

Usha Jain Vs. State

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Court : Rajasthan

Decided On : Aug-27-2001

Reported in : 2001(4)WLC1; 2002(1)WLN669

Judge : AR. Lakshmanan, C.J.; and Bhagwati Prasad, J.

Appeal No. : D.B. Civil Special Appeal No. 1290 of 1999

Appellant : Usha Jain

Respondent : State

Disposition : Appeal dismissed

Judgement :

Bhagwati Prasad, J.

1. The present special appeal has been filed by the appellant petitioner against the judgment dated 11.8.1999 passed by a learned Single Judge of this Court whereby the writ petition filed by the petitioner was dismissed by the learned Single Judge.

2. In the writ petition, the petitioner claims that she obtained B.T.C. degree from Uttar Pradesh in the year 1976, which was treated by the State of Rajasthan equivalent to B.S.T.C. of Rajasthan till 11.6.1980 when the Deputy Director, Primary and Secondary Education, Rajasthan, Bikaner has issued an order

whereby this degree was derecognised. The petitioner claims that she was appointed as a Trained Teacher vide order dated 5.4.1980 vide Annex. 1. Annex. 1 states that the petitioner is appointed until the end of the sessions or regularly selected candidates are available. The petitioner's further case is that she has been regularly paid salary. Every year she was appointed with a break of summer vacation. The petitioner claims that the petitioner was ordered to be retained in service until a final decision is taken by the State of Rajasthan regarding B.T.C. obtained by the petitioner. The petitioner also claims that the State of Rajasthan issued a direction on 6.4.1988 that the teachers who have been appointed prior to 31.12.1985 should be regularised. Ultimately on 15/18.5.1992 the petitioner was relieved from her service treating her to be not qualified.

3. A reply was filed to the writ petition by the State Government on behalf of the respondents and the respondents claimed that B.T.C. awarded by the State of Uttar Pradesh was not recognised in the State of Rajasthan after 5.4.1980. The petitioner has joined her services on 8.4.1980. Then on 8.4.1980 she was not a teacher with the qualification which was a recognised qualification. The petitioner applied for regular selections held under the advertisement Nos. 55, 56 and 59 for regular and permanent employment but she was not considered fit to be selected. Thus, she is a rejected candidate as far as these selections are concerned. However, the petitioner was given temporary appointment until recognition of B.T.C. degree was finally decided. The recognition of the B.T.C. degree was determined by the Government of Rajasthan in the Department of Education (Gr. 3) vide its letter No.F. 9(1) GA/Gr. 3/74 Jaipur dated 5.4.1980 derecognising the qualification. Further after the controversy regarding recognition of the degree of the petitioner started the petitioner was continued in service on temporary basis and the respondent State has claimed that in subsequent appointments she was treated to be an untrained teacher and paid accordingly a grade of untrained teacher. The petitioner since 1.7.1989 was given untrained teacher's grade. At that time she accepted the salary of untrained teacher and in the selections she faced she was considered to be untrained teacher and, therefore, she was not selected. Ultimately in the year 1992 she was relieved from service.

4. Learned Single Judge, after considering the case of the petitioner, came to the conclusion that the case of the petitioner is not liable to succeed on the simple ground that her qualification was not a qualification which can be considered to be valid. Her qualification was B.T.C. which stood derecognised prior to her appointment. Therefore, she is not entitled to get any benefit on the basis of an appointment which was offered to her as a term appointment. The learned Single Judge has based his decision on the basis of a Full Bench decision of this Court in the matter of Shanker Lal Verma v. R.S.E.B., reported in 1999(1) WLC 1 and has dismissed the writ petition filed by the petitioner.

5. Learned Counsel for the appellant has urged that the learned Single Judge has erred in dismissing the writ petition. The petitioner was appointed prior to the derecognition of the degree obtained by her. That being the position her case was saved from the law laid down in the case of Shanker Lal Verma (supra). Learned Counsel for the appellant has further urged that the State has ordered for regularisation of the services of the teachers who have been in service after a particular date on the strength of the letters issued by the State Government. Learned Counsel for the appellant has further urged that the petitioner has remained in service for about 12 years and asking her to go after 12 years' service is unjust.

6. Counsel for the State in reply has submitted that the petitioner herself permitted her to be treated as untrained teacher and accepted the grade of untrained teacher in 1989. Thus, by her conduct she has lost the claim that she should be treated as trained teacher. Untrained teacher cannot be appointed in the face of the law laid down by the Hon'ble Supreme Court in the case of Ram Sukh and Ors. v. State of Rajasthan and Ors. reported in : (1990)ILLJ107SC . When trained teachers are available. The petitioner has faced more than three selections and in each of the selections she was not selected. The petitioner having known that she was being considered untrained has not made any efforts to get herself a qualification by virtue of which she could be treated to be trained teacher. Further for 12 years, the petitioner continued as an ad hoc teacher after being rejected in the selections. Her appointment was de hors the rules. Since her qualification was not considered equivalent to the qualification recognised by the State of

Rajasthan, she was not offered any regular appointment. The orders issued by the State Government for regularisation from time to time are not applicable to the case of the petitioner because she has faced the regular selections and has been rejected. She was only continued to judge whether her qualification is recognised or not. Having fully known that her qualification is not recognised she has not taken steps to acquire herself by a proper qualification. She does not deserve to be regularised more particularly in the back-ground that she has faced 3 selections and in all the 3 selections she was declared as unsuccessful.

7. We have considered the rival submissions made at the Bar on behalf of both the parties and have also perused the record.

8. The question of recognition of the degree acquired by the petitioner has been finally decided by the State of Rajasthan on 5.4.1980 vide its order dated 11.6.1980 that such degree is not recognised by the State of Rajasthan. That being the position the degree possessed by the petitioner was not a degree recognised by the State of Rajasthan to be sufficient to be offered an appointment.

9. The appointment offered to the petitioner in 1980 was a term appointment on temporary basis with a clear stipulation that she will be in the service either up to the end of the session or selected candidates are available. Subsequent to this appointment she has faced 3 selections and she adjudged not to be qualified and thus the case of the petitioner was adjudged for regular selection but she was found not to be entitled for appointment having adjudged not to be appointed during those selections her fate was sealed.

10. The petitioner has not challenged the result of those selections either by way of appeal or writ etc. Once her rejection at the regular selection has taken finality then her continuance on ad hoc basis cannot confer her any right to be regularised in service. This rejection acquires more prominence in the back-ground that in the year 1989 itself the petitioner had permitted the respondents to consider her to be an untrained teacher. From 1989 to 1992 while she served as ad hoc teacher she has accepted the grade of untrained teacher. If she accepts the grade of untrained teacher from 1989 to 1992 and raises no grievance then she herself accepts the position of her being an untrained teacher. If she accepts the position of her being

an untrained teachers then her claim in the writ petition that she should be treated as trained teacher runs contrary to the conduct of the petitioner herself.

11. The Hon'ble Supreme Court in the case of Ram Sukh (supra) has held that untrained teachers cannot be appointed when trained teachers are available. The petitioner has not taken any steps to get herself trained by a proper degree in the meanwhile. That being the position, the petitioner has not tried to make up the deficiency in her qualification good.

12. Another important aspect of the matter which deserves notice is that she was irregularly appointed teacher for a fixed term, de hors the rules. In the regular selections she was not declared successful. Thus, she was never appointed after being regularly selected. Any appointment de hors the rules would not confer any right on the petitioner in the back-ground that she was not qualified and whatever qualification she was possessing was derecognised. As a result of such decrcognition she accepted the grade of untrained teacher in the year 1989 and continued to accept the same until 1992 when she was removed from service.

13. The argument of the learned Counsel for the appellant that the petitioner has continued in service for 12 years loses significance in the light of the observations of the Hon'ble Supreme Court in Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra and Ors. reproted in : (1995)ILLJ927SC which reads as under:

Further, eligibility and continuous working for howsoever long period should not be permitted to over-reach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course.

14. Since 1992 the petitioner was out of employment. It is about 10 years that she is out of job. At this juncture her faculty of teaching may have lost its edge and, therefore, at this point of time this Court is not inclined to interfere in the light of the observations made by the learned Single Judge that the appointment she was claiming was made after derecognition. We find no illegality in the order of the learned Single Judge. There is no force in this special appeal and the same is

dismissed.

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