IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

RAJASTHAN HANDPUMP MISTRY KARMCHARI SANGH INTUC.
v.
THE STATE OF RAJASTHAN AND OTHERS.

S.B.CIVIL WRIT PETITION NO.3071/2001.
Under Article 226 of the Constitution of India.

DATE OF ORDER: 28.4.2005

**PRESENT.**

**HON'BLE MR. JUSTICE R.P.VYAS.**

Mr.Vinod Purohit ) for Petitioner (s).
Mr.Sanjeet Purohit )
Ms.Kusum Rao, for Respondents.

**BY THE COURT:**

**REPORTABLE**

The instant petition has been filed by the petitioner – union, Rajasthan Handpump Mistry Karmchari Sangh, INTUC (Rajasthan), through its President, Shri Samson Bhagora, under Article 226 of the Constitution of India, praying therein that the letter dated 10.7.2001 (Annexure 9), issued by the State of , Rajasthan, may be declared illegal and invalid; the same may be quashed and set aside and the Respondents may be restrained from terminating the services of the petitioners-union, as mentioned in Appendix 'A', in pursuance to the letter

dated 10.7.2001 (Annexure 9). It is also prayed that the appropriate Government may be directed to refer the reference to the Labour Court.

The facts giving rise to the instant petition are that vide order dated 19.5.1993 (Annexure 1), the petitioners, as mentioned in Appendix 'A', were called for interview on 22.5.1993, for the post of Mahila Hand Pump Mistry. The Vikas Adhikari, Panchayat Samiti, Bichhiwara, District – Dungarpur, Respondent No.4, has sought list of eligible candidates from the concerned Project Officer, Swachh Pariyojana, Dungarpur, which was made available to him vide letter No.1120-25 dated 18.5.1993 of Respondent No.3 – Chief Executive Officer & Secretary, Zila Parishad, Dungarpur. The further case of the petitioners-union is that they were imparted necessary training from 18.6.1993 to 31.8.1993 as Mahila Hand Pump Mistry. Thereafter, vide order dated 6.2.1995 (Annexure 2), issued by the Vikas Adhikari, Panchayat Samiti, Bichhiwara, District – Dungarpur, the petitioners, as mentioned in Appendix 'A', were given appointment on the post of Mahila Hand Pump Mistry. In pursuance to the order dated 6.2.1995 (Annexure 2), an amendment order dated 5.8.1996 (Annexure 3) was issued, whereby a sum of Rs.34/- per day or a maximum of Rs.884/- per month were ordered to be given.

For regularizing the services of the Hand Pump Mistry and giving them regular pay scales, a writ petition, bearing S.B.Civil

Writ Petition No.4656/90 (Radhey Shyam Dhobi v. State of Rajasthan & Others) and No.287/91 of Hand Pump Workers Union & Others, were filed, which were decided vide order dated 26.8.1991. Thereafter, the Government – Respondents preferred S.L.P.No.409-410/95 (Government of Rajasthan v. Ratan Lal Gohar) before the Supreme Court, which was decided vide judgment dated 25.8.1995. Then, in compliance with the judgment of the Hon'ble Supreme Court, Respondent No. 1 – the Director & Deputy Secretary, Gramin Vikas and Panchayat Raj Department, Rajasthan Government, Jaipur issued orders dated 17.10.1995, 30.12.1995 and 28.2.1996 (Annexures 4 to 6) respectively, giving necessary guidelines for regularizing the services of the Hand Pump Mistry and giving them pay scales.

In compliance with the orders (Annexures 4 to 6) of Respondent No.1, a subsequent order dated 31.3.1997 (Annexure 7), giving pay scale of Rs.750-940 w.e.f. 1.4.1997, to the Hand Pump Mistry, as mentioned in Appendix 'A', was issued by Respondent No.4 – the Vikas Adhikari, Panchayat Samiti, Bichhiwara, District – Dungarpur.

Thereafter, on completion of two years of service and on being found their work-performance satisfactory, Respondent No.4 issued the order dated 31.5.1999 (Annexure 8), declaring the Hand Pump Mistry as permanent on their respective posts.

In the meanwhile, the District Collector, Dungarpur – Respondent No.2, vide his letter dated 1.5.2001, sent a report to

the State Government mentioning therein that despite the ban for appointment imposed by the State Government, Respondent No.4 – the Vikas Adhikari, Panchayat Samiti, Bichhiwara, District – Dungarpur, called the candidates for interview vide his letter No.3059 dated 29.12.1994 and by committing irregularities, gave illegal appointments to 27 Contract Hand Pump Mistries on 9.1.1995. Thereafter, in pursuance to the letter dated 1.5.2001 of the District Collector, Dungarpur, Respondent No.1 issued the order dated 10.7.2001 (Annexure 9), directing the Concerned Authority to terminate the services of the Hand Pump Mistries, without any delay, who were given appointments during the ban-period.

The petitioners – union submitted a detailed representation dated 1.8.2001 (Annexure 10) against the order (Annexure 9) of the State Government, which has not still been considered by the Respondents – Authorities. Hence, the petitioners – union has no alternative, except to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

It is submitted by the learned counsel for the petitioners-union , that the petitioners were called for interview, they were selected for the post of Hand Pump Mistry (Women), they were imparted adequate training for the prescribed period and, thereafter, they were given regular appointment by the Competent Authority of the State Government. Therefore, their

services, as directed by Respondent No.1, in the order dated 10.7.2001 (Annexure 9) cannot at all be terminated.

It is further submitted by the learned counsel for the petitioners – union that it was a regular selection, as, after completing the service for two years and on being fond their work-performance satisfactory, they were given regular pay scale by the Competent Authority.

It is also submitted by the learned counsel for the petitioners – union that even if they were given appointment during the ban period by the Competent Authority, yet they cannot be made liable to suffer the loss of termination of their services, for the fault and lapses on the part of the Competent Authority of the State Government. According to the learned counsel, it cannot be termed as a back-door entry. Not only that, but also the fact that they have worked satisfactorily for a period of more than six years, therefore, in such a situation, their services cannot be terminated by the State Government in arbitrary manner, by taking the pretext of ban period, as it is against the norms of the welfare State.

It is contended by the learned counsel for the petitioners – union that the Rajasthan Hand Pump Mistri Karmchari Sangh INTUC is a registered Union. It has its registration No.RTU 2/98.

The appointment of the petitioners is a valid one and Respondent No.4 – Vikas Adhikari was a Competent Authority of the State Government to give appointments, therefore, their appointments cannot be termed as illegal appointments.

It is further contended by the learned counsel for the petitioners – union that even if the act of any Authority of the State Government is illegal, the punishment of such default cannot be imposed on the petitioners, as the persons mentioned in Appendix 'A', were not only appointed after taking interview and adopting the due procedure of law, but they were also declared permanent vide Annexure 8. Thus, according to the learned counsel, the appointment of the petitioners, in any way, cannot be termed as an illegal appointment.

It is strenuously contended by the learned counsel for the petitioners – union that not only the petitioners were given appointment on contract basis, but their services were made permanent after completion of a period of two years and were also given salary in the regular pay scale as per the Rules. So, their appointment cannot be termed as a back door entry in the service, as they were appointed after following the due procedure in accordance with the law.

In support of his contentions, learned counsel for the petitioners – union has referred to the case of Montriel Street Railways Company v. Normandin (AIR 1917 SC 142), wherein

their Lordships of the Supreme Court observed as under :-

" When the provisions of a statute relate to the purpose of duty and the case is such that to hold null and void acts done in neglect of duty would work in serious inconvenience or injustice to the persons who had no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directive only the neglect of them though punishable not affecting the validity of the act done."

With regard to the power under Article 226 of the Constitution of India, their Lordships of the Supreme Court in Radha Raman Samanta v. Bank of India & Others, (2004) 1 SCC 605, held that the power under Article 226 could be exercised for the enforcement of fundamental rights. The High Courts have often exercised their power under Article 226 of the Constitution for enforcement of a legal right. It was also held by their Lordships of the Supreme Court that examination of undisputed facts is not debarred in a proceeding under Article 226 of the Constitution. To make matter clear, reference of Style (Dress Land) v. Union Territory, Chandigarh (1999) 7 SCC 89, may be made, in which their Lordships held as under :-

" Action of renewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field."

It is submitted by the learned counsel for the petitioners-union that the judgment delivered by the Hon'ble High Court in the case of Radhey Shyam Dhobi v. State of Rajasthan on

26.8.1991 is a judgment in rem and it is fully applicable in the case of the petitioners. It is wrong to say that the Hon'ble High Court ever directed to regularise the services of only those persons who had been given appointment prior to 29.4.1994 and had completed 240 days service before or after the order having been passed by the Hon'ble High Court.

Learned counsel for the petitioners-union has also referred to the decision of this Court dated October 11, 2000, rendered in S.B.Civil Writ Petition No.3618/2000 and two other similar petitions (Shri Parashwanath Umaid Senior Secondary School, Falna v. Manish Sharma and Others), in which the learned Single Judge has observed as under :-

> "But the basic question, which has been agitated and on the basis of which, the respondent teachers' services came to an end, had been that the Government had issued an order to terminate the services of all those teachers, who had been offered employment during the period, on which the Government had imposed the ban. Mr. Singhvi has submitted that at the relevant time, there had been no ban and the appointments of respondent – teachers were made after following the required selection and taking approval of the Competent Authority. Even otherwise, such a course is not permissible even for the Government for the reason that it is settled proposition of law that no person can be allowed to take benefit of his own wrong and even if there was an order putting ban on fresh appointments, it may be valid between the present petitioner and the State Government. The respondent – teachers cannot be put to a disadvantageous position on that account and there can be no dispute to the said legal proposition."

On the other hand, it is submitted by the learned counsel for the respondents that the petitioners-union has failed to produce any document showing that it is a registered union.

Therefore, the petitioners are not entitled to invoke the extra-ordinary jurisdiction of the Hon'ble Court under Article 226 of the Constitution of India. The petitioners had only apprehension that their services are likely to be terminated in future, but, in fact, no termination order has been issued by the State Government. Therefore, according to the learned counsel, on this ground also, the petitioners are not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

It is further submitted by the learned counsel for the respondents that the order dated 6.2.1995 (Annexure 2) was issued by the Panchayat Samiti, Bichhiwara, but, according to the learned counsel, Respondent No.4 was not authorised to issue the said Annexure 2 as ban was imposed by the State Government vide order dated 29.4.1994 for appointment on the post of Hand Pump Mistri. Thus, Respondent No.4 was not the Competent Authority to give appointment to Mahila Hand Pump Mistri on contract basis w.e.f. 29.4.1994. Though it is correct that Annexure 7 was issued by Respondent No.4, but it was issued in ignorance of the fact that the order dated 29.4.1994 has already been issued by the State Government imposing ban on the appointment of Hand Pump Mistry.

It is also submitted by the learned counsel for the respondents that the case of Radhey Shyam is not applicable to the present petitioners – union, as services of only those candidates have been regularised who were given appointment

prior to 29.4.1994 in pursuance to the order of the High Court and the candidates who have completed 240 days service before or after the order having been passed by the High Court.

It is vehemently argued by the learned counsel for the respondents that appointment itself was an illegal as it was not a regular appointment w.e.f. 6.2.1995 and the appointment was given on contract basis. Therefore, the services of the employees of the petitioners-union cannot be regularised.

Lastly, it is submitted by the learned counsel for the respondents that the ban was imposed by the State Government not to grant appointment on 29.4.1994, but despite this fact, in ignorance of the aforesaid order of the State Government, the appointments were given, on contract basis, by Respondent No.4. So, in any case, back door entry for filling up vacancies has to be strictly avoided and the appointment cannot be termed as a regular appointment.

In support of her contentions, learned counsel for the respondents has relied on the case of Ashwani Kumar v. State of Bihar (AIR 1997 SC 1628), in which it was observed that in any case, back door entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could

ever be effected. Such an entry of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however, competent the recruiting agency may be. In that case, illegal and invalid appointments made by the Government were cancelled. When their legality was questioned in the writ petitions filed under Article 226 of the Constitution, the High Court upheld the government action.

Learned counsel for the respondents has also relied on the case of Prakash Chand v. State of Rajasthan & Others (S.B.Civil Writ Petition No.241/97), decided on November 2, 2001.

Heard learned counsel for the parties.

It is admitted position that the petitioners were called for interview on 22.5.1993 on the post of Mahila Hand Pump Mistry by the Competent Authority of the State Government. It is also admitted position that they were imparted training of Mahila Hand Pump Mistry from 18.6.1993 to 31.8.1993. Thereafter, vide order dated 6.2.1995 (Annexure 2) issued by the Competent Authority of the Government, they were given appointment. It may be mentioned that on their completion of two years of service and on being found their work-performance satisfactory, they were made permanent on the post of Hand Pump Mistry vide order dated 31.5.1999 (Annexure 8), issued by the Competent Authority of the Government. Sofar as their appointment, made by the Vikas Adhikari (Competent

Authority), during the ban period is concerned, it is abundantly clear that there was no fault on the part of the petitioners, for which they cannot and should not be made liable to suffer the loss of termination of their services, as it was a lapse on the part of the concerned Competent Authority of the State Government. Apart from that, after giving them appointment on the post of Hand Pump Mistry, vide order dated 6.2.1995 (Annexure 2), sufficient time has elapsed, so, in these circumstances, it will not be just and fair & in the interest of justice to terminate their services, on account of lapse on the part of the Competent Authority of the State Government. Apart from that, it is not the duty of the Welfare State to terminate the services of the employees, after passing such a long period of time since 6.2.1995. Even otherwise also, such a course is not permissible for the Government for the reason that it is settled proposition of law that no person can be allowed to take benefit of his own wrong. The petitioners cannot be put to a disadvantageous position.

Thus, in view of the aforesaid submissions, the contentions of the learned counsel for the respondents are not sustainable. Looking to the facts and circumstances of the case in hand, the authorities cited by the learned counsel for the respondents are also not applicable to the instant case.

It cannot be held that the appointments made by the Competent Authority of the State Government, during the ban

period, in accordance with the law, would render the appointments of the petitioners void or invalid. No fault can be found with the petitioners.

In the result, the writ petition is allowed. The letter dated 10.7.2001 (Annexure 9), issued by the State Government is declared illegal and invalid and the same is quashed and set aside. The services of the petitioners shall not be terminated in pursuance to Annexure 9.

There will be no order as to costs.

(R.P.VYAS),J.

Scd.