
(2010) 09 RAJ CK 0007
In the Rajasthan High Court

State of Rajasthan and Others

APPELLANT

Vs

Raju Meena and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Citation : (2010) 09 RAJ CK 0007

Hon'ble Judges : Jagdish Bhalla, C.J; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This special appeal has been filed against the interim-order passed by the learned Single Judge of this Court dated 2/8/2010. By the interim-order earlier passed on 4/3/2010, appellant-State was restrained from making any appointment on the post of Computer Operator with Machine through placement agencies in District Baran. Application filed by the State under Article 226(3) of the Constitution of India was partly allowed and the interim-order earlier passed on 4/3/2010 was modified by the order impugned dated 2/8/2010.

2. A joint writ petition was filed by 91 writ petitioners with the grievance that they were earlier selected vide order dated 18/11/2009 and were in fact given appointments and postings but when they proceeded to join the place of their posting, they were not allowed to join. Respondent No. 1 vide order dated 10/2/2010 directed that appointment shall be given to only those candidates, who were selected through placement agencies and for such of the candidates, who had joined in the earlier process of selection, it was directed that their contract of service would be terminated w.e.f. 28/2/2010. Learned Single Judge by the interim-order dated 4/3/2010, restrained the State Government and its functionaries from making any appointment on the post of Computer Operator with Machine through placement agencies in District Baran pursuant to the aforesaid order dated 10/2/2010.

3. Admittedly, selection of the writ-petitioners herein was made pursuant to the advertisement issued by the State Government on 24/9/2009. Subsequently, State Government by way of change of policy decided to make these appointments through placement agencies and therefore order impugned in the writ petition dated 10/2/2010 was issued. While in the advertisement earlier issued, there was no condition for giving appointments through placement agencies, it was therefore that the learned Single Judge by the impugned-order dated 2/8/2010 while admitting the writ petition modified the stay order earlier granted on 4/3/2010 to say that appellants herein i.e. the State and its functionaries, shall consider the candidature of the writ petitioners/candidates on the basis of select list dated 18/11/2009 prepared pursuant to the advertisement dated 24/9/2009 for the post of Computer Operator with Machine. It was directed that such appointments will be subject to final decision of the writ petition and that will not preclude the State from incorporating reasonable conditions in their order of appointment and in case the selected candidates fail to join, respondents would be at liberty to make appointments through their own procedure provided under the law.

4. The State Government has preferred appeal against the observation made by the learned Single Judge in the interim-order dated 2/8/2010 that the appointments on the post of Computer Operator with Machine through the placement agencies with a view to exploiting the petitioners is totally unfounded. Interest of such candidates was duly taken note of. The agencies were given the contract only in order to ensure that if and when, the Computer Operators go on leave or resign, it would be in a position to replace them by another suitable candidate. It is contended that Computer Operators were engaged under the National Rural Employment Guarantee Scheme, 2005 (NREGA) and therefore appointments were given on contract basis. Impugned-order passed by the learned Single Judge be therefore set-aside.

5. We have gone through the order impugned as also the material on record.

6. Although it is true that appointment of the writ petitioners in the first instance was sought to be made on contract basis because they were not being engaged in permanent establishment, rather were engaged for implementing the scheme known as NREGA. It is presumably for that reason that appointments were described as contractual appointment in nature but while doing so, the appellant-State could not impose condition of employing such candidates through placement agencies, which obviously would imply that such agencies would be charging certain percentage of remuneration payable to the employees as commission. It was therefore that the learned Single Judge has by merely passing the interim-order, safeguarded their interest with the directions to the State to consider the candidature of the petitioners/selected candidates for appointment in terms of select list dated 18/11/2009 prepared with reference to advertisement dated 24/9/2009 for the post of Computer Operator with Machine. However, it was also observed that such appointments would be subject to final

decision of the writ petition and that would not preclude the State from incorporating reasonable conditions. This also shows that appointment of the writ petitioners would be only for the duration of the scheme and not beyond that.

7. We do not find any justification for our interference in the impugned-order particularly when writ petition is still pending.

8. Special appeal fails and is hereby dismissed.