

State of Rajasthan

Vs

Rajendra Kumar Rawat and Others

Civil Appeal Nos. 1585-1605 of 1987

(Ranganath Misra, G. L. Oza JJ)

25.11.1987

JUDGMENT

RANGANATH MISRA, J. –

1. These appeals are by special leave and are directed against the common judgment of the Division Bench in a group of writ applications filed before it challenging the termination of appointment as Legal Assistants in the State of Rajasthan.

2. Three questions mainly came before the High Court for determination :-

(1) Is there a distinction between making financial provisions in the budget to meet the expenses for posts and creation of posts ?

(2) What exactly was the number of vacancies available to be filled up as required by the rules ? And if recommendation had been received from the State Public Service Commission in terms of rules for regularly filling up the vacancies, how would appointees Rule 30 be dealt with ? and

(3) Whether the persons whose appointments under Rule 30 have been terminated and who have availed the opportunity of getting screened through the Public Service Commission in the regular way and have failed, would still be entitled to claim the benefit of employment ?

3. In course of arguments before us one more aspect arose as to whether seven of the Legal Assistants recruited in the year 1982 could be allowed to form themselves into a group to be continued without being recommended by the Public Service Commission, on the basis of periodic approval of the Public Service Commission to their continuance.

4. Financial provisions in the budget is made on the basis of the anticipated expenditure planned on the basis of expected requirements of the different departments of government. Approval of lump sum amount in the budget to meet expenditure under the head of salary by the legislature does not amount to creation of posts and administrative orders would still be necessary for creating the posts unless they are continuing from before. The reasoning adopted by the High Court on this score is not acceptable, we do not agree that once provision is made in the budget it becomes obligatory for the State Government to fill up the vacancies and if there be a failure on the part of the State Government to do so, a writ could be issued to the State Government to fill up the posts. It is relevant to take note of the fact though the High Court at one stage indicated that this should be the

legal position, in the concluding portion of its judgment the High Court has stated that if provision has been made in the budget and the posts have been created the judgment should be implemented in the manner indicated. Obviously this meant that the High Court was not prepared to overlook the distinction between the two situations.

5. Rule 30 of the rules provides for urgent temporary appointments :

"A vacancy in the service which cannot be filled in immediately either by direct recruitment or by promotion under these rules may be filled in by the Appointing Authority or by the authority competent to make appointments, as the case may be, by appointing in an officiating capacity thereto an officer eligible for appointment to the post by promotion or by appointing temporarily thereto a person eligible for direct recruitment to the service where such direct recruitment has been provided under the provisions of these rules :

Provided that such an appointment will not be continued beyond a period of one year without referring the case to the Commission for concurrence, where such concurrence is necessary and shall be terminated immediately on its refusal to concur ..."

6. It is not disputed that the Legal Assistants whose services have been terminated and who are respondents before us were appointees under this rule. Government have made the order of termination on the basis that candidates were available on the basis of regular selection through the Commission. It is unnecessary to go into the question further as we are satisfied that the termination in this case was the outcome of regular selection.

7. There is no dispute that the respondents had offered themselves as candidates before the Public Service Commission and have not been successful. On that footing it has been contended relying upon the decision of this Court in the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* (1986 Supp SCC 285 : 1986 SCC (L&S) 644; AIR 1986 SC 1043), that the persons of this category are no more entitled to lay claim on the basis of termination of their employment under the Rule 30. We agree that the same is the position in law.

8. It has been stated before us by appellant's counsel that is on today the sanctioned strength of Legal Assistants is 126; but that is disputed on behalf of the respondents. It is difficult for us to determine the exact number and that must be left to the State Government. In the event of there being vacancies in the sanctioned posts the same would be available to be filled up under Rule 30. It has to be taken note of here that seven of the Legal Assistants were recruited in 1982 under Rule 30 and have been continuing with the periodic approval of the Public Service Commission. The rule nowhere contemplates regularisation of such recruitment. Under Rule 30 the appointments are bound to terminate in the event provided in the proviso of the rule. Therefore, their continuance was not correct. The State Government shall take immediate steps to fill up the vacancies as required under the rules by sending the requisition to the Public Service Commission. On the basis of the determination of the exact number of vacancies, the State Government will have also to require the Public Service Commission is to recruit for the remaining vacancies. Until such recruitment is made, the seven Legal Assistants who have been continuing from 1982 and are not parties to the proceedings may continue. For the remaining vacancies (after the reserve list is exhausted) the State Government is directed to appoint out of the persons who were already in service and whose services have been terminated following the rule indicated by the High Court, namely those who have put in the maximum period of service shall be preferred. The State of Government shall send

the requisition to the Public Service Commission without delay and we direct the Public Service Commission to give priority to make the selection as early as possible. The judgment of the High Court is modified. The State Government shall make temporary appointment as directed above within four weeks. The civil appeals are disposed of with no order as to costs.

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