
(2003) 05 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2006 of 2003

Yamuna Shanker Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-05-2003

Acts Referred:

Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 —
Section 3(3)

Citation : (2004) 1 RLW 665

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Govind Mathur and A.K. Rajvanshy, for the Appellant; V.D. Yyas, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—Both the aforementioned writ petitions are being decided by this common order as in both of them identical questions of law and facts are involved,

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2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 2.5.2003 against the respondents with the prayer that by an appropriate writ, order or direction, the impugned order dated 25.4.2003 (Annex.8) passed by the respondent No. 2 Registrar, Mohanlal Sukhadiya University, Udaipur by which the services of the petitioner were not extended after 31.3.2002 and the impugned show cause notice dated 31.1.2003 (Annex.6) issued to the petitioner by the respondent No. 2 Registrar, Mohanlal Sukhadiya University, Udaipur be quashed and a set aside and the respondents be directed to absorb the petitioner on the regular vacant post of Assistant Professor.

3. The case of the petitioner as put forward by him in this writ petition is as follows:-

The petitioner after doing the L.L.M. in the year 1977 was appointed as Assistant Professor at College of Law in Udaipur University, later on, termed as Mohan Lal Sukhadiya University, Udaipur, on adhoc basis and worked upto 31.5.1983 and, thereafter, his services were discontinued.

The further case of the petitioner is that vide order dated 23.2.1984, he was again appointed on the post of Legal Assistant in the employment of the respondents on a consolidated pay of Rs. 1200/- per month.

The further case of the petitioner is that in the year 1988, he proceeded on leave for doing Ph. D. work at New Delhi and his leave was sanctioned upto 13.11.1988, but thereafter, his services were terminated vide order dated 3.3.1990 treating him absent from duties with effect from 14.11.1988.

The further case of the petitioner is that after completion of Ph. D. work, he returned to Udaipur in the month of January, 1991 and the petitioner was again appointed on the post of Legal Associate vide order dated 8.2.1991 (Annex.1), which reads as follows:-

"The Vice-Chancellor is pleased to appoint Shri Y.S. Sharma as Legal Associate, College of Law, Udaipur as stop-gap- arrangement upto 31.3.1991 or till a selected candidate joins on the post of Associate Professor, whichever is earlier on a fixed amount of Rs. 2070/- p.m. with effect from the date he joins his duties in pursuance of this order."

The further case of the petitioner is that since 8.2.1991, he is continuously working as Legal Associate in the employment of the respondents and his services were extended from time to time and lastly, the services of the present petitioner as well as petitioner Dr. D.K. Jain of Writ Petition No. 1984/2003 were extended upto 31.3.2003 through order Annex.2 dated 13/17.1.2003.

The further case of the petitioner is that he filed a writ petition No. 563/1989 before the Hon"ble Supreme Court in respect of seeking relief for equal pay for equal work and for creation of post etc. etc. and that writ petition was decided by the Hon"ble Supreme Court through judgment dated 16.9.1992, a copy of which is marked as Annex.3 and the last para of that judgment of Hon"ble Supreme Court is quoted here:-

"Before we part we must mention that counsel for the petitioners had urged that even though the petitioners have put in long years as Research Associates they are still treated as ad hoc employees with no security of tenure. We would leave it to the authorities to consider the feasibility" of preparing a scheme whereunder such Research Associates can be absorbed in the regular cadre of Research Assistants as and when vacancies arise. Since the educational requirements, process of selection and job- charts are almost identical such a scheme can be of mutual benefit to the employees as well as the University, the employees getting security of tenure and University getting experienced hands. We would expect the University to examine the feasibility of preparing such a scheme at an early

date."

The further case of the petitioner is that thereafter, the respondents passed an order dated 27/28.12.1999 (Annex.4) and allowed UGC pay scale to the petitioner.

However, in respect of fixation of pay, a show cause notice Annex.6 dated 31.1.2003 was issued to the petitioner by the respondent No. 2 Registrar, Mohanlal Sukhadiya University, Udaipur. A reply to the said show cause notice Annex.6 was filed by the petitioner through Annex.7 on 4.3.2003.

The further case of the petitioner is that though his services were extended upto 31.3.2003 through order Annex.2, but through impugned order Annex.8 dated 25.4.2003, the services of the petitioner were not extended beyond 31.3.2003 meaning thereby the services of the petitioner came to an end on 31.3.2003 and that order Annex.8 has been challenged by the petitioner on various grounds. Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondents and their case is that since the petitioner was appointed on adhoc basis and his services were not extended after 31.3.2003, therefore, he had no case and the order dated 25.4.2003 (Annex.8) by which the services of the petitioner were not extended beyond 31.3.2003 was served on the petitioner on 29.4.2003 through Annex.R/4 and the petitioner was relieved from the post of Legal Associate on 30.4.2003 and since then, he was not in service.

It was further submitted by the respondents that no doubt the adhoc services of the petitioner were extended from time to time, but his services were never regularised as Legal Associate nor he was ever appointed as Legal Associate in a regular manner for the obvious reason that there was no sanctioned post of Legal Associate in the budget of the University. Thus, the petitioner had no right to hold the post of Legal Associate after 31.3.2003.

It was further submitted by the respondents that the services of the petitioner were not extended after 31.3.2003 as per the Resolution No. 23 passed by the Board of Management of the University in its meeting held on 21.4.2003 and a copy of the said Resolution is marked as Annex.R/7.

It was further submitted by the respondents that the said Resolution No. 23 (Annex.R/7) was passed keeping in view the fact that the Rajasthan Universities Teachers & Officers (Selection for Appointment) Amendment Act, 2003 (hereinafter referred to as the "Amendment Act of 2003") was passed on 5.4.2003 and the existing Sub-section (3) of Section 3 of the Rajasthan Universities Teachers & Officers (Selection for Appointment) Act, 1974 (hereinafter referred to as the Act of 1974) under which the adhoc appointment of the petitioner was made, deleted by the Amendment Act of 2003. A copy of the said Amendment Act of 2003 by which Sub-section (3) of Section 3 of the Act of 1974 was deleted is marked as Annex.R/8.

For convenience, Sub-section (3) of Section 3 of the Act of 1974 is quoted here:-

"3. Restrictions on appointments of teachers and officers.-(1).

(2)..... (3) Nothing therein contained shall apply to the appointment of a teacher or an officer as a stop-gap arrangement for a period not exceeding one year or to the appointment of a part time teacher or of a teacher or officer in the pay scale lower than that of Lecturer or Assistant Registrar respectively."

It was further submitted by the respondents that since Sub- section (3) of Section 3 of the Act of 1974, under which the adhoc appointment of the petitioner was made, has been deleted through Amendment Act of 2003 (Annex.R/8), therefore, the respondents could not extend the adhoc services of the petitioner as Legal Associate and that is why, his services were not extended after 31.3.2003 through order Annex.8 dated 25.4.2003. Hence, the writ petition filed by the petitioner be dismissed.

4. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and gone through the materials available on record.

5. There is no dispute on the point that the petitioner was appointed before 1991 in the employment of the respondents, but this Court is not concerned for earlier appointments, but through order Annex.1 dated 8.2.1991, the petitioner was appointed as Legal Associate on a fixed amount of Rs. 2070/- per month and his services were extended from time to time and lastly his services were extended upto 31.3.2003 through Annex.2 meaning thereby he remained in the employment of the respondents for more than 11 years.

6. The other aspect of the case is that in the writ petition filed by the petitioner before the Hon"ble Supreme Court, the Hon"ble Supreme Court through judgment Annex.3 has clearly observed that though the petitioner had put in long years as Research Associate in the employment of the respondents, still he was treated as adhoc employee with no security of tenure and, therefore, the respondents were directed to prepare a scheme whereunder such Research Associates could be absorbed in the regular cadre of Research Assistants as and when vacancies arise.

7. In my considered opinion, by passing the impugned order Annex.8 dated 25.4.2003, the respondents have clearly violated the directions given by the Hon"ble Supreme Court through judgment Annex.3. This is another aspect of the matter.

8. The question for consideration is whether in the above facts and circumstances, the impugned order Annex.8 dated 25.4.2003 by which the services of the petitioner were not extended beyond 31.3.2003 can be justified or not.

9. Before deciding this question, it may be stated here that this Court is aware

that the Educational Authorities should be left without interference from the Court and other outside agencies in administering their disciplinary jurisdiction over the matters of examinations and appointments.

10. The interference in matters of University through writ jurisdiction should be made only when;-

(1) That there is a patent and undoubted violation of a provision in the statute or regulation or ordinance governing the particular subject;

(2) That this non-compliance or violation should have directly resulted in a substantial restriction of the service or benefit which a citizen is entitled to get from the University; and

(3) That the direction or relief sought should be such that it should not add to the inconvenience suffered by the public at large, disproportionate to the injustice or inconvenience that is sought to be remedied.

11. In the present case, as already stated above, the petitioner was appointed on adhoc basis and his adhoc services were extended from time to time and he remained in the employment of the respondents as such for more than 11 years.

12. No doubt a person appointed temporarily on adhoc basis as a rule has no right to the post and further he will have no right to be absorbed in service and thus, as a matter of course, he cannot claim regularisation, but that rule is subject to one exception that if the adhoc/casual/temporary appointments were made and the policy of ad hocism is followed for a long period without filling up those posts on a regular basis then the Courts will interfere. This is because of the simple reason that an employer cannot follow policy of ad hocism for a long period as it is not sound personnel policy and would lead to breach of Articles 14 and 16 of the Constitution of India. In this respect, the decision of the Hon''ble Supreme Court in *Rattanlal v. State of Haryana* (1), may be referred to.

13. Apart from this, I am clearly of the opinion that when a person is allowed to function for more than 11 years even on adhoc basis, it would be certainly unjust to hold that he has no sort of claim to the post which he was holding.

14. The Hon''ble Supreme Court in *Rudra Kumar Sain and Ors. v. Union of India and Ors.* (2), has observed that if a person possessing requisite qualifications is allowed to continue in service for fairly long period, his appointment cannot be said to be stop-gap or fortuituous or ad hoc.

15. It may be stated here that in the present case, there is no dispute on the point that the petitioner is having requisite qualifications for the post for which he was appointed and the impugned order by which his services were not extended, was not passed on the ground that he was not doing his job sincerely and satisfactorily. Therefore, so far as the work performance of the petitioner is concerned, there is no stigma on his part.

16. This Court in *Dr. Parvat Singh v. State of Raj. and Ors.* (3), has observed that

the regularisation can be made under the statutory rules and in case, there are no rules, the court can issue such a direction if it is satisfied that continuation of the employees for an unreasonable long period on adhoc basis is arbitrary and requires redressal as being violative of the mandate enshrined in Article 14 of the Constitution of India to restrain from exploiting the helplessness of the employees.

17. So far as the present case is concerned, since the petitioner is doing the job as Legal Associate in the employment of the respondents for fairly long period for more than 11 years, therefore, his appointment though on the face of it appears to be adhoc appointment, but it should not be treated as adhoc appointment and not only this, in the present case, the Hon"ble Supreme Court through judgment Annex.3 had directed the respondents to prepare a scheme for absorbing such type of persons meaning thereby the Hon"ble Supreme Court has expressed the intention that such persons should be absorbed and they should not be left in lurch.

18. Thus, the action of the respondents not extending the services of the petitioner after 31.3.2003 through order Annex.8 dated 25.4.2003 on the ground that he was appointed on ad hoc basis cannot be justified and legal right of the petitioner has been infringed by not extending the services of the petitioner after 31,3.2003 and therefore, the impugned order Annex.8 dated 25.4.2003 cannot be sustained.

19. So far as the deletion of Sub-section (3) of Section 3 of the Act of 1974 by the Amendment Act of 2003 is concerned, that amendment would not affect the rights of the petitioner as it came into force with effect from 1st Jan. 2003 and prior to that, the petitioner has remained in the employment of the respondents for more than 11 years.

20. Therefore, in the above background, the argument of the respondents that the present case is a case of non-extension of service and, therefore, the petitioner is not entitled to relief, cannot be accepted and thus, the law laid down by this Court through judgment dated 4.1.2001 passed in S.B. Civil Writ Petition No. 88/1999 would not be helpful to the respondents.

21. For the reasons stated above, since legal right of the petitioner has been infringed by not extending the services of the petitioner after 31.3.2003 through impugned order Annex. 8 dated 25.4.2003, therefore, the petitioner is entitled to relief under Article 226 of the Constitution of India and thus, this writ petition deserves to be allowed and the impugned order Annex.8 dated 25.4.2003 is liable to be quashed and set aside and the petitioner is entitled to continue in service as Legal Associate in the employment of the respondents and further, the impugned show cause notice Annex.6 dated 31.1.2003 is also liable to be quashed and set aside.

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22. So far as the facts of this case is concerned, the petitioner was appointed as Legal Associate on adhoc basis on fixed emolument of Rs. 1500/- through order Annex.1 dated 7/8.3.1990 and his services were extended from time to time and lastly his services were extended upto 31.3.2003 through Annex.2 to writ petition No. 2006/2003 and through impugned order (Annex.3) dated 25.4.2003, the services of the petitioner were not extended beyond 31.3.2003 and that order Annex.3 has been challenged by the petitioner and earlier to this, the petitioner filed a writ petition before this Court being S.B. Civil Writ Petition No. 1214/1998 and the same was disposed of by this Court through order dated 7.2.2002 in terms of the judgment of the Hon''ble Supreme Court Annex.3 of Writ Petition No. 2006/2003.

23. This writ petition also raises the same controversy which has been decided above in S.B. Civil Writ Petition No. 2006/2003 and for the reasons given above in S.B. Civil Writ Petition No. 2006/2003, this writ petition also deserves to be allowed and the impugned order Annex.3 dated 25.4.2003 is liable to be quashed and set aside and the petitioner is entitled to continue in service as Legal Associate in the employment of the respondents.

In the result, both the aforementioned writ petitions filed by the petitioners are allowed and the impugned orders dated 25.4.2003 (Annex.8 to writ petition No. 2006/2003 and Annex.3 to writ petition No. 1984/2003) passed by the respondent No. 2 Registrar, Mohanlal Sukhadiya University, Udaipur are quashed and set aside and the respondents are directed to take the petitioners back in service as Legal Associates, with all consequential benefits. The respondents are further directed to absorb the petitioners on regular posts from the date when vacancies arise, as directed by the Hon''ble Supreme Court through judgment dated 16.9.1992 (Annex.3 to writ petition No. 2006/2003). The impugned show cause notice dated 31.1.2003 (Annex.6 to writ petition No. 2006/2003) is also quashed and set aside.

No order as to costs.