
(2015) 11 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 187/2015

Ummed Singh Shekhawat	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Citation : (2015) 11 RAJ CK 0020

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Y.P. Khileree, for the Appellant; R.R. Kanwar, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—At the request of learned counsel for the parties, the matter has been finally heard.

2. This writ petition has been filed by the petitioner aggrieved against the minutes of the meeting dated 29.11.2013, whereby the representation made by the petitioner has been rejected.

3. The petitioner was initially appointed as daily wages employee vide order dated 21.3.1992. The petitioner continued in employment, whereafter, his services were terminated by order dated 14.1.1993 and he was relieved on 16.1.1993. Feeling aggrieved, the petitioner raised an industrial dispute.

4. The Labour Court vide its award dated 23.12.1998, came to the conclusion that the termination of the petitioner's services were bad and ordered reinstatement alongwith consequential benefits.

5. Feeling aggrieved, the respondent-State filed SBCWP No. 1569/2000, which came to be decided on 24.7.2002. The award passed by the Labour Court was upheld, however, the direction regarding the backwages was modified and it was ordered that the petitioner would be entitled to a lump sum compensation of Rs. 10,000/-.

6. Whereafter, the petitioner was reinstated and he continued in service of the respondent. However, when despite working for a long time, the services of the petitioner were not regularised, the petitioner filed SBCWP No. 785/2006. The said writ petition came to be accepted by this Court vide order dated 8.5.2013 and it was inter-alia directed as under:--

"In this view of the matter, this writ petition is disposed of with the direction to the respondents to consider the case of the petitioners for regularization of their services as per the judgment rendered by Hon"ble Supreme Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , so also, under the notification dated 27.2.2009 issued by the State Government, whereby, amendments were made in the Rules of 1999, within a period of two months from the date of receipt of certified copy of this order and pass appropriate order and if the petitioners are found suitable for regularisation then grant them all the consequential benefits."

7. Pursuant to the directions dated 8.5.2013, the respondents have held a meeting on 29.11.2013 and have resolved as under:--

8. A perusal of the minutes would reveal that the representation made by the petitioner has been principally rejected on two grounds -(i)- that there has been a break of service between 16.1.1993 to 8.9.2003 and (ii)- that the petitioner was not appointed against a vacant post.

9. Learned counsel for the petitioner submits that both the reasons recorded by the committee are ex-facie incorrect. It is submitted that once the termination of petitioner's services by order dated 14.1.1993 was held bad by the Labour Court and he was ordered to be reinstated back in service w.e.f. 16.1.1993, it cannot be said that there was a break in service. It is further submitted with regard to the appointment of the petitioner against vacant posts that after the order was passed by this Court ordering consideration of petitioner's representation, a factual report was sent by the Senior Deputy District Education Officer-cum-Block Elementary Education Officer, Nokha ("the Sr. D.D.O."), wherein a specific assertion was made that the petitioner was appointed against sanctioned vacant post and even on the date when the communication was sent on 1.3.2013, the post was vacant and therefore, both the reasons indicated by the committee are ex-facie contrary to the record and therefore, the same cannot be sustained.

10. It was further submitted that by the notification dated 27.2.2009, the Rajasthan Class-IV Service (Recruitment and other Service Conditions) (Amendment) Rules, 2009 ("Amendment Rules, 2009") came into force, whereby under sub-rule (4) of Rule 6 such cases were required to be dealt with and the action of the respondents being contrary to the said provision also cannot be sustained. It was prayed that the writ petition be allowed. The rejection of the petitioner's representation be set-aside.

11. Learned counsel for the respondent-State vehemently contested the submissions made by learned counsel for the petitioner.

12. It was submitted that a bare look at Annexure-1 i.e. order of appointment would reveal that the same nowhere indicates that the appointment was made against sanctioned vacant post; large number of illegal appointments were made which came to be set-aside by the State Government, however, the petitioner approached the Labour Court and an award was passed in his favour; this Court while deciding the writ petition filed by the petitioner, directed to follow the verdict in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , wherein specific directions have been given and as the petitioner does not fall within the parameters laid down by Supreme Court, rejection by the committee is justified.

13. It was claimed that the petitioner cannot rely on the judgment in the case of Kailash Chand Saini v. State of Rajasthan & Ors.: SBCWP No. 6271/1998 decided on 16.8.2011 at Jaipur Bench (Annex.12) as in the said case, directions were given to regularise the services while in the case of petitioner, directions have been given to consider the case in the light of judgment passed in the case of Uma Devi (supra). It was prayed that the writ petition filed by the petitioner be dismissed.

14. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

15. As noticed hereinbefore, while deciding the writ petition filed by the petitioner, the respondents were directed to consider the case of the petitioner for regularisation of his services as per the judgment in the case of Uma Devi (supra) as also under the Notification dated 27.2.2009 issued by the State Government, whereby amendments were made in the Rajasthan Class-IV Service (Recruitment and other Service Conditions) Rules, 1999. The committee, apparently, which is constituted under the Amendment Rules, 2009 considered the case of the petitioner and rejected the representation on two grounds as already noticed hereinbefore.

16. So far as the first ground regarding break in service of the petitioner is concerned, a bare look at the order passed by this Court in the writ petition filed by the State against the award passed by the Labour Court in favour of the petitioner, setting aside petitioner's retrenchment would reveal that this Court specifically directed as under:--

"Accordingly, this writ petition filed by the petitioners is partly allowed in the manner that the impugned judgment and order of the Labour Court, Bikaner dated 23.12.1998 (Annex. 1) so far as they relate to declaring the termination of the respondent No. 1 to be invalid and ordering his reinstatement with effect from 16.1.1993 are upheld, but on point of back wages, the respondent No. 1 is granted compensation of Rs. 10,000/- (Rs. ten thousand only) in place of full back wages and to that extent, the judgment and order of the Labour Court, Bikaner dated 23.12.1998 (Annex.1) stand modified accordingly."

17. The above direction clearly reveals that the petitioner was ordered to be

reinstated w.e.f. 16.1.1993 i.e. the date when he was relived pursuant to the termination order dated 14.1.1993 and therefore, it cannot be said that there was a break in service in so far as the petitioner is concerned.

18. The second ground indicated by the committee pertains to the aspect whether the petitioner was appointed against a vacant sanctioned post by order dated 21.3.1992. After the directions were issued by this Court to consider the case of the petitioner for regularisation, it appears that based on the requirements of the Amendment Rules, 2009, information was sought by the District Education Officer, Elementary Education, Bikaner from Sr. D.D.O., who gave the following information, which reads as under:--

(emphasis supplied)"

19. A perusal of the above factual information provided by the Sr. D.D.O. reveals that a specific assertion was made that the petitioner was appointed against sanctioned post; there was a break between 16.1.1993 to 8.9.2003 on account of termination of service by order dated 14.1.1993 and if the petitioner's service is reckoned from 23.1.1992, as on 10.4.2006, petitioner had completed 10 years; presently a post was vacant and that the petitioner in terms of notification dated 27.2.2009 was entitled for regularisation.

20. Learned counsel for the respondents submitted that the above information indicated in Annex.-9 cannot be relied on by the petitioner and it is only the indication in Annex.-1 (order of appointment) which should determine the nature of appointment.

21. It would be noticed that the petitioner in para 10 of the writ petition made specific assertion regarding the contents of Annex.-9 indicating the information submitted/supplied by the Sr. D.D.O.

22. In reply to para 10 of the writ petition, the following reply has been given by the respondents:--

"9. That the averments made in Para 10 are admitted to the extent of B.E.E.O., Nokha sending an inter departmental communication (Annex.9) to the District Education Officer, Bikaner. However, it is clarified here that a bare perusal of Annex.1 placed on record makes it clear that the petitioner was engaged on daily wages and not against the vacant and sanctioned post, therefore, the rest of the averments made in this paragraph are denied."

23. A perusal of the response by the respondents would reveal that sending of the communication has been accepted by the respondents, however, based on the contents of Annex.-1 it has been contended that the petitioner was not appointed against vacant and sanctioned post. Nowhere in the reply the respondents have denied the contents of Annex.-9 and the only submission has been that the same has been an inter departmental communication.

24. Once the contents of Annex.-9 have not been denied by the respondents,

even if the same is an inter departmental communication, as the said document specifically deals with the subject matter of the present controversy, wherein information was sought in terms of the requirements of Amendment Rules, 2009, the half-hearted denial by the respondents is of no avail and it cannot be said that what is contained in Annex.-9 cannot be relied on by the petitioner to substantiate his claim made in the writ petition.

25. So far as the contents of Annex.-1 are concerned, the same merely indicates that the petitioner, based on the directions of the Director, Elementary and Secondary Education Rajasthan, was appointed as daily rated employee at salary of Rs. 572/- per month and Rs. 22/- per day. The said contents by itself cannot negate the case of the petitioner that he was appointed against sanctioned post and the said document also by itself cannot negate the contents of document Annex.-9. The requirements of Amendment Rules, 2009 are that the person must have completed 10 years" service on 10.4.2006 and the appointment must have been qua the duly sanctioned posts.

26. Once, the above two requirements are fulfilled, which the committee vide Annex.-14 has wrongly held against the petitioner, the petitioner becomes entitled to relief under the provisions of the Amendment Rules, 2009 and in terms of the directions issued by this Court while deciding SBCWP No. 785/2006 on 8.5.2013.

27. So far as the submissions made by learned counsel for the respondents regarding the principles laid down in the case of Uma Devi (supra) are concerned, there cannot be any dispute that the principles laid down in the case of Uma Devi (supra) governs the field. However, as the respondents have under the directions of this Court dealt with the representation made by the petitioner in terms of the Amendment Rules, 2009 and have indicated two specific reasons for denying the relief claimed by the petitioner and as both the said reasons indicated have been found to be non-existent; the reliance placed by learned counsel for the respondents on judgment in the case of Uma Devi (supra) is of no avail.

28. In view of the above discussion, the writ petition filed by the petitioner is allowed. The minutes of the meeting dated 29.11.2013 (Annex.14) are quashed and set-aside and the respondents are directed to pass appropriate orders in view of the observations made hereinbefore and grant all consequential benefits to the petitioner within a period of three months from the date a certified copy of this order is placed before the respondents.