

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Special (Writ) Appeal No. 964/2022
In

S.B. Civil Writ Petition No.5149/2021

Mrs. Krishna Bhatia Wife Of Shri Ashish Bhatia, Aged About 40 Years, Resident Of G-2, Pink Pride, 30, Udai Nagar-A, Nirman Nagar, Jaipur (Raj.)

----Appellant

Versus

1. Army Public School, Jaipur Military Station Jaipur Through Principal
2. Chairman Army Public School, Jaipur Military Station Jaipur(Raj.).
3. School Administration And Management Committee, Army Public School, Jaipur Military Station Jaipur(Raj.) Through Chairman.
4. The Army Welfare Education Society, Through Its Managing Director, Building No. 202, Shankar Vihar, Delhi Cantonment, New Delhi- 110010.

----Respondents

For Appellant(s) : Ms. Krishna Bhatia, Appellant in person.

For Respondent(s) : Ms. Gayatri Kulshresth, Principal, Army Public School, Jaipur

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Judgment

28/02/2023

Heard.

This appeal is directed against the order dated 29.06.2022 passed by the learned Single Judge, whereby, the interim order passed earlier in the case has been modified in the manner that the appellant shall be allowed to continue in service on the post of P.R.T. subject to holding the required educational qualifications as per the N.C.T.E. norms issued on 28.06.2018. Learned Single

Judge also clarified that those petitioners, who have completed the bridge course upto 31.07.2021 shall also be allowed to work on the post of P.R.T. with the respondent-institution. A liberty has also been given to the respondents to engage the teachers on contractual/ad hoc basis pursuant to advertisement dated 16.02.2022, though keeping their selection and appointments subject to final outcome of the petition.

The appellant in person, assailing the order passed by the learned Single Judge, would submit that the modification in the earlier interim order is on the premise that the continuance would be subject to holding required educational qualifications as per the N.C.T.E. norms issued on 28.06.2018 whereas, the appellant was appointed on 28.03.2018. It is submitted that the appellant had been working in the institution since 2010 as contractual/ad hoc employee and she was then regularized in service after 10 years and while continuing on probation, just before regularization, such services were sought to be terminated by impugned order, therefore, the appellant had a strong *prima-facie* case and interim order passed in her favour ought not to be clarified/modified to her detriment.

Ms. Gayatri Kulshresth, Principal, who is appearing on behalf of respondents-Army Public School, Jaipur, would submit that long continuance of appellant as ad hoc or contractual employee will not create any indefeasible right in her favour. She would submit that for regular appointment, qualifications prescribed by N.C.E.T. are required to be fulfilled. It is stated that on the date of appointment, i.e., 28.03.2018, the appellant was not fulfilling the statutorily prescribed qualifications.

We have heard the parties from both the sides and perused the order passed by the learned Single Judge and the records of the case.

The appellant admittedly had been working in institution for long until she was granted regular appointment on 28.03.2018. The order of the learned Single Judge shows that reference is to N.C.T.E. norms issued on 28.06.2018 which is after the date of appointment of the appellant. Whether or not the appellant is fulfilling the required education qualification prescribed under the law, is a matter for consideration on merits of the case. Long continuance of the appellant in service followed by an order of regularization, by itself made out a strong *prima-facie* case in favour of the appellant. Therefore, the appellant is entitled to continue in service till final decision of the case.

In view of the above, we are inclined to allow the appeal and set aside the order passed by the learned Single Judge insofar as the present appellant is concerned and order that the appellant shall be allowed to continue in service in the same capacity in which she was continuing at the time of her termination. After completion of the period of probation, the appellant shall be treated only as temporary employee. Her continuance obviously would be a subject to the final outcome of the writ petition.

Accordingly, the appeal is allowed.

(ANIL KUMAR UPMAN),J (MANINDRA MOHAN SHRIVASTAVA),ACTING CJ
Sanjay Kumawat-50