

Rakesh Kumar Vs. State of Raj. and ors

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Court : Rajasthan Jodhpur

Decided On : May-14-2014

Appellant : Rakesh Kumar

Respondent : State of Raj. and ors

Judgement :

S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 1/16 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. & (2) S.B. Civil Writ Petition No.10567/2012 Heera Ram Vs. State of Rajasthan & Ors. & (3) S.B. Civil Writ Petition No.11752/2012 Parmeshwar Patidar Vs. State of Rajasthan & Ors. & (4) S.B. Civil Writ Petition No.11764/2012 Bheemraj Maida Vs. State of Rajasthan & Ors. & (5) S.B. Civil Writ Petition No.341/2013 Vinod Kumar Vs. State of Rajasthan & Ors. & (6) S.B. Civil Writ Petition No.527/2013 Rakesh Kumar Vs. State of Rajasthan & Ors. Date of Order :::

14. h May, 2014 PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI
REPORTABLE Appearance: Mr. Devesh Bohra, for the petitioners. Mr. B.L. Bhati,
Govt. Counsel. -- BY THE COURT:

1. These writ petitions involving similar controversy are being decided by this common order, however, the facts are illustratively taken from SBCWP No.1460/2013-Sandeep Kumar S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 2/16 Babal Vs. State of Rajasthan. The petitioner, Sandeep Kumar Babal, was initially appointed on probation for a period of two years as Teacher Grade-III vide the order (Annex.P/1) dated 14.07.2010 in the pay scale of Rs.5200-20200 with the grade pay of Rs.2800/- after being duly selected by the Rajasthan Public Service Commission in pursuance of the Advertisement No.1 dated 20.06.2008 and as modified by Advertisement No.2 dated 02.09.2008.

2. The said selection process, however, became matter of judicial scrutiny by this Court and in the DB Civil Special Appeal (W) No.207/2013- Vinita Sharma & Ors. Vs. State of Rajasthan & Ors. (decided on 02nd August, 2013) in a judgment authored by Hon'ble the Chief Justice, the Division Bench of this Court put to rest the said controversy, which occurred on account of revision of merit list upon answer key for the said examination by multiple choice questions found to be incorrect in respect of one question No.20 in Series-A paper, which was quoted by the Division Bench in the said judgment and consequently the said revision of merit list resulted in the ouster/termination of the persons like the present petitioners since in the revised merit list, they did not find their names having been pushed down. The Division Bench of this Court held that the revised merit list had to be given logical and consequential effect and, therefore, the termination/ouster of such persons like the present petitioners, was not liable to be interfered with. The relevant portion S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 3/16 of the judgment of the Division Bench in the case of Vinita Sharma (supra) is quoted herein below: - The sequence of events constituting the factual backdrop is not in dispute. Noticeably, it is not the case of either of the parties that the judgments delivered in Hari Singh & Ors. (supra) and Meenakshi Sharma (supra) have, as on dates, being interfered with or modified by any higher forum. Though there is no specific direction in Hari Singh & Ors. (supra), for ouster of the candidates earlier selected and appointed, but whose means do not find place in the revised merit list, in our estimate, having regard to the nature of the

exercise directed, it was a contemplated and logical consequence as a corollary thereof. In Meenakshi Sharma (supra), the plea, amongst others, that the revision of the merit list ought to be confined only to the writ petitions, was rejected in categorical terms. That no appointment of any candidate beyond the number of posts advertised in the selection process, has been recorded in emphatic terms. Apart from the fact that the appointment orders of the appellant/writ petitions did contain a stipulation that the same would be subject to the orders passed in the writ petitions filed before this Court, there is no semblance of any evidence that the 1688 posts said to be vacant as on 01.01.2013 or any number therefrom, had been within the purview of the selection process involved, but had remained unfilled S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 4/16 even after the publication of the revised merit list. The reference of these vacancies therefore, is of no decisive significance. If these vacancies do not relate to the selection process in hand, accommodation of any unsuccessful candidates therein against the same, would not be permissible in law, as it would then tantamount to recruiting persons against posts, not thrown open to be competed for by the available, eligible and even more meritorious candidates. This would run contra to the constitutionally enjoined norms governing the process of recruitment to public service. As the litmus test, is and ought to be merit and merit alone exhibited by the performance of the candidates in a public participatory process initiated for appointment in public office, there cannot be any compromise with this imperative precept. The learned Single Judge in Meenakshi Sharma (supra) as well, left it to the discretion of the government to examine as to whether it is possible to accommodate/retain 171 candidates excluded from the revised merit list. As appointments have to be essentially made only against the posts advertised and for which selection had been held, in the attendant facts and circumstances, in our view, no judicial mandate, as sought for to retain the appellants/writ petitions in service, is warranted. xxx xxx Having regard to the facts involved in Grijesh S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 5/16 Shrivastava & Ors. (supra), we are constrained to observe that this decision as well, is of no assistance to the appellants. As a comparative

assessment of the merit of the candidates in the selection process in hand had been undertaken afresh, as per the decision in Hari Singh & Ors. (supra), and as a consequence thereof, the appellants/writ petitioners could not make their mark to stake their claim against the vacancies, for which the process had been contemplated and conducted, we are constrained to hold that no writ, order or direction, in the exercise of our power of judicial review to continue them in service, in the singular facts and circumstances of the case, ought to be issued. The appeal is thus dismissed. The stay application also stands rejected. This notwithstanding, it would always be open for the respondents, if so advised, to take appropriate steps in terms of the observations made in Meenakshi Sharma (supra). We however, make it abundantly clear that this parting observation should not be construed to be a direction to the State respondents to retain the appellants in service.

. Sd/- Sd/- (P.K. LOHRA), J.

(AMITAVA ROY), CJ.. 3. Though, the SLP No.25894/2013-Munna Ram & Ors. Vs. State of Rajasthan & Ors., is said to be pending before the Hon'ble Supreme Court, the present writ petitions filed by the S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 6/16 petitioners are little in different context and can be decided by this Court even without waiting for the final judgment of the Apex Court in the aforesaid special leave petition. In the aforesaid SLP, on 20.09.2013 the following interim order has been passed by the Hon'ble Apex Court: - Issue notice on the special leave petition as also on the petitioners' prayer for interim relief, returnable in six weeks. Dasti, in addition, is permitted. In the meanwhile, operation of the impugned order of the Division bench of High Court shall remain stayed. It shall be the petitioners' duty to serve the respondents before the next date of hearing, failing which the interim order passed today shall stand automatically vacated.. 4. As a consequence of the revision of the merit list, the probation of the present petitioner who was appointed under the order (Annex.P/1) dated 14.07.2010, was discharged and the appointment was cancelled vide the order (Annex.P/3) dated 17.03.2011. The said order is also quoted herein below for ready reference: - , , 6, , .. , : // III/2009-10/5700

17.03.2011 % %, ' 1' "/ /2008- 09/1125 20.06.2008 + 2/2008- S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 7/16 09 02.09.2008 -III (%-25) 6 ' % < 21643 14.07.2010 % @A C < G G % I C . . ' 12651/2009 ' % % G 17.06.2010 % C G % % % % ' % 6(8) ' "/ III/ /08/4045 21.01.2011 % M G ' M N ' O ' M III < % O : ' M % % C < % A O Sd/- , , " 5. However, the petitioner in another selection process held for a higher post of Teacher Grade II (not Teacher Grade III on which he was earlier appointed on 14.07.2010) vide the order (Annex.P/8) dated 14.09.2012 after his termination as Teacher S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 8/16 Grade III vide Annex.P/3 dated 17.03.2011. The petitioner's name in the appointment order (Annex.P/8) dated 14.09.2012 appears at Serial No.4 and he was posted as Teacher Grade II at Loroli Kallan, Deedwana, District Nagaur, and he joined his services in pursuance of the said order in the pay scale of Rs.9300-34800 with the grade pay of Rs.3600/- and is continuing to serve the State Government as Teacher Grade II as of now.

6. In the present writ petition, the petitioner has sought the relief to the effect that the respondent State should be directed to treat the appointment of the petitioner as Teacher Grade II in continuity with his earlier appointment as Teacher Grade III earlier made on 14.07.2010, which was terminated on 17.03.2011 and if it is so treated, the benefit of pay protection, continuity of service period etc. deserve to be given to these petitioners even upon their fresh appointment in different selection process held for the post of Teacher Grade II and having been appointed as such Teacher Grade II vide the order (Annex.P/8) dated 14.09.2012. The prayers made by the petitioner in CW No.1460/2013-Sandeep Kumar Babal Vs. State of Rajsthan & Ors, are quoted herein below: It is, therefore, most humbly and respectfully prayed that this writ petition may kindly be allowed and by an appropriate writ, order or direction: (i)the respondent No.3 may kindly be directed to issue the No Objection Certificate while fixing S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 9/16 the salary of the petitioner in the regular pay scale of the post of Teacher Grade III and relieve the petitioner

to join the post of Senior Teacher (Science). (ii)the Dy. Director, Secondary Education, Ajmer Division, Ajmer may kindly be allow the petitioner to join his duty on the post of Senior Teacher (Science) while considering his past service on the post of Teacher Grade III. (iii)Any other appropriate writ, order or direction which this Hon'ble Court deems just and proper may kindly be passed in favour of the petitioner.. 7. In the reply filed by the respondent State in the present writ petition, these averments have been controverted and Mr. B.L. Bhati, learned Govt. Counsel appearing for the State also submitted that there is no connection between the earlier appointment of the petitioner as Teacher Grade III vide order dated 14.07.2010, which was a different selection process and the present appointment of the petitioner as Teacher Grade II under different selection process held under different Advertisement dated 10.02.2012 and the appointment order (Annex.P/8) dated 14.09.2012 is not in continuity or promotion of the petitioner from Teacher Grade III to the post of Teacher Grade II and, therefore, no such relief can be claimed as aforesaid and granted to the petitioner. S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 10/16 8. Learned Govt. Counsel also submitted that even assuming for arguments' sake, while not being so, that the Division Bench order of this Court, quoted above, is to be reversed by the Hon'ble Apex Court in the SLP, referred to supra, even then no continuity of appointment of the present petitioner as Teacher Grade III under the appointment order (Annex.P/1) dated 14.07.2010 can be presumed and no benefit of continuity of service can be given to the petitioner connecting his appointment in fresh selection process as Teacher Grade II under the order Annex.P/8 dated 14.09.2012. He, therefore, urged that the writ petition deserves to be dismissed.

9. The facts of other connected cases are stated to be similar as both the learned counsels submitted. In two of the writ petitions, being SBCWP No.10567/2012- Heera Ram Vs. State of Rajasthan & Ors. and SBCWP No.527/2013- Rakesh Kumar Vs. State of Rajasthan & Ors., the petitioners were allowed to join the duties as Teacher Grade II under the interim order of a coordinate bench of this Court. For the purposes of ready reference, the order dated 08.10.2012 passed by a coordinate bench of this Court in SBCWP No.10567/2012- Heera Ram Vs. State of Rajasthan & Ors. is quoted herein below: - By an order dated 14.07.2010,

appointment was accorded to the petitioner as Teacher Grade-III (General) under the Directorate of Sanskrit Education, Government of Rajasthan, Jaipur. In pursuant to the S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 11/16 order aforesaid, he joined the services on 22.07.2010. Subsequent thereto, by an order dated 17.03.2011, the Director, Sanskrit Education, Government of Rajasthan, Jaipur, cancelled the order of appointment order dated 14.07.2010. Being aggrieved by the same, the petitioner alongwith 32 other similarly situated persons preferred a petition for writ (S.B. Civil Writ Petition No.2581/2011) before this Court. While issuing notices to the respondents, this Court by an interim order directed the respondents not to terminate the petitioner and other similarly situated persons from service, who were employed under the order dated 14.07.2010. In pursuant to the interim direction aforesaid, the petitioner is working with the respondents as Teacher Grade III (General). During the pendency of the writ petition aforesaid, the petitioner faced the process of selection initiated by the Government of Rajasthan by holding a competitive examination through the Rajasthan Public Service Commissioner, Ajmer, for the purpose of appointment to the post of Teacher Grade-II. As per the averments contained in the writ petition, the petitioner has been selected for appointment and the Deputy Director (Secondary), Department of Education, Government of Rajasthan, Jodhpur, under an order dated 14.09.2012 has instructed him to join service on the post of Teacher Grade-II (Senior Teacher) In Pay Band-2 (9300-34800) with Grade Pay Rs.3600/-. In pursuant to the order aforesaid, the S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 12/16 petitioner was required to join the duties upto 05.10.2012. His predicament is that the respondent No.3 and 4 are not relieving him from the post of Teacher Grade-III (General) to join the service as Teacher Grade-II (Senior Teacher) in Department of Education (Secondary). It is submitted by learned counsel for the petitioner that on 04.10.2012, he has supplied a copy of the writ petition to learned standing counsel for the Department of Education in pursuant to the oral instruction given by the court. Learned counsel for the respondent, Ms. Meenu Purohit, does not dispute the aforesaid. She wants some time to file reply to the writ petition. Time prayed

for is allowed. Put up on 30.10.2012. In the meanwhile, the respondent No.3 and 4 are directed to relieve the petitioner from the post of Teacher Grade-III (General) to join the duties with the respondent No.5 as Teacher Grade-II (Senior Teacher), subject to final decision of S.B. Civil Writ Petition No.2581/2011. The Deputy Director of Education (Secondary), Jodhpur Zone, Jodhpur is directed to permit the petitioner to join the duties on being relieved by respondent No.2 and 3.. 10. I have heard the learned counsel for the parties at length and perused the record including the judgment of the Division Bench S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 13/16 of this Court in the case of Vinita Sharma (supra).

11. In the considered opinion of this Court, the present writ petition is misconceived and deserves dismissal. Merely because the petitioner was appointed as Teacher Grade III in the selection process held in pursuance to the Advertisement dated 20.06.2008 vide the order (Annex.P/1) dated 14.07.2010, which selection process was subject-matter of judicial scrutiny by this Court on account of some incorrect answers in the answer key in the examination held by the RPSC and the merit list has to be revised upon the correct answer being given effect to, to its logical end, it cannot be said that the present petitioner who was appointed as Teacher Grade III on 14.07.2010 purportedly on the basis of wrong answer given to that particular question under the previous merit list and whose services were terminated as Teacher Grade III on 17.03.2011 upon revision of merit list to give effect to the correct answer for that particular question, it cannot be said that the petitioner's irregular appointment on the basis of wrong answer deserves to be treated as a regular appointment so as to give him the benefit of continuity of the period of service under that appointment order (Annex.P/1) dated 14.07.2010.

12. On the other hand, the Division Bench of this Court by which judgment this Court sitting singly is undoubtedly bound, only subject to final decision of SLP by the Hon'ble Apex Court of course, S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 14/16 the petitioner's earlier appointment was clearly

liable to be terminated upon his name being not included in the revised merit list and that is what was done by the Director of the Sanskrit Education, Jaipur vide the order (Annex.P/3) dated 17.03.2011.

13. Luckily and incidentally, the petitioner in a fresh and different selection process, could be selected and secured appointment as Teacher Grade II, on a higher post and in the higher pay scale, and was so appointed vide the order (Annex.P/8) dated 14.09.2012, but he cannot be permitted to claim the benefit of continuity of his past service as Teacher Grade III, which was for all purposes terminated vide the order (Annex.P/3) dated 17.03.2011, only subject to the decision of SLP by the Hon'ble Supreme Court. The two selection process in question have no connection whatsoever and the present writ petition is founded on a wholly misconceived notion that had the petitioner been continued in the post of Teacher Grade III, upon his irregular/illegal appointment on the basis of wrong answer also been upheld finally as per Hon'ble Supreme Court decision, which is awaited as of now and, therefore, he should be held entitled to the benefit of continuity of service, is a misconception, to say the least.

14. The new appointment in the fresh selection process as Teacher Grade II under order (Annex.P/8) dated 14.09.2012 of the present petitioner has no connection with the previous appointment S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 15/16 as Teacher Grade III. During the probation period as Teacher Grade III, in which the petitioner was at time of his termination on 17.03.2011, no lien can be said to have been created in favour of the petitioner on the post of Teacher Grade III in pursuance of earlier appointment order (Annex.P/1) dated 14.07.2010. He was not even a regularly appointed Teacher Grade III and the very purpose of keeping a new appointee on probation for a period of two years is to assess not only his/her performance but the regularity of the appointment itself also. Since, the selection process in question became the subject-matter of the litigation and the judicial scrutiny, as aforesaid, the rights of the petitioner as Teacher Grade III may remains subject to that judicial scrutiny finally up to the Hon'ble Supreme Court, but that may not be of any consequence or benefit to the subsequent appointment of the petitioner as Teacher Grade II

under a new and different selection process under order (Annex.P/8) dated 14.09.2012.

15. The appointment of the petitioner on the post of Teacher Grade II under the order (Annex.P/8) dated 14.09.2012 is not a promotion given to him from the post of Teacher Grade III in the present case. It is a fresh appointment in pursuance of a different selection process and as already stated above, the two different selection process have no connection between them, which alone could furnish the basis for the relief claimed in the present writ S.B. Civil Writ Petition No.1460/2013 Sandeep Kumar Babal Vs. State of Rajasthan & Ors. Along-with connected 5 writ petitions Order dated 14/05/2014 16/16 petition, namely, of pay protection and continuity of service etc. No such fact situation is available here and consequently, the relief as claimed in the present writ petition cannot be given to the petitioners.

16. In view of above discussion, the writ petitions preferred by the petitioners are found to be devoid of any force and the same deserves to be dismissed.

17. The petitioners are dismissed accordingly. No costs. A copy of this order be sent to the concerned parties forthwith. (Dr. VINEET KOTHARI), J.

DJ/- 20

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