

**Mahesh Vs. State and ors.**

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**Court :** Rajasthan

**Decided On :** Jul-17-1998

**Reported in :** 1999(1)WLN230

**Judge :** B.J. Shethna and; A.K. Singh, JJ.

**Appeal No. :** DB Special Appeal (Writs) Nos. 569, 570, 571, 572, 573, 574, 575, 576, 577, 579, 604, 605, 616, 618,

**Appellant :** Mahesh

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** Shri. Mridual, Shri. M.S. Singhvi

**Disposition :** Appeal dismissed

**Judgement :**

**B.J. Shethna, J.**

1. These appeals are disposed of by this common order as it is arising out of the common judgment dated 27th May, 1998 delivered by the learned Single Judge dismissing main writ petition No. 884/98 and allied matters mentioned in the scheduled annexed to the judgment.

2. Learned Counsel Shri Mridul and Shri M.S. Singhvi, appearing for the appellants-original petitioners in all these appeals vehemently submitted that the learned Single Judge has committed a grave error in dismissing all writ petitions. Respondent, Director, College Education, Government of Rajasthan, Jaipur, issued an advertisement on 6.10.1997 for temporarily filling up the posts of Teachers. The petitioners applied for the same and after due selection, they were given fixed term appointment upto 31st March, 1998. Thereafter, on 17.12.1997, Rajasthan Public Service Commission advertised the posts of Teacher for regular appointment. Several persons have applied including the petitioners for the regular selection pursuant to the advertisement issued by the R.P.S.C. It is just before their temporary appointments come to an end on 31st March, 1998 that the petitioners filed separate petitions before this Court and contended that the respondents be restrained from depriving the petitioners of the emoluments for the period of summer vacation and till the regular appointments are made in pursuance to the selection made by R.P.S.C. they should be continued in service. It was also contended that the appointment order of the petitioners fixing the term upto 31st March, 1998 was illegal, bad in law; therefore, liable to be set aside. However, the respondents' case was that the petitioners were given appointment for a fixed period upto 31st March, 1998 or till regular candidates selected by the R.P.S.C. are made available, whichever ever was earlier, therefore, they have no right to continue after 31st March, 1998 as knowing fully well the conditions mentioned in the advertisement and in the appointment order, they accepted the employment. Initially, the learned Single Judge while issuing notice to the other side, granted interim orders in favour of the petitioners and pursuant to that interim order, they continued in service even after 31st March, 1998. However, the learned Single Judge did not agree with the submissions made by the learned Counsel for the petitioners at the time of final hearing, therefore, dismissed all the petitions and refused to continue the interim orders passed in their favour. Aggrieved by that common order of dismissing the writ petitions and refusing to extend the interim relief, the appellants have filed separate appeals. In some cases, the learned Vacation Judge granted interim order and in some cases not.

3. It was contended by learned Counsel Shri Mridul as well as Shri M.S. Singhvi, appearing for the appellants that granting the appointment till 31st March, 1998

was not permissible, therefore, their services could not have been terminated on 31st March, 1998. However, it was contended by learned Counsel Shri M.R. Singhvi for the respondents that in the advertisement dated 6.10.1997 it was clearly mentioned that their appointments will be for a period of four months and knowing fully well that they would not be given appointment for more than four months, they accepted the temporary appointment, upto 31st March, 1998. The said appointment was not in violation of any rule rather it was in accordance with the Rules. It was submitted that having accepted the terms of appointment, they cannot be permitted to challenge the same on the eve of expiry of that period. He submitted that there was no compulsion on them to accept the appointment orders. They could have refused to accept the appointment if they were not prepared to accept the appointment upto 31st March, 1998.

4. The fact which is not in dispute is that the appointment of the appellants was purely on temporary and ad hoc basis and that too for a fixed period upto 31st March, 1998 and it was made as per Rule 29 of the Rajasthan Educational (Collegiate Branch) Service Rules, 1986 (for short, 'the Rules'). Proviso (1) to Rule 29 clearly provides that such an appointment will not be continued beyond a period of one year without referring the case to the Commission for concurrence where such concurrence is necessary and shall be terminated immediately on its refusal to concur. Second proviso to Rule 29 provides for the temporary appointment which should be either upto the end of academic session or till a regular candidate selected by the Commission is made available whichever is earlier.

5. In the instant cases, temporary appointments were made under Rule 29 for a fixed period upto 31st March, 1998. The appellants would not have even continued if the regular selected candidates from the R.P.S.C. were made available before 31st March, 1998. In case regular selected candidates from the R.P.S.C. were not made available then their services would have come to an end on 31st March, 1998 as per the appointment orders itself. It is also not in dispute that for the regular recruitment through R.P.S.C., a request had already been sent on 1.9.1997. In fact, the R.P.S.C. also advertised the post on 17.12.1997 and the applications were required to be submitted to it upto 9.2.1998. Almost all the

appellants had applied for the said post pursuant to that advertisement. The selection and appointments were in process but before 31st March, 1998 the petitioners filed petitions and obtained stay against their termination, therefore, no regular appointment could be made till today.

6. Learned Counsel, Shri Mridul and Shri Singhvi for the appellants, relying upon the Supreme Court judgments reported in (1) Rattanlal and Ors. etc. v. State of Haryana and Ors. : (1986)ILLJ23SC (2) Rajbinder Singh v. State of Punjab and Ors. JT 1998 (1) S.C. 31 & of this Court reported in (3) Mrs. Anita Kothari v. State of Rajasthan 1991 WLR (S) Raj. 124 and (4) Lecturers Forum v. State of Rajasthan 1993 (1) WLC (Raj.) 654 submitted that the temporary appointment of the appellants till 31.3.1998 was bad and they should be allowed to continue till the regular candidates from the R.P.S.C. are made available. It was submitted by them that mere acceptance of the appointment orders would not go against the appellants. Therefore, it was submitted that this Court may allow all these appeals and set aside the order passed by the learned Single Judge and allow the petitions filed by the petitioners and direct the respondents to continue the appellants in service till the regularly selected candidates from the R.P.S.C. are made available for appointment.

7. Before dealing with the submissions made by the learned Counsel for the appellants, brief facts of the aforesaid cases are required to be mentioned. In case of Mrs. Anita Kothari (supra), petitioner Mrs. Anita Kothari filed a petition before the Division Bench of this Court as the Public Service Commission was not advertising the post and every year she had to appear before the temporary selection committee and for seven years she had to appear before the committee which caused lot of hardship to her and in 1989 she was relieved from service at the end of academic session. In case of Lecturers Forum (supra), initially the writ petition was filed directly before the Supreme Court and the Supreme Court directed to treat that petition as a petition filed under Article 226 of the Constitution of India before the High Court and accordingly transferred it to this Court. In that case, about 18 to 21 regular posts of Lecturers were available but only 5 regular appointments were made and the remaining posts were filled in by making temporary appointments for a few months till the end of academic year. In Rattan

Lal's case (supra), a substantial number of ad hoc appointments were made in the vacancies existed, which remained unfilled for about 3 to 4 years and no steps were taken for making regular appointment. Under the circumstances, the Supreme Court directed the State Government of Harayana to take immediate steps to fill up the posts of Teachers in accordance with the relevant rules and allowed those teachers, who were working on the said post, till the vacancies were duly filled up. Rajbinder Singh's case (supra) was allowed by the Supreme Court by a brief order, which we would like to reproduce, which is as under:

1. The petitioner is an ad hoc lecturer. He was appointed for a term. His grievance is that he is likely to be removed from service so that he may be deprived of his vacation salary. It appears that the practice of the respondents is to appoint fresh people every time.

This Court in a number of writ petitions (W. P. 125/87 and 317/1987) has allowed the ad hoc teachers to continue in service while person regularly selected by the P.S.C. are appointed to the posts. The respondent ought to extend the benefit of that order to all other ad hoc lecturers. It is not proper to drive them to this Court for securing similar relief. We make it clear that the petitioner and other similar ad hoc teachers are entitled to the benefit of the order of this Court made in the aforesaid writ petition.

8. Now, we will come to the facts of the present cases. The facts in these cases are totally different than the facts of the above cases All the appellants-petitioners were given temporary appointment for a fixed period upto 31st March, 1998 or till a regular candidate selected by the RPSC is made available, which ever was earlier. The appointments were made in pursuance to the advertisement issued by the respondent No. 2, Director on 6.10.1997 wherein it was clearly mentioned that the appointment would be for four months. The RPSC had also advertised the post on 19.12.1997 pursuance to which the applications were required to be submitted to the RPSC on or before 9.2.1998. In Pursuance to that, the appellants had applied for the post. The process of selection was also started when the appointments were to come to an end on 31.3.1998 and just few days before 31.3.1998, all the petitioners filed writ petitions before this Court and obtained stay orders. Under the

circumstances in our humble opinion, none of the aforesaid judgments of this Court or of the Supreme Court would be applicable on facts of these cases.

9. At this juncture, a submission was made by the learned Counsel for the appellants that so far no regular candidate from RPSC is made available for the appointment, therefore, till the regular candidate is available, the appellant should be continued in service. Merely because the regularly selected candidates from RPSC are not made available that fact would not go in favour of the appellants for continuing them in service on the post of Lecturer after their appointments came to an end way back on 31.3.1998. As per the terms of appointment orders, the appointment of the appellants were for a fixed period upto 31st March, 1998 and in our opinion, they had no right to continue on the post even for a day after 31st March, 1998. We must also say that it is because of the litigation filed by them first before the learned Single Judge and then before Division Bench, the selection and appointment process have been delayed, due to which no appointment could be made due to stay obtained by them. In fact, no rights much less fundamental right of the appellants- petitioners guaranteed under the Constitution of India have been violated in these cases, therefore, their petitions were required to be dismissed and in our opinion they were rightly dismissed by the learned Single Judge.

10. We have gone through the reasons assigned by the learned Single Judge while dismissing the writ petitions. Even if we were inclined to take a different view of the matter then also it would not be sufficient for this Court to interfere with the order passed by the learned Single Judge in the special appeal as the learned Single Judge has given good reasons while dismissing their writ petitions and the view taken by the learned Single Judge is not only possible but also just, proper and legal. We must keep in mind that this Court is dealing with special appeals and not a regular first appeal. When the view expressed by the learned Single Judge is just and proper then ordinarily this Court would not interfere with such orders in special appeal. In fact, we are in complete agreement with the reasons assigned by the learned Single Judge for dismissing the writ petitions.

11. The submission that deliberately the respondents have denied the benefit of summer vacations, cannot be accepted. In fact, the appellants who were teachers,

were not at all justified in claiming the relief of grant of salary for the period of summer vacations during which they have not even worked. In our opinion, the learned Single Judge was fully right in observing that there cannot be any justification in directing the respondents to continue the petitioners during summer vacations just with a view to make them entitled for the salary of the vacation period. It is the public money, which cannot be allowed to be rather mis-used in this manner. In fact, all the petitioners have hardly served for 3 to 4 months for which they were duly paid, therefore, it does not lie good in their mouth to claim the salary for the vacation period for which they have not worked. They were the Teachers and at least one would expect a reasonable demand from them and not such demand like this. If we grant such relief then we would be setting up a wrong precedent. Hence, this submission is also rejected.

12. In view of the above discussion, we do not find any substance or merit in these appeals and accordingly all these appeals fail and are dismissed. The interim relief, if any, granted in these appeals, stands vacated forthwith. The parties to bear their own costs.

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