adhoc basis from the date of joining till 16.5.1994 vide order dated 12.8.1993. After expiry of the

above period i.e. on 16.5.1994, the concerned employee was relieved from service.

3. Challenging the letter of appointment dated 12.8.1993, an appeal was filed by the concerned employee before the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (hereinafter referred to as "the Tribunal"). In reply to the appeal filed on behalf of the petitioner institution, it has been submitted that after the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rajasthan Non-Government Educational Institutions (Recognition, Grants In Aid and Other Service Conditions etc.) Rules, 1993 came into force, an advertisement was issued for appointment to the post of Lower Division Clerk on which the concerned employee had earlier been employed and after selection appointment has also been given to a selected person vide order dated 19.9.1994. It has also been submitted in the reply that in pursuance to the advertisement issued on 31.8.1994, the concerned employee did not apply. As such, there was no occasion for considering her case for appointment to the post of Lower Division Clerk even on adhoc basis.

4. After considering the evidence and material on record, the Tribunal allowed the appeal vide order dated 1.5.1995. While holding the termination of services of the concerned employee in violation of Section 18 of the Act of 1989 as well as Rule 39 of the Rules of 1993, the concerned workman was held entitled for reinstatement with all consequential benefits including back wages. The order dated 1.5.1995 passed by the Tribunal is under challenge in the present writ petition.

5. After hearing counsel for the parties. I have carefully gone through the material on record, the impugned order passed by the Tribunal, the relevant provisions of the Act as also the Rules and the judgments cited at the bar.

6. The facts narrated above, are not disputed so far. Section 18 of the Act of 1989 is reproduced hereunder :-

" 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 taken :

Provided further that this section shall not

(i) to a person who is dismissed or removal on the ground of conduct which led to him 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 can not 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."

7. The consequential Rule 39 of the Rules of 1993 is also reproduced hereasunder :-

"39. Removal or Dismissal from Service (1) The service of an employee appointed temporarily for six months, may be terminated by the management at any time after giving at least one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give atleast one month's notice in advance or in lieu thereof deposit or surrender one month's salary to the management.

(2) An employee other than the employee referred to in Sub-rule (1), may be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other ground which makes the employee unsuitable for further retention in service. But the following procedure shall be adopted for the removal or dismissal of an employee ;-

(a) A preliminary enquiry shall be held on the allegations coming into or brought to the notice of the management against the employee.

(b) On the basis of the findings of the preliminary enquiry report, a charge sheet alongwith statement of allegations shall be issued to the employee and he shall be asked to submit his reply within a reasonable time.

(c) After having perused the preliminary enquiry report and the reply submitted by the employee, if any, if the managing committee is of the opinion that a detailed enquiry is required to be conducted, a three member committee shall be constituted by it in which nominee of the Director of Education shall also be included.

(d) During the enquiry by such enquiry committee the employee shall be given a reasonable opportunity of being heard and to defend himself by means of written statement as well as by leading evidence, , if any.

(e) The enquiry committee, after completion of the detailed enquiry, shall submit its report to the management committee.

(f) If the managing committee, having regard to the findings of the enquiry committee on the charges, is of the opinion that the employee should be removed or dismissed from service, it shall;

(i) furnish to the employee a copy of the report of enquiry committee.

(ii) give him a notice stating the penalty of removal or dismissal and call upon him to submit within a specified time such representation as he may wish to make on the proposed penalty,

(g) In every case, the records of the enquiry together with a copy of notice given under Sub-clause (f)(ii) above and the representation made in response to such notice if any, shall be forwarded by the managing committee to the Director of Education or an officer authorised by him in this behalf, for approval.

(h) On receipt of the approval as mentioned in Sub-clause (g) above, the managing committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order the employee concerned and also to the Director of Education or the officer authorised by him in this behalf:

Provided that the provisions of this rule shall not apply :-

(i) To an employee who is removed or dismissed 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 the 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 service of an employee cannot be continued without prejudice to the interest of the institution, the service 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."

8. Clause 1 of the Rule 39 is not applicable in the present case. The other Clause 2 clearly postulates that an employee may be removed or dismissed from service on the ground of insubordination, inefficiency, neglect of duty, misconduct or any other ground which makes the employee unsuitable for further retention in service and only for the grounds mentioned above, a procedure has been prescribed under the rule for removal or dismissal of an employee.

9. In the present case, none of the exigencies, as referred above, have either "been alleged or even remotely can be presumed. The service of the concerned employee stood terminated with the afflux of time. Subsequently, as per provisions of the Act and Rules made thereunder, regular selection had also been made and the concerned employee not having participated in the same, cannot be allowed to challenge the same.

10. Furthermore, the appointment letter was issued on 12.8.1993, the termination was made after completion of the tenure on 16.5.1994, whereas the appeal was filed by the concerned employee on 11.7.1994, challenging the conditions of service mentioned in the letter of appointment after availing the benefits as mentioned in the letter of appointment itself. The petitioner is estopped to challenge the terms of her appointment after completing the whole

tenure. None of the circumstances as mentioned above have been considered by the Tribunal in the impugned order.

11. After having considered entire facts and circumstances of the present case, the impugned order of the Tribunal cannot be sustained in the eyes of law and the same is liable to be set aside.

12. Accordingly, the writ petition is allowed. The impugned order dated 1.5.1995 passed by the Tribunal is set aside and the appeal filed by the concerned employee before the Tribunal is also dismissed. There will be no order as to costs.