

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION No.2965/1995.

: :

Ram Prasad Keer Vs. State of Rajasthan & Ors.

: :

Date of Order 30.6.2009

HON'BLE MR.JUSTICE MOHAMMAD RAFI Q

Mr. Nitin Jain for the petitioner.

Mr. S. D. Khasuria, Addl.Govt.Counsel with Mr. Gajanand Mishra Manav, Deputy Government Counsel for the State.

Heard learned counsel for the parties.

2. This writ petition was originally filed by the petitioner with the prayer that respondents be directed to pay to him salary in the regular pay scale on the principles of equal pay for equal work. Petitioner was initially engaged on the post of Chowkidar on 1.5.1994 in the students hostel run by Social Welfare Department. His appointment was described as part time and he was being paid fixed emoluments of Rs.350/- per month. Notice of writ petition was issued and respondents filed reply to writ petition. However, services of petitioner were abruptly discontinued w.e.f. 7.7.1997. Allegation of petitioner is that his services

were terminated because respondent wanted to accommodate one Shyam Lal. On the prayer of petitioner writ petition was allowed to be amended permitting him to challenge his removal and aforesaid Shyam Lal was added as party respondent No.4.

3. Shri Nitin Jain, learned counsel for the petitioner has cited judgment of Supreme Court in State of Rajasthan & Ors. Vs. Mod Singh & Ors. : SLP (Civil) No.21173/1994 and connected matters in which the scheme for regularisation of part time chowkidars and part time cooks working in Social Welfare Department was approved. It is contended that since petitioner was in service as on 1.5.1995, he was liable to be regularised in service in the third phase. Respondents only with a view to deprive petitioner of his legitimate right illegally terminated his services. His termination was made solely with a view to accommodating Shri Shyam Lal. Learned counsel cited judgment of Coordinate bench of this Court in Dayalal & 6 Ors Vs. State of Rajasthan & Ors. : WLC (Raj.) 2003 (3), 599 and submitted that controversy raised in the present judgment is squarely covered by aforesaid judgment, in which case too services of some of the petitioners were terminated. They were ordered to be regularised in service

and the termination order was held illegal and quashed. The petitioner is, therefore, entitled to the same relief and benefit of scheme approved by Supreme Court.

4. Shri S. D. Khasuria, learned Additional Government Counsel has opposed the writ petition and submitted that petitioner in para No.2 of the writ petition has submitted that he worked only till February, 1995 and that his services were continued till 7.7.1997 and thereafter terminated, is a disputed fact, remedy wherefor lies before the concerned Industrial Court by way of an industrial dispute. The judgments of Supreme Court and by this Court in Mod Singh and Dayalal (*supra*) are distinguishable. Petitioner was engaged only by Mess Committee and was never an employee of the State Government. Unless, it is proved that petitioner was continued in service till 7.7.1997, it cannot be accepted that his services were terminated on that date. It is, therefore, prayed that writ petition be dismissed. Learned counsel cited judgment of Supreme Court in Official Liquidator Vs. Dayanand : 2008 (10) SCC to argue that unless the petitioner is in position to produce the order of appointment, such contention cannot be accepted on mere *ipse dixit*.

5. Consideration of the arguments aforesaid and perusal of the material on record clearly show that this writ petition was filed by petitioner on 24.4.1995 and his initial appointment was made on 1.4.1994. In the originally filed writ petition prayer was made that respondents be directed to pay to the petitioner salary in the regular pay scale at least from the date of filing writ petition. Contention raised by learned Additional Government Counsel that petitioner continued only till February, 1995 as per the averments made in para No.2 of the writ petition, cannot be accepted because what is stated in para No.2 is that payment voucher of the petitioner for payment of salary for the period from May, 1994 to February, 1995 are enclosed as Annexures 1 to 10. In subsequent paras of writ petition, especially paras No.13 & 14 petitioner categorically asserted that he continuously worked on the post from 1.5.1994 till the respondent No.3 did not allow him to work on such post on 7.7.1997 and appointed respondent No.4 Shyam Lal in his place and that was done around the time when the Director, Social Welfare Department constituted Screening Committee vide order dated 28.7.1997. Reply to the writ petition especially of para No.13 and 14 show that respondents have not specifically

denied the fact about the petitioner's continuation in service till 7.7.1997 and not also denied that he was refused permission to attend the duties. What is stated is that petitioner can approach Labour Court redressal of his grievance and that respondent No.4 was given appointment that petitioner himself abandoned the job and now the respondent No.4 is also no more in service. Contention though raised that petitioner voluntarily abandoned the job, cannot be accepted especially because petitioner could not have done so in the face of pendency of writ petition. Reliance placed by learned Additional Government Counsel in Official Liquidator (supra) is misconceived in the face of specific plea set up by petitioner in paras No.13 & 14 about petitioner continuation in service upto 7.7.1997, which they have not denied specifically and the averments made in reply to writ petition in paras No.13 & 14 are abosultely vague and unclear. Similar contention that employees engaged as part time cook and chowkidar were raised in series of petition before this Court including aforesaid judgments of Mod Singh and Dayalal (supra) to argue that they were not employees of State Government and was rejected, which is why ultimately the respondents had to frame scheme of regularisation to such cooks and chowkidar, who were even

though required to guard the hostels around the clock and prepare food for inmates of the hostel both times and also prepare refreshment. In the circumstances, describing their appointment as part time was nothing but a misnomer and showing them as employees appointed by Mess Committee was aimed at depriving petitioner of his legitimate appointment.

Learned counsel also produced copy of letter dated 21.8.2001 written to Superintendent of Government Hostel, Datwas calling him to produce original document so that his case for regularisaiont should be forwarded. It is not known as to what happened to the proposal submitted by Superintendent. Respondents acted arbitrarily in terminating services of petitoner despite the fact that there was a litigation with petitioner and that there was judgment of Supreme Court in Mod Singh (supra) in third phase of which petitioner would have been covered to be ultimately regularised upon continuing in service till 1.4.1998. The Coordinate Bench of this Court in Dayalal and six others decided exactly identical writ petitions, in some of which writ petitions, services of petitioners were terminated. The orders of termination were held illegal, quashed and set aside and it was directed that petitioners shall be entitled to regular

salary with effect from the date of filing writ petition and the State Government shall frame a scheme for their regularisation. The direction for fresh scheme of regularisation was issued because the cases of those employees, were not covered in any of the three phase referred to above. In the instant case, case of petitioner would be covered in the third phase because his termination order has been held to be illegal and arbitrary being violative of Article 14 & 16 of the Constitution of India.

In the result, this writ petition is allowed. The verbal order of termination dated 7.7.1997 is declared illegal, unconstitutional and quashed and set aside. Petitioner shall be deemed to have continued in service throughout from 1.5.1994. Respondents are directed to extend the benefit of regularisation to the petitioner in terms of judgment of Supreme Court in Mod Singh (supra) in the third phase w.e.f. 1.4.1999. Petitioner shall be entitled to all consequential benefits.

Compliance of this judgment be made within three months from the date its copy is produced before the respondents.

(MOHAMMAD RAFI Q)J.

A.Arora/-

