

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

S.B. Civil Writ Petition No.18376/ 2011
Purshottam Sharma & Ors. Vs. State of Rajasthan & Ors.

Date of Order :: 23rd December, 2011

HON'BLE MR. JUSTICE M.N. BHANDARI

Mr. Mahendra Sharma, for the petitioners.

By the Court:

The petitioners are aggrieved by the order dated 29.6.2011. The aforesaid order was passed pursuant to the judgment of the High Court in the earlier writ petitions.

Learned counsel for petitioners submits that the aforesaid order dated 29.6.2011 has been passed in violation of the judgment of this Court in S.B. Civil Writ Petition No.4731/2009 and the Division Bench's judgment in D.B. Civil Special Appeal (Writ) No.574/2010 decided on 7.12.2010. In those cases, a direction was issued that Vidhyarthi Mitra can be discontinued only when regularly selected candidates become available and even while doing so it should be based on state level seniority list.

Learned counsel for petitioners further submits that by virtue of the impugned order dated 29.6.2011, the respondents are asking for the bond from the petitioners, which seems to be with an intention to discontinue them or to reckon their seniority again from the date of fresh appointment. If the petitioners are given seniority now as per the new appointment order, it may have consequential effect, thus the impugned order may be set aside.

I have considered submissions aforesaid.

It is a matter where number of writ petitions were earlier decided by the learned Single Judge by a detailed judgment and therein it was directed that Vidhyarthi Mitra may not be replaced unless regularly selected candidates either by way of recruitment or promotion become available. In the event of termination, it should be based on the principle of "last come first go" after drawing state-level seniority list. The judgment of the learned Single Judge was challenged by the State. In the appeals, judgment of the learned Single Judge was maintained but with some modifications that seniority list may be prepared at the level on which seniority of such incumbents is maintained under

the Rules and thereby principle of “last come first go” be applied. After the judgment of the Division Bench, matter again came up before the Coordinate Bench and therein referring to the Rules, determination of seniority was ordered to be maintained at the district level. The grievance of petitioners is now that in the garb of the impugned order dated 29.6.2011, their seniority would be affected and thereby in the event of termination, they would go out first.

I have considered the aforesaid and perused the impugned order dated 29.6.2011, which is quoted hereunder for ready reference:-

“राजस्थान सरकार
शिक्षा [ग्रुप-2] विभाग
क्रमांक: प.17[7]शिक्षा-2/जयपुर, दिनांक-29.6.2011

आयुक्त,
माध्यमिक शिक्षा
राजस्थान, बीकानेर।
निदेशक
प्रारम्भिक शिक्षा
राजस्थान, बीकानेर
निदेशक,
संस्कृत शिक्षा,
राजस्थान, जयपुर।

विषय:- शैक्षिक सत्र 2011-12 हेतु संविदा पर विद्यार्थी
मित्र लगाये जाने के सम्बन्ध में।

महोदय,

उपरोक्त विषयान्तर्गत लेख है कि व्याख्याता, वरिष्ठ

अध्यापक, अध्यापक तृतीय वेतन श्रृंखला के रिक्त पदों पर शैक्षिक सत्र 2010-11 में संविदा पर कार्यरत रहे विद्यार्थी मित्रों को पूर्व में जारी शर्तों एवं मानदेय के आधार पर तथा माननीय उच्च न्यायालय द्वारा पारित निर्णयानुसार शैक्षिक सत्र 2011-12 हेतु जुलाई, 2011 से संविदा पर लगाये जाने की स्वीकृति प्रदान की जाती है। इनके मानदेय भुगतान स्वीकृत रिक्त पदों हेतु उपलब्ध बजट में से किया जावेगा। वर्ष 2011-12 के लिए शैक्षणिक सत्र 2010-11 में कार्यरत रहे प्रत्येक विद्यार्थी मित्र से पूर्व में निर्धारित शर्तों के अनुसार नया अनुबन्ध किया जावेगा।

उक्त स्वीकृति वित्त (व्यय-1) विभाग की आई.डी. संख्या- 101102056 दिनांक-27.6.2011 द्वारा प्राप्त सहमति के आधार पर प्रदान की जाती है।

भवदीय
हॉ/-
(अशोक सम्पत राम)
प्रमुख शासन सचिव"

Perusal of the order quoted above shows that pursuant to the judgment of this Court sanction has been granted to continue the contractual employees who were working in the session of 2010-2011 and it has further been directed to sign the agreement containing the same terms and conditions as were existing in the original agreement. Much objection has been raised for signing of the agreement though it has not been disputed that petitioners were initially engaged on the contract basis and they had signed agreement also. Even as per the judgment of the Division Bench, contractual employees cannot be replaced by another set of contractual employees but then petitioners being contractual employees are under an obligation to sign the agreement. The impugned

order does not show that the seniority position of the petitioners would be affected or is to be counted from the date of agreement rather judgment of this Court in the case supra directs for application of "last come first go" and petitioners having been continued in service, are wrongly apprehending any effect on their seniority. Mere submission of agreement for the present session is not going to affect them rather rights settled in favour of the petitioners in the judgment supra still hold field though with a clarification as given by the Division Bench. Thus, I find that the present writ petition has been filed only on the apprehension and thus are not maintainable. In any case, while dismissing the writ petition, it is clarified that submission of agreement will not affect the continuance of the petitioners' service and their rights as settled by the Division Bench of this Court in the case supra. No action should be taken by the respondents in violation of the direction given by the learned Single Judge and as upheld by the Division Bench though with some modifications.

The petitioner/s are accordingly directed to submit an agreement pursuant to the circular dated 29.06.2011 and they would not be debarred to continue merely for the reason

that the agreement was not signed on or before 4.7.2011. However, petitioner/s should sign the agreement within a period of two weeks from today.

Learned counsel further submits that petitioners have not been paid salary for want of signing of agreement, thus a direction may be given to the respondents for release of salary. For that purpose, the petitioners are ready to sign the agreement for the period in question.

The prayer aforesaid is accepted. If the petitioners sign the agreement then respondents are directed to release their salary forthwith, if they have worked for the year in question.

In case, the respondents find any difficulty in carrying out the order or any clarification, they would be at liberty to move an application for modification or recalling of the order.

(M.N. BHANDARI), J.

preety, Jr.P.A.

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

*Preety Asopa
Jr.P.A.*