

State of Rajasthan and ors. Vs. Rajendra Kumar Verma

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Court : Rajasthan

Decided On : Jan-20-1998

Reported in : 1998(2)WLC437; 1998(1)WLN55

Judge : V.S. Kokje and; B.S. Chauhan, JJ.

Appeal No. : D.B. Civil Special Appeal No. 1201 of 1997

Appellant : State of Rajasthan and ors.

Respondent : Rajendra Kumar Verma

Advocate for Def. : Mr. S.K. Malik

Advocate for Pet/Ap. : Mr. N.M. Lodha

Judgement :

B.S. Chauhan, J.

1. The instant appeal has been filed by the State and others the appellants against the judgment and order of the learned Single Judge dated 26.9.1997 passed in S.B. Civil Writ Petition No. 1329/94 filed by respondent-petitioner Rajendra Kumar Verma.

2. The facts, as revealed by the record of this appeal are that the respondent-petitioner was appointed by the appellants on ad-hoc basis as a Stenographer

(Grade II) with effect from 28.4.1975. Subsequently the appellant-State issued an order dated 15.3.1978 contained in Annexure. P. 5, according to which the Direction was issued that in case of an ad hoc appointee prior to 1.1.1976 possess the requisite qualification by passing a speed test from the prescribed Institution, he shall be treated as a regular appointee in service. The State-appellant, also, circulated the letters to various departments on 1.8.1978 contained in Annexure. P. 6 stating that such a requisite test can be passed from All Languages Short-hand Institute, Ajmer and to the same effect, another letter dated 2.8.1978 was issued by the State-appellant, which is contained in Annexure. P. 7. In view of these, the respondent-petitioner passed the said test in 1979 from the said institute and claimed regularisation from the date of his initial appointment. However, his representation was rejected and communicated to the respondent-petitioner in the year 1985 for the reason that the said requisite qualification, i.e., passing of the test from the All Languages Short-hand Institute, Ajmer, was not recognised by the State. On further enquiry, the same reply was given to the respondent-petitioner vide letter dated 1.8.1987 contained in Annexure. P. 46 to the petition. Instead of challenging the said orders rejecting his claim for regularisation, respondent-petitioner reagitated the issue before the competent Authority alongwith other issues, e.g., increments etc. It appears that some sort of impression/ assurance was given to him by the appellants that his matter was pending consideration, which is evident from various Annexures filed by the respondent-petitioner. The respondent-petitioner was, also, transferred in 1985 from Jodhpur to Barmer and the respondent-petitioner did not join the post there and remained absent from 1.5.1986 to 9.10.1986. The appellants ordered the respondent-petitioner to apply for privilege leave for this period so that it could be regularised but that, also, remained disputed as inspite of several letters, referred to in letter dated 18.12.1992 contained in Annexure. P. 61, the respondent-petitioner did not apply for such leave. The respondent-petitioner further claimed for regularisation, giving him annual grade increments etc. according to rules and giving all the consequential benefits to him. As the same remained pending for consideration of the appellants, the respondent-petitioner filed the aforesaid writ petition before this Court, which has been allowed by the judgment and order dated 26.9.1997 passed by the learned Single Judge granting him all the reliefs;

hence this appeal.

3. Heard Mr. N.M. Lodha learned Counsel for the appellants and Mr. S.K. Malik learned Counsel for the respondent-petitioner.

4. Mr. Lodha has submitted that passing of the speed test from All Languages Short-hand Institute, Ajmer had never been recognised by the State and the respondent-petitioner does not possess the requisite qualification even today and, therefore, not entitled for regularisation. Thus, the directions issued by the learned Single Judge to treat the respondent-petitioner as regularised from 1975 and pay the regular pay etc. are contrary to law.

5. We had been taken to the entire record by the learned Counsel for the parties and we fail to understand, if under any impression the appellant-State itself was asking its ad hoc employees to pass the said test from the said institute at Ajmer, how it is open to the said Authority to say that the said qualification is not recognised by it. Even if the appellant-State has circulated such letters under some mistake or wrong impression and the employees have acted upon it bona fide, the State cannot be permitted to agitate this issue as the employee had appeared in the said test on a clear direction/understanding/Circular issued by the State contained in Annexures P. 5 and P. 6 to the petition and the appellant-State cannot be permitted to blow hot and cold in the same breath. Sri Lodha could not explain as why the respondent-employee was not informed of this decision prior to 1985. He had passed the test in 1979 and asked for its benefits immediately thereafter. What were the compelling circumstances under which he was allowed to work for decades even after holding him ineligible?

6. Therefore, we are of the considered opinion that the conclusion reached by the learned Single Judge that the said qualification was recognised and the respondent-petitioner was eligible for consideration of regularisation and he was entitled to be treated as regularised from the date of his initial appointment, is correct and no fault can be found with it.

7. The respondent-petitioner was transferred, from Jodhpur to Banner and the question remained in dispute whether the petitioner-respondent joined the duties

at Barmer or not. There is nothing on record which can be termed as unimpeachable piece of evidence to justify the claim of the respondent-petitioner. However, from the publication dated 25.9.1986 contained in Annexure. Rule 2, issued by the appellant-State in the news-paper, an inference can be drawn that the respondent-petitioner did not join the duties at Barmer. As the said publication in the local news-paper itself provided that if he did not join within fifteen days, his services would be terminated under the provisions of Rule 86(3) of the Rajasthan Service Rules. It is settled law that transfer is an incident of service and no employee has a right to choose the place of his posting and he is bound to ensure the compliance of transfer order and unless the transfer order is stayed or its operation is suspended by a competent authority or a court of law, and it is not complied with, the employee runs the risk of being subjected to disciplinary proceedings. (Vide: Gujarat Electricity Board v. Atmavan Sungomol Poshani : (1989)IILLJ470SC .)

8. In the instant case, it appears from the record, that the respondent-petitioner after being elected as President of the District Unit of All Rajasthan Stenographers Association was in a capacity to influence the authorities and for the reasons best known to them, the authorities started succumbing to his pressure and it further encouraged the respondent-petitioner to resort to the arms-twisting tactics. The authorities could not muster the courage to initiate the disciplinary proceedings against him. A person may tell a lie but the circumstances do not. In the instant case, circumstances speak for itself and speak in volumes. The atmosphere prevailing in the officer of the appellants seems to be stinking and the officers holding the higher ranks were incapable and inefficient to take any action against the respondent-petitioner as they were required under the law. Such a sorry state of affairs reveal the demoralisation of officials in particular and administration in general. It represents an atmosphere of total subservience and may lead to a large deeper malaise in the governance of the administration, as it is one of the eloquent cases where such a sorry state of affairs has been brought to light. There is sufficient material on record to show that he exerted undue pressure on the appellants' officers and used all sort of unwarranted activities. He, also, resorted to agitations, threats to go on 'fast until death' and succeeded in black-mailing the officers of the appellants as is evident from letters dated 22.4.1993 and 18.5.1993

contained in Annexures. P. 70 and P. 74 respectively. This Court is bound to take over-all prospective of the whole matter. If this situation is permitted to continue, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become laws unto himself, thereby leading to anarchism.' (D.K. Basu v. State of West Bengal and Ors. : 1997 CriLJ743). He, also, made scandalous allegations against the high officials, particularly Sarvashri B.R. Purohit and Mr. B.N. Bhootra, which are evident from Annexure. P. 30 onwards. Vague and mellow allegations of mala fides without material to substantiate the same do not warrant any interference by this Court. Moreover, the authority, to which mala fides was imputed, has not been impleaded as a party by name, thus, the issue of mala fide cannot be considered. (Vide: State of Bihar and Anr. v. P.P. Sharma, I.A.S. and Anr. 1992 Suppl. (1) SCC 222; Dr. J.N. Banavalikar v. Municipal Corporation of Delhi AIR 1996 SC 326; AH India Bank Officers Federation and Ors. v. Union of India and Ors. : (1997)ILLJ419SC ; and I.K. Mishra v. Union of India and Ors. : AIR 1997 SC3740).

9. Instead of taking any decision as how to treat the period of absenteeism from 1.5.1986 to 7.10.1986, the high officials of the appellants, vide order dated 20.4.1993 contained in Annexure. P. 68, constituted a committee of three Accountants to make suggestion as what may be the solution of the problem and the three Accountants, constituting the said Committee, did not hesitate to pass stricture against the very high officials. The attitude on the part of the officers of the appellants to appoint such a committee was unwarranted and uncalled-for and they did it because they could not gather the courage to take appropriate action against the delinquent employee who had the courage to refuse to carry on the transfer order. However, we disapprove the course of appointing such a Committee. As it is not provided under any statutory provision, its recommendations cannot be said to be worth consideration. In such a peculiar situation, rule of law mandates that a competent authority would take a decision by application of mind and applying the relevant rules etc. governing the service conditions of an employee involved. Authorities cannot be permitted to shift their responsibilities on the shoulders of others, whom law does not recognise at all. The affairs have to be run by rule of law and not by rule of thumb. While deciding the case of Police Commissioner v. Gordhan Das : [1952]1SCR135 , the Hon'ble

Apex Court put reliance on the judgment of the House of Lords in *Julius v. Lord Bishop of Oxford* 1880 5 AC 214, and observed as under:

Public authorities cannot play fast and loose with the powers vested in them.... An enabling power of this kind conferred for public reasons and for the public benefit is coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shrieked or shelved nor it be evaded performance of it can be compelled....

10. The learned Single Judge, vide impugned judgment and order, has, also, regularised this period of absenteeism and issued directions to make payments etc. We are of the considered opinion that till today, no competent Authority has taken a decision as to how this period is to be treated and there was no order before the learned Single Judge which could have been said to be bad in law. The learned Single Judge, in the facts and circumstances of this case ought not to have issued such directions. The court cannot take upon itself the task to be performed by a statutory Authority nor the court can straightway direct the Authority to regularise the said period of absenteeism. At the most, the competent Authority could have been directed to take a decision on the issue within a stipulated period. (Vide *Veerapa Pillai v. Raman & Raman Ltd.* : [1952]1SCR583 ; *J.V. Narayan Rao and Ors. v. P. Purshotlam Rao and Ors.* 1993 (1) JT 17; *Life Insurance Corporation of India v. Ramchandran Ambedkar* : (1994)1ILLJ173SC).

11. In *State of Haryana v. Naresh Kumar Bali*, 1994(4) SCC 448, the Hon'ble Apex Court observed as under:

The High Court could have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision making process and not against the decision itself; and it is no part of the court's duty to examine the power of the authorities itself. There is wide-spread misconception on the scope of interference in judicial review.

12. In view of the above the following situation emerges:

I. The respondent-petitioner was appointed as Stenographer on ad-hoc basis on 28.4.1975 and was given an impression by the appellant-State that if he passes the speed test etc. from the said institution of Ajmer, he could be entitled to get the benefit of the order dated 15.3.1978 contained in Annexure. P. 5.

II. The respondent-petitioner passed the said test in 1979 and filed an application to be treated as regularised as per order dated 15.3.1978. The said application was not considered by the appellant till 1985 when it was rejected and the respondent-petitioner was informed that no such benefit could be given to him as the qualification possessed by him was not recognised. On further inquiry, he was told the same vide letter dated 1.8.1987 contained in Annexure. P. 46. The appellants did not furnish any explanation for as to why:

(a) the respondent-petitioner was kept in service for a decade though he was not eligible/qualified;

(b) his application for regularisation was kept pending for eight years;

(c) the respondent-petitioner was alleged (sic) to work even after 1985-1987; and

(d) if he was allowed to work, on what basis he was deprived of the benefits of Article 39(d) of the Constitution of India.

III. The respondent-petitioner did not challenge the said orders passed in 1985-87 before the appropriate Forum/Court of law and there is no explanation for not doing so.

IV. After being elected as the President of the District Unit of the Rajasthan Stenographers' Union, he exerted pressure and started agitations etc. against the appellants' officers, like 'fast unto death' and became the law unto himself and, also, exerted threats and the authorities succumbed to the pressure exerted by him.

V. The respondent-petitioner, on being transferred, did not join the duties at Barmer and the appellants' officers could not muster the courage to initiate disciplinary proceedings against him, rather they asked him to apply for privilege

leave and the respondent-petitioner did not consider it proper to apply for such leave.

VI. The officers failed in discharging their duties and appointed a Committee of Three Accountants to make recommendations. The said Committee made recommendation for the regularisation of the period of absenteeism. The said recommendation is neither statutory nor binding and, thus, has to be ignored.

13. Thus, after taking into account the circumstances in totality, the appeal deserves to be allowed partly and the order passed by the learned Single Judge is modified as under:

14. The respondent-petitioner shall be deemed to have been regularised from the date of his initial appointment and he shall be entitled for arrears of pay accordingly alongwith interest @ 10% per annum; and the appellants are directed to consider, within a period of two months from today, as how to treat the period of absenteeism of the respondent-petitioner from 1.5.1986 to 9.10.1986 and if the period is regularised, the respondent-petitioner shall be entitled for the consequential relief. However, if the Authorities decide not to regularise the said period, it will be open for the respondent-petitioner to challenge the said impugned order before the appropriate Forum.

15. In view of the above, the appeal filed by the appellants-State and others, stands allowed partly. There will be no order as to costs.