

State of Rajasthan

Vs

Dinesh Kumar Bharti

Civil Appeal No. 349 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

20.01.1997

ORDER

1. Leave granted.

2. We have heard learned counsel for both the parties.

3. This appeal by special leave arises from the judgment of the Single Judge of the Rajasthan High Court made on 4-11-1992 in SA No. 175 of 1992. The learned Judge dismissed the second appeal on the ground of limitation. After hearing the learned counsel for both the parties, instead of remanding the matter, we think that it can be disposed of on merits. The respondent was appointed on ad hoc basis as a teacher on 30-9-1970. The Screening Committee constituted to regularise the services of the ad hoc teachers found that the respondent was not fit to be confirmed. On the basis thereof, the order of termination came to be made on 8-5-1974. It was challenged in the suit. Ultimately, when it was decreed by the trial court and affirmed by the appellate court, the High Court dismissed the second appeal on the ground of limitation. The District Judge relied upon Rule 23-A of the Rajasthan Service Rules, 1951 to hold that prior notice required by Rule 23-A was not given to terminate the service. So the order is bad in law. Rule 6(b)(3) of the Rules provides thus :

"6. (b)(3) that a person holding any of the following Grade I posts in Sections B, C, D, E and F or any of the posts in Section 'A' of the schedule on 31-12-1972 in an ad hoc/officiating/temporary capacity and who had continuously held the said post or would have held any of these posts but for his deputation elsewhere, for a period not less than six months on 15-12-1971 and was working as such on the date of publication of these (amendment) rules shall be screened by a committee referred to in Rule 25, for adjudging his suitability for such post, provided he possesses the qualifications prescribed in the rules either for direct recruitment or for promotion or the prescribed qualification of the posts on the basis of which he was appointed in the ad hoc or officiating or temporary capacity on such post."

4. Under Rule 25, the Screening Committee was appointed to adjudge the suitability of ad hoc teachers for regularisation. As a consequence of the above rule, the Screening Committee considered the persons holding posts on temporary or officiating basis or in ad hoc capacity who had continuously held the post for a period of not less than six months as on 15-12-1971 and were working as such on the date of the publication of the Amendment of the Rules. They were required to be screened by a committee constituted under Rule 25 to adjudge their suitability to the posts provided they possessed the qualification prescribed under the rule either for the direct recruitment or for promotion or the prescribed qualification of the posts on the basis of which they were

appointed in ad hoc or officiating or temporary capacity. Admittedly, the committee was constituted in 1974 under Rule 25 and the committee came to the conclusion that the respondent was not fit to be confirmed. Rule 23-A was inserted w.e.f. 10-7-1981. Rule 23-A(2)(a) reads as under :

"The service of a temporary government servant who has been in continuous government service for more than three years and who satisfied the suitability in respect of age and qualifications prescribed for the post and has been appointed in consultation with the Rajasthan Public Service Commission were as such liable to termination at any time by a notice of three months given in writing either by the government servant to the appointing authority or by the appointing authority to the government servant :

Provided that the service of any such government servant may be terminated forthwith, and on such termination the government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rate at which he was drawing immediately before the termination of his service for the period by which such notice falls short of three months, as the case may be."

5. Therefore, Rule 23(2)(a) per se was inapplicable. Even otherwise, assuming that it was applicable, it would apply to a case where consultation with the Public Service Commission is necessary and the Public Service Commission finds the government servant not eligible to be confirmed, In such a case, termination of the services could be made only after giving three months' notice in writing. In this case, the Screening Committee was constituted. It is obviously not a case covered under Section 23-A for obtaining the concurrence of the Public Service Commission. Under those circumstances, the view of the courts below was obviously incorrect. The High Court was incorrect in dismissing the appeal on the ground of delay.

6. The appeal is accordingly allowed. The order of the courts below stands set aside. No costs.