

(2014) 08 RAJ CK 0081

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 860/2012

State of Rajasthan

APPELLANT

Vs

Sanjeev Kumar Sharma

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2014) 4 WLN 335

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Judgement

1. We have heard Mr. Sanjeev Kumar Sharma, respondent in person. No one appears on behalf of the appellants/State. The advocates in the High Court are abstaining from work since 9th July, 2014.

2. The counsels, representing the State of Rajasthan, may be the members of the Bar Association, they are also abstaining from work. They are appointed by the State Government to pursue the cases and watch the interest of the State Government in the High Court. There is no justification for the counsels, representing the State Government, to abstain from work.

3. In the present case, the matter relates to an employee in the office of the Advocate General. We find it distressing that both the State of Rajasthan and the office of the Advocate General, despite listing of the case, of which they have full knowledge, have not appeared to defend their principles.

4. We may observe here that despite the abstention of the counsels, the litigants are appearing and are requesting the Court to hear the matters. In absence of the counsels appearing for the State Government, State Institutionalities and the Public Sector Undertaking and Corporations, the Court finds it difficult to proceed with the matters. There are, however, many cases, which require urgent attention, and should not wait despite the non-appearance of the counsels.

5. In the present case, the petitioner had first approached the Court for

regularization of his services in the office of the Advocate General. The writ petition was disposed of by the learned Single Judge with a direction to the respondents to consider the case of the petitioner to create a post and provide budget to pay salary to the petitioner.

6. The writ petition, giving rise to the special appeal, was filed for regularization of the petitioner's services.

7. The learned Single Judge disposed of the writ petition of the petitioner on the ground that the petitioner's case is covered by the judgment in the case of Ashok Kumar vs. State of Rajasthan & Anr., S.B. Civil Writ Petition No. 7679/2002, decided on 13.01.2012, which was allowed by the Court with the directions to reinstate the petitioner forthwith with all consequential benefits and their cases for regularization of service be considered in accordance with para 53 in the judgment rendered in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . The writ petition was detached from the bunch of petitions and it was directed to be listed for hearing.

8. We have gone through the judgment in Ashok Kumar's case (supra) and do not find that the facts and circumstances of the petitioner's case are similar. In Ashok Kumar's case (supra), the petitioners were appointed in the office of the Advocate on record in the Supreme Court representing the State of Rajasthan, on posts, which were sanctioned by the State Government. The Review Committee had considered and rejected the prayer for regularization on two posts of Stenographer and three posts of LDC. These posts were subsequently abolished by the notification dt. 08.07.2002. A learned Single Judge has observed that there was no justification to abolish the posts as there was need of their services in the office of the Advocate on record in Supreme Court, which had an excessive workload.

9. In the present case, the petitioner was appointed on contract, dehors any procedure of selection and appointment. There is no sanctioned post, on which he may have been appointed. In the reply submitted on behalf of respondent No. 2, it is stated that the petitioner was appointed on contract without following any procedure of selection at the initial stage. His appointment thus, falls in the category of back-door entry and, as such, his continuous service of 12 years does not give him any right to continue. Unless there is a post, on which he has been appointed, there is no question of regularization and other benefits.

10. We also find that the learned Single Judge, had erroneously, found that in the facts and circumstances of the petitioner's case is same as in Ashok Kumar's case (supra) and the parties may abide by the decision rendered in the case of Ashok Kumar (supra). We are of the view that the petitioner's rights, considering the facts and circumstances as he has served for 12 years on the post, were required to be considered on merits by the learned Single Judge independently. The disposal of the writ petition only on the ground that the petitioner's case is covered by the decision in Ashok Kumar's case (supra), was not justified.

11. The special appeal is allowed. The matter is remanded back to the learned Single Judge to consider and dispose of the petitioner's writ petition on merits. Since we are remanding the matter to the learned Single judge, we direct that the interim order dt. 21.03.2007, passed in the writ petition, in favour of the petitioner will continue until decision of the writ petition.