

(2015) 02 RAJ CK 0194

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 2085, 2090, 2091, 2092, 2096, 2097, 2098, 2112, 2113, 2114, 2115, 2116, 2117 and 2120/2014 and 13, 16, 17, 162, 169, 170 and 171 of 2015

State of Rajasthan and Others

APPELLANT

Vs

Shakil Ahmed and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 02 RAJ CK 0194

Hon'ble Judges : Sunil Ambwani, A.C.J;Prakash Gupta, J

Bench : Division Bench

Advocate : Inderjeet Singh, AAG and Surinder Pratap Singh, for the Appellant; R.N. Mathur, Senior Counsel assisted by Praveen Sharma and Bajrang Lal Choudhary, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. We have heard learned counsel appearing for the parties.
2. All the connected Special Appeals, filed by the State of Rajasthan, arise out of the common judgment dated 20.05.2014, passed by learned Single Judge, by which he has allowed the writ petitions with following directions:--
 - "1) that the respondents should continue the petitioners as contractual Lecturers in the Self Finance Scheme from 1st of August to 28th February every year on the same terms as before without undertaking fresh process of selection in the succeeding academic year.
 - 2) that the petitioners shall not be entitled to claim any remuneration for the period other than the aforesaid in any academic year.
 - 3) that this will not preclude the respondents from making fresh appointment, if any candidate is not willing to continue or continuously absents from duty for more than a month.

4) that it will be open for the respondents to replace the services of the petitioners by duly selected candidates through RPSC."

3. D.B. Special Appeal(W) Nos. 162/2015, 169/2015, 170/2015 and 171/2015, filed by the petitioners in the writ petitions, arise out of the same judgment, against direction number 1, by which they have been allowed to continue as contractual Lecturers in the Self Finance Scheme from 1st August to 28th February in the succeeding year on the same terms.

4. All the writ petitions were filed for directions to the respondents to produce the entire relevant record pertaining to the petitioners' case; issue an appropriate writ, order, or direction quashing the verbal termination orders of the petitioners, to be illegal, null and void, ineffective, inoperative and non est in the eye of law, and further for direction to the respondent Nos. 3 and 4 to allow the petitioners to continue in service on the post of College Lecturers in the respective subjects, till the RPSC selected candidates are made available, or the Self Finance Scheme is in operation.

5. Brief facts giving rise to the writ petitions, are that the Directorate of College Education, Government of Rajasthan, Jaipur, issued a scheme in the year 2006, named as Self Finance Scheme, to be operated on public support for promoting higher education in the State of Rajasthan. The Scheme provided for a "Vikas Samiti", to be constituted in each District, with Collector at the District Headquarters and Sub Divisioner Officer at Sub Divisional Headquarters, to be the working President; the Principal of local Senior Secondary School; an enlightened citizen, to be nominated by the District Collector; a representative of Director, College Education; two educationists, to be nominated by the Director, College Education; the Member of Legislative Assembly of the area; two enlightened citizens, to be nominated by the State Government; Zila Pramukh at District Headquarters; Chairman, Nagar Parishad/Nagar Palika, Chairman, Gram Nagar Parishad/Nagar Palika and Sarpanch of the Gram Panchayat at other places, two guardians, to be nominated by the District Collector; two donors and trustees, to be nominated by the District Collector, and one member of Zila Parishad and Panchayat Samiti each, to be nominated by the Zila Pramukh/Pradhan, to be its members. The nominee of the Director, College Education is provided to be the Member Secretary of the Vikas Samiti.

6. Para 3.1 of the Scheme, provides for opening of new faculty/subject/section in the Government Colleges; para 3.1.1. provides for constitution of Vikas Samiti in every Government College, which may decide, with the permission of the State Government under para 3.1.2, to start a new faculty/subject/section in accordance with the requirement of the local students; para 3.1.3 provides for forwarding the proposals for that purposes for approval of the Directorate of College Education; para 3.1.4 provides that the financial support for opening the new classrooms, laboratory, books, instruments, furnitures etc. shall be made by the Vikas Samiti from its own sources, or from public support/donors/trusts/development funds of the Member of Parliament or Member of Legislative

Assembly; para 3.1.5 provides that the funds will also be collected for recurring or non-recurring expenses from the aforesaid sources, or from the fees of the students; and for which the recurring expenses have to be collected at least for a period of three years under para 3.1.6; para 3.1.8 of the Scheme provides that for the proposed new faculty/subject/section, the teaching and non-teaching staff shall be selected by the Vikas Samiti at its own level from amongst the candidates with prescribed eligibility, on a fixed amount, on contract for the period, for which the appointment is to be made; para 3.1.9 provides that College Vikas Samiti will make the expenses either recurring or non-recurring without imposing financial burden on the State Government, and that the expenses/accounts shall be subjected to yearly audit as per para 3.1.11.

7. All the petitioners in the writ petitions were appointed after the year 2006 in the Government Colleges in new faculties/subjects/sections, opened on a decision taken by the Vikas Samiti with the approval of the Director, College Education, on contract for a fixed period, beginning from 1st August of every year till 28th February of the succeeding year, and that all of them have been continued from year to year, on fresh appointment on contract, after executing a undertaking/contract for a period from joining upto 28th February of the succeeding year, on payment of Rs. 100/- per period or Rs. 8000/- per month, whichever is less. The contract provides that if any document presented for appointment is found to be incorrect, the petitioners will be immediately terminated, and that their appointment will be purely on temporary basis, on contract. The contract further provides that the appointee will not claim, in future, any preference or for regularization and will not approach the Court for making any such claim. In case the appointee wants to leave the job, one month's notice will be given by him, or one month's pay equal to one month's salary will be deposited. The last clause of the contract provides that in case the work and conduct of the appointee is not found satisfactory, he will be removed from the appointment.

8. In none of the writ petitions, there was any pleading that the petitioners were being removed or were replaced by someone else. The cause of action was based upon a Government Order, which provided for appointment of retired persons on regular basis in the college where the candidates from the RPSC are not made available. The Government Order was not applicable to the petitioners.

9. We have examined the pleadings in the writ petitions of all the petitioners, and do not find that any of them was either replaced or were not appointed on contract for the next academic year. The writ petitions were filed only for the purpose that the appointments should not be made on contract every year, and that the petitioners should be allowed to continue till the regularly selected candidates from the RPSC are made available.

10. Learned Single Judge, after hearing the arguments and referring to the judgments cited before him, was of the opinion that the vacancies in the respective colleges in which the petitioners are working as Lectures on contract

basis under the Self Finance Scheme, continues to be available in the educational institutions and this proves the requirement of the respondents to hire the services of the petitioners. Even if the respondents are making appointment of the petitioners from the month of August till the end of the month of February, there is no reason for them to undertake the same exercise in every succeeding academic session so long as the vacancies on the post of Lecturers of the subject in which the petitioners are working continued to be remained available, and when the petitioners are prepared to offer their services even in the ensuing academic session. Learned Single Judge was of the opinion that inviting applications for undertaking fresh exercise every year keeps the draconian sword hanging over the head of the petitioners exposing them to the risk of being discontinued every year and to substitute them by newly selected candidates, who will also be appointed on contractual basis.

11. Learned Single Judge observed that the Supreme Court and this Court has deprecated the practice of substituting one set of contractual employees with another. If the respondents are permitted to go ahead with the such practice, it will only give leverage to them to adopt the policy of hire and fire and act on the basis of pick and choose. The action of the respondents was, therefore, declared to be illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India.

12. After making the aforesaid observations and before giving directions, learned Single Judge observed as follows:--

"At the same time, further prayer of the petitioners for regularisation in service cannot be granted in view of the nature of their appointment and the fact that they have been working only for part of the academic session on the basis of the agreements voluntarily executed by them with the President of the society and that their remuneration is paid out of the funds generated by the Samiti, even though they may be working against regular vacancies."

13. Upon hearing the arguments of learned counsel appearing for the parties, we find that learned Single Judge even after making observation quoted as above, erred in finding that the petitioners were appointed every year on contract on the posts of Lecturer. He failed to examine the Scheme, which did not provide for creation and sanctioned of any post. The petitioners were appointed under a Scheme, initiated in the year 2006 for self finance of the courses, on public support for promotion of higher education. The Department of College Education, did not create any posts, nor had undertaken any exercise for ascertaining the requirement for or sanction of any post. The Scheme provides for ascertaining the need of local students and appointment by the Vikas Samiti, chaired by the Collector, of which the members included the members of the College and the local persons including public representatives. The Vikas Samiti is required to consider the requirement of the students of particular college, for studying the subject every year, and for which the funds are to be collected from the local public, fees of the students, donations from the trusts and from the development

funds of the Members of Parliament and the Members of the Legislative Assembly. The donations are to be collected at least for a period of three years to start the new courses or subjects, which are required to be approved by the Director, College Education. The appointments under the Scheme are provided to be made on contract, as there is permanency for continuing the subject, to be determined by the Vikas Samiti every year, according to the local needs. There was thus no question for having any selection and appointment, to be made through Rajasthan Public Service Commission.

14. Learned counsel appearing for the petitioners, who are the appellants in some of the Special Appeals, submits that the Scheme was initiated to serve the Constitutional purpose of development and promotion of higher education in the State. The State Government is bound to provide higher education to the students, for which there were sufficient number of students, and thus the entire burden should be undertaken by the State Government. The scheme was floated in the year 2006, under which the petitioners were appointed and continued from time to time. He submits that making appointments every year is the exploitation of the young and eligible teaches, who are qualified and willing to serve in the colleges.

15. There is absolutely no material to show that there has been any regular recruitment on the sanctioned posts in the colleges, in which the petitioners did not have an opportunity to participate. Further, there is no material, nor there was any pleading that any of the petitioners was replaced by engaging fresh appointee, on contract. The State Government had neither created any posts, nor taken over the financial liability for payment to the teachers, on regular basis. The Self Finance Scheme, or providing higher education in the Government colleges, is based upon the requirement of the students of the local area, to be funded with the finances to be arranged locally by contribution by the fees charged from the students, donations from trusts and the development funds of the public representatives. Further there are no statutory rules made by the State Government to regulate the services of the teachers appointed on contract.

16. In *State of Madhya Pradesh and Others Vs. Ku. Sandhya Tomar and Another*, (2013) 136 FLR 300 : (2013) 1 LLN 397 : (2012) 12 SCALE 561 : (2013) 1 SLJ 295 , the Supreme Court was concerned with the similar scheme, in which there was no post available, nor any post was created. The appointments were provided in the scheme, on contract, for a particular period. The Supreme Court interfered with the judgment of the High Court, and allowing the Civil Appeal, observed as follows:--

"9. There can be no dispute with respect to the settled legal proposition that in the event that a person is not appointed on a regular basis, and if his service is not governed by any statutory rules, he shall be bound by the terms and conditions that have been incorporated in his appointment letter. (Vide *State of Punjab v. Surinder Kumar*). In such an eventuality, there can be no reason with

respect to why the terms and conditions incorporated in the appointment letter should not be enforced against such an employee. In the instant case, Respondent 1 was temporarily appointed in a project and thus, she had at no point of time, been appointed on a regular basis, owing to which, she cannot claim any lien with respect to the said post."

17. In *State of Haryana and Others Vs. Shakuntla Devi*, AIR 2009 SC 869 : (2008) 119 FLR 1169 : (2008) 12 JT 48 : (2008) 13 SCALE 621 : (2009) 2 SLJ 183 : (2009) 2 SLR 633 , the Supreme Court distinguished the nature of ad hoc and regular appointment, and held that the very fact that subsequent appointments were made by the competent authority on regular basis, was a pointer that earlier appointments were ad hoc, and held in para 32, as follows:--

"32. Only by reason of fulfillment of the conditions laid down under the contract of service and/or the statutory rules governing the same, can a person become a full-fledged government employee. When the terms and conditions of service are governed by a statute or statutory rules, no doubt the same would prevail over the contract of employment, but then for the said purpose, the employee concerned must show that the appointment was regular in nature and on a post which is a cadre post. The government employee acquires status only when he becomes entitled thereto by reason of a statute or by his employer declaring him to be entitled therefor."

18. In the present case, the petitioners were not appointed on any sanctioned post, nor there was any post sanctioned or created, under any statutory Rules. They were appointed under the Self Finance Scheme for promotion of higher education in the State to serve need of local students in the colleges, for which the funds were to be provided by the general public, trusts, donations, fees of students, and the development funds of the public representatives. The petitioners, appointed on contract, have no right to continue. There is no post, on which they may be directed to continue. Their appointment was subject to contract, which they had willingly signed. There was no threat, undue influence, or coercion, nor any circumstances existed, which compelled them to accept the appointment, and to accept the terms and conditions of the contract.

19. For the aforesaid reasons, we do not find that learned Single Judge could have given any of the directions, which have been given in the impugned judgment.

20. All the Special Appeals, filed by the State of Rajasthan, are allowed, and the judgment of learned Single Judge is set aside.

21. The Special Appeal Nos. 162/2015, 169/2015, 170/2015 and 171/2015,, filed by those who were the petitioners before learned Single Judge as against direction No. 1, are dismissed.

22. All pending applications are disposed of.

23. A copy of the judgment be placed in all the connected files.