

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

O R D E R

- 1) S.B. CIVIL WRIT PETITION NO.10616/2009.
Kaml esh Meena & Ors. Vs. State of Raj asthan & Ors.
- 2) S.B. CIVIL WRIT PETITION NO.11116/2009.
Mukesh Kumar Behrod & Ors. Vs. State of Raj . & Ors.
- 3) S.B. CIVIL WRIT PETITION NO.11167/2009.
Naresh Kumar & Ors. Vs. State of Raj asthan & Ors.
- 4) S.B. CIVIL WRIT PETITION NO.11179/2009.
Jagdi sh Meena & Anr. Vs. State of Raj asthan & Ors.
- 5) S.B. CIVIL WRIT PETITION NO.11180/2009.
Vi shnu Kumar Vij ay & Anr. Vs. State of Raj . & Ors.
- 6) S.B. CIVIL WRIT PETITION NO.11181/2009.
Nepal Singh Parmar & Anr. Vs. State of Raj . & Ors.
- 7) S.B. CIVIL WRIT PETITION NO.11182/2009.
Manoj Pal Singh Vs. State of Raj asthan & Ors.
- 8) S.B. CIVIL WRIT PETITION NO.11183/2009.
Sumer Singh & Ors. Vs. State of Raj asthan & Ors.
- 9) S.B. CIVIL WRIT PETITION NO.11184/2009.
Raj esh Meena & Ors. Vs. State of Raj asthan & Ors.
- 10) S.B. CIVIL WRIT PETITION NO.11185/2009.
Laxmi Narayan Pareva & Ors. Vs. State of Raj .& Ors.
- 11) S.B. CIVIL WRIT PETITION NO.11186/2009.
Renu Prajapati Vs. State of Raj asthan & Ors.
- 12) S.B. CIVIL WRIT PETITION NO.11221/2009.
Miss Teena Mahavar Vs. State of Raj asthan & Ors.
- 13) S.B. CIVIL WRIT PETITION NO.11769/2009.
Onkar Lal Mehar Meena Vs. State of Raj asthan & Ors.

14) S.B. CIVIL WRIT PETITION NO.11887/2009.
Mahendra Kumar Meena Vs. State of Rajasthan & Anr.

15) S.B. CIVIL WRIT PETITION NO.12124/2009.
Shiv Dayal Bairwa & Anr. Vs. State of Raj. & Ors.

16) S.B. CIVIL WRIT PETITION NO.12125/2009.
Anuradha Kakkar & Ors. Vs. State of Raj. & Ors.

17) S.B. CIVIL WRIT PETITION NO.12236/2009.
Girraj Kumar Meena & Ors. Vs. State of Raj. & Ors.

18) S.B. CIVIL WRIT PETITION NO.12271/2009.
Arti Vasistha Vs. State of Rajasthan & Ors.

19) S.B. CIVIL WRIT PETITION NO.12411/2009.
Devendra Kumar Vs. State of Rajasthan & Ors.

20) S.B. CIVIL WRIT PETITION NO.12449/2009.
Dharma Pinki Vs. State of Rajasthan & Ors.

21) S.B. CIVIL WRIT PETITION NO.15605/2009.
Faiz Ahamad Vs. State of Rajasthan & Ors.

22) S.B. CIVIL WRIT PETITION NO.16108/2009.
Ms.Archana Vs. State of Rajasthan & Ors.

23) S.B. CIVIL WRIT PETITION NO.12444/2009.
NREGA Raj Karmchari Kalyan Sansthan & Ors.
Vs.
State of Rajasthan & Anr.

Date of Order: - January 31, 2011.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Reportable

BY THE COURT

Shri Sanjeev Prakash Sharma, Sr. Advocate with
Shri Ankit Sethi,
Shri Jag Mohan Saxena, Ms. Susan Timothy,
Shri Babu Lal Sharma,
Shri Hanuman Choudhary,
Shri Shiv Charan Gupta,
Shri Vipul Jaiman for Shri S. S. Sunda and

Shri Vijay Pathak for the petitioners.

Shri Dinesh Yadav, Additional Advocate General.

BY THE COURT: -

1) All these writ petitions are filed against the order by which services of the petitioners have been terminated. This is not in dispute that petitioners were appointed on the post of Programme Officer pursuant to the advertisement issued on 4/6/2008. Petitioners applied for the post of Programme Officer as per the advertisement issued by the respondents in which, applications were invited from eligible candidates possessing Post Graduate qualification of M.S.W. or M.A or M.B.A. The appointments were made on contract basis. However, their services were terminated in some of these cases vide order dated 3/8/2009 pursuant to the notification of the government dated 9/1/2007 in SBCWP No.10616/2009 filed by petitioners Kamlesh Meena & 57 other petitioners. The Programme Officer (NREGA) Panchayat Samiti Sawai Madhopur vide order dated 3/8/2009 directed that their services shall stand terminated w.e.f. 31/8/2009. Similar orders have been passed pursuant to the Circular of the Finance Department dated 9/1/2007 in all other cases.

2) Contention of the learned counsel for the petitioners is that respondents have taken wrong and incorrect interpretation of Section 15 of the National Rural Employment Guarantee Act, 2005 (for short, "Act of 2005"). Section 15 of the Act of

2005 provides that "at every Panchayat at intermediate level, the State Government shall appoint a person, who is not below the rank of Block Development Officer, with such qualifications and experience as may be determined by the State Government as Programme Officer at the panchayat at intermediate level".

3) It is argued that the aforesaid provision merely determine rank of the Programme Officer, who is appointed with such qualifications equivalent to that of the Block Development Officer at intermediate level. However, respondents have taken a wholly incorrect interpretation of that provision by contending that only a person, who is already appointed as Block Development Officer, would be eligible for being appointed as Programme Officer. If that was so, there was no justification for providing such qualification. Learned counsel invited the attention of the court towards the judgment delivered by the co-ordinate bench at Principal Seat at Jodhpur in **Sohan Lal Choudhary & Ors. Vs. State of Rajasthan & Ors.** SBCWP No. 8644/2009 decided on 15/12/2009 dismissing the identical writ petition. That writ petition was wrongly decided because aforesaid interpretation of Section 15 has been upheld by that judgment. Similar judgment delivered by another co-ordinate bench at principal seat at Jodhpur in SBCWP No. 1073/2001 in **Hanuman Singh Patel Vs. State of Rajasthan & Ors.** decided on 25/11/2010 was also not

correctly decided. It is contended that although, the aforesaid judgment is subject-matter of appeal but so far, no interim order has been passed however, petitioners are continuing in service with the respondents, albeit, under the interim-orders passed by this Court. Learned counsel for the petitioners in **Sohan Lal Choudhary** supra argued before the Principal Seat at Jodhpur that Programme Officers will be selected from the D.P.C. or may be taken on deputation. Any other person may be appointed as Additional Programme officer but no person can be appointed as Programme Officer, who is not holding the rank of Block Development Officer. Respondents however ultimately issued an advertisement inviting applications for appointment on the post of Assistant Programme Officer however, minimum eligibility qualification for appointment has been prescribed to be M.B.A. or equivalent thereto. Learned counsel for the petitioners argued that in the scheme that has been notified by the Government of Rajasthan in 2008, the provision has been made in clause 3.1.2 for appointment on the post of Programme Officer also for fresh recruits on the post of Programme Officer on contract basis that only in the event respondents appoint the Programme Officer, can responsibility of Programme Officer be discharged by a Block Development Officer. At the time when petitioners were appointed even on the higher post of Programme Officer, eligibility qualification for appointment

was Graduation degree in M.S.W., M.B.A. Now while issuing advertisement dated 4/6/2008 minimum eligibility qualification is of Graduation with preference to be given to M.B.A. or equivalent qualification of Diploma in Rural Social Welfare Worker from a recognized University. Further preference also to be given to the candidates, who have qualified the competitive examination of Rajasthan Administrative Service. The petitioners when they were selected on contract basis, were ready and willing to discharge even on the post of Additional Programme Officer or Assistant Programme Officer so long as other service conditions of emoluments etc. are not changed to their detriment. Only change of designation would not be a reason for that not to work under the supervision of the Block Development Officer. However, this Court is not persuaded to uphold first argument on merits of the case that according to Section 15 of the Act of 2005, their appointment was validly made and they are liable to be continued.

4) Per contra, Shri Dinesh Yadav, Learned Additional Advocate General opposed the writ petitions and submitted that there is a purpose why the government has decided only the Block Development Officer is appointed as Programme officer because enormous number of complaint of irregularities were receiving against the contractual appointees and to check such irregularities, it is felt necessary to have

substantially appointed the senior rank official of the government, which is why the Block Development Officer has been purposely designated as Programme Officer in terms of Section 15. It is argued that initially the government put a different inference under Section 15 but in the real sense, Section 15 provides that at every Panchayat at intermediate level, the State Government shall appoint a person, who is not below the rank of Block Development Officer, with such qualifications and experience as may be determined by the State Government as Programme Officer at the panchayat at intermediate level. It is contended that Section 14 of the said Act provides that the Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of appropriate rank as the State Government may decide shall be designated as the District Programme Coordinator. Learned counsel submitted that if petitioners approach the government, the government with open minds would consider their grievance for continuing them on the post of Assistant or Additional Programme Officer keeping in view the qualification prescribed for their appointment at the initial stage when they were engaged as Programme Officer.

5) I have given my anxious consideration to the rival submissions of the parties and scanned the material on record.

6) Although, learned counsel for the petitioners tried to persuade this court to take a different view than one expressed by the co-ordinate benches in **Sohan Lal Choudhary** and **Hanuman Singh Patel** supra but I find that reading of Section 15 merely provides that at every Panchayat at intermediate level, the State Government shall appoint a person, who is not below the rank of Block Development Officer, with such qualifications and experience as may be determined by the State Government as Programme Officer at the panchayat at intermediate level. If legislature in Section 15 only provided that such person, who holds such qualification and experience for appointment of the Block Development Officer, may be appointed as Programme Officer but in the present case, situation is reverse. The co-ordinate bench in **Sohan Lal Choudhary** supra while rejecting this argument made detailed discussion, which is reproduced, as under: -

“From bare perusal of above said provision, it is clear that a person who is below the rank of Block Development Officer, cannot be appointed as Programme Officer and, admittedly, the petitioners are persons holding not rank in employment either of Block Development Officer or above said post, therefore, I do not find any force in the submission of the learned counsel for the petitioners that even if they are not holding the rank of Block Development Officer and since they are qualified to hold post of Block Development Officer, they can be given appointment on the post of Programme Officer and are eligible to be appointed because of the simple reason that mere eligibility of a person to hold post is irrelevant when requirement of holding of post of particular rank is there in the Act and Rules. In view of the above reason only, the petitioners cannot claim their continuation on

the post of Programme Officer and even if the petitioners have been given appointment with designation of Programme Officer under contract, then because of that action of the respondents, no right is created in the petitioners so as to claim their appointment or continuation to hold on the post of Programme Officer when they are lacking basic required qualifications to hold the post of Programme Officer. The petitioners' contention that on the basis of exactly the same qualifications which were prescribed for the Block Development Officer vide earlier advertisement including advertisement dated 4.6.2009(Annex.1), the petitioners are now asked to work on lower post of Assistant Programme Officer and for Assistant Programme Officer also the same qualifications have been prescribed which were for the Programme Officer and thereby the respondents asked to the petitioners to join on lower post, is also no help to the petitioner in any manner because of the reason that if for some period, the petitioners have been given designation of Programme Officer under the scheme framed under the Act of 2005, even then they do not become eligible for the post of Programme Officer and if other post is offered to them, of Assistant Programme Officer, then that depends upon their choice whether they want to accept the post or not."

7) There is additional reason why the government has decided to designate only Block Development Officer as Programme Officer envisaging a common reason that number of irregularities are being received in implementation of the scheme and in order to ensure this responsibility, appointed a high rank official of the government, who holds substantive qualification for appointment for ensuring that accountability. This is decision of the government in the light of Section 14 of the Act wherein, it has been provided that Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of appropriate rank as the State

Government shall be designated as district Programme Coordinator for implementation of the Scheme in the district. That is why the government have only the Block Development Officer as Programme Officer, which stand of the government cannot be faulted.

8) Since petitioners expressed their willingness to serve the respondents even on the post of Additional and Assistant Programme Officer and in view of the statement made by the learned Additional Advocate General that decision so taken by the government may be conveyed to the petitioners and other affected employees, who are continuing with the respondents under the interim order passed by this court, I dispose of all these writ petitions requiring the State Government to take a fresh decision as to continuity of the petitioners by re-designating them as Additional or Assistant Programme Officer keeping in view the fact that they were eligible for being appointed even on the higher post of Programme Officer when they were initially appointed against contractual post pursuant to the advertisement dated 4/6/2008 or otherwise. Such decision shall be taken by the government within a period of eight weeks starting from today. Services of the petitioners may be continued for this duration of eight weeks.

(MOHAMMAD RAFIQ), J.

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