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STATE OF RAJASTHAN AND ANR.

v.

KULWANT KAUR

APRIL 25, 2006

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[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

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Rajasthan Panchayat Samiti & Zila Parishad Service Rules, 1959—Rule 59—Teacher possessing Diploma in tailoring appointed as primary teacher on temporary basis—In pursuance of Circular and also decision of Supreme Court, services of such teachers possessing only diploma in tailoring and not requisite qualification terminated—Writ Petitions challenging the termination—Termination order stayed and Government directed to send such teachers for requisite training and on completion to regularise their service—Validity of—Held: Teachers did not possess essential qualification as such had no legal right to continue in service—Interim order passed in her favour would not mean that she held valid post or termination order was bad in law—Also equity not in her favour since she continued to be in service—Thus, services rightly terminated—Service Law.

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The minimum qualification for the post of Primary School Teacher was Matriculation and Basic Short Training Certificate (BSTC) course in terms of the Rajasthan Panchayat Samitis & Zila Parishad Service Rules, 1959. Respondent possessed Diploma in tailoring and was temporarily appointed as a Grade-III teacher. In pursuance of the Circular of the Director, Primary and Secondary Education directing termination of the services of temporary teachers who possessed only diploma in Tailoring, respondent's services were terminated. On Writ Petition, High Court stayed the termination order and directed that such teachers should be sent for obtaining the requisite training. Thereafter, in view of the decision of this Court in *State of Rajasthan v. Shyam Lal Joshi & Ors.* services of all the teachers who did not possess the requisite qualification were directed to be terminated. Respondent's services were also terminated. She again filed a writ petition. Stay order was passed and she continued in service. Single Judge of High Court dismissed both the writ petitions. Division Bench of High Court quashed the termination order and directed the Government to give her training in case the appellant did not possess the

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requisite qualification, and on completion regularize her services. However, it did not notice that the Rules of 1959 were substituted by Rajasthan Panchayati Raj Rules, 1996, wherein the educational qualification of temporary teacher was (i) Senior Secondary under New (10 + 2) Scheme or Higher Secondary under Old Scheme from Rajasthan Board of Secondary Education or equivalent (ii) B.S.T.C. Hence the present appeals.

Allowing the appeals, the Court

HELD: 1.1. Respondent did not possess requisite qualification, as such had no legal right to continue in service. Only because the order of termination of service of respondent was directed to be stayed and in obedience of the interim orders passed by the High Court, she was allowed to continue in services, the same cannot lead to the conclusion that she had been validly holding the post or the order of termination was bad in law. Thus, the termination order is not bad in law. [333-D-E]

1.2. *Actus Curiae neminem gravabit* is a well known maxim. Thus, the orders passed by the appellant could not have been directed to be set aside by the High Court on the grounds stated. High Court did not arrive at a finding that the respondent was possessed of basic essential qualification, both as regard general education as well as the training. [333-H; 334-A]

1.3. It is also not a case where equity is in favour of the Respondent. Only because an interim order was passed in her favour, the same would not mean that despite the fact that she did not possess requisite qualifications, her services would be allowed to continue. Even the old Rules were not applicable in her case. The matter would have been different had she acquired the requisite qualification prior to issuance of order of termination in 1994. Admittedly, she had not by then completed her training. Even at that point of time, she was not possessed of the Short Training Certificate. Thus, her services had rightly been terminated and the purported acquisition of qualification by her in 1996 would be of no significance. [334-A-C]

State of Rajasthan v. Shyam Lal Joshi and Ors., [1994] 1 SCC 593 and *Mohd. Sartaj & Anr. v. State of U.P. and Ors.*, [2006] 1 Scale 265, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 694-695 of 2005.

A From the Final Judgment & Order dated 19.2.2001 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal Nos. 639/1995 and 640/1995.

Aruneshwar Gupta and Naveen Kumar Singh for the Appellants.

B Manu Mridul, Anant Vatsya and Surya Kant for the Respondent.

The Judgment of the Court was delivered by

C **S.B. SINHA, J.** The State of Rajasthan enacted Rajasthan Panchayat Samiti & Zila Parishad Act, 1959 ('the Act', for short). The Respondent was appointed as a Grade-III teacher on 25.11.1983 by the Panchayat Samiti, Padampur. The terms and conditions of her appointment were governed by Rajasthan Panchayat Samitis & Zila Parishad Service Rules, 1959 ('the Rules', for short). The Schedule appended to the said Rules lay down the conditions for appointment, including basic educational qualification, as also the eligibility criteria therefor which read as under:

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S.No.	Name of the Post and pay scale	Source of Recruitment with percentage		Qualification and experience for direct recruitment	Promotion		Remarks
		Direct Recruitment	By promotion		Post from which promotion will be considered	Qualification/ Experience for promotion	
5.	Primary School Teacher	100%	-	Senior Secondary with basis STC	-	-	Candidates who possessed Secondary or Hr. Secondary examination prior to 1990 shall also be eligible

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H The minimum qualification required for the post of Primary School Teacher was the Matriculation and Basic Short Training Certificate (BSTC) course. The services of the Respondent were terminated in the year 1984 but

she was reappointed on a temporary basis. The Director, Primary and Secondary Education issued a circular directing termination of the services of temporary teachers who possessed only diploma in Tailoring. The services of the Respondent pursuant to the said circular had also been terminated, relying on the said circular by the appellant herein, by an order dated 11.5.1987. She filed a writ petition before the Rajasthan High Court wherein an order of stay was passed. She was allowed to continue in service in view of the said order of stay. The question as to whether, having regard to the fact that the authorities of the State Government themselves had not been sending the Assistant Teachers for training, some directions were issued by the High Court to the effect that the services of such teachers should not be terminated, but, they should be sent for obtaining the requisite training.

The question as to whether the National Training Certificate in Tailoring or any other craft should be treated to be equivalent to Short Training Certificate or not, came up for consideration of this Court in *State of Rajasthan v. Shyam Lal Joshi & Ors.*, [1994] 1 SCC 593, wherein the relevant rule, which is as under, was noticed:

“Secondary with Basic School Training Certificate (BSTC) or a training qualification recognized as equivalent to BSTC by State Government.”

This Court held:

“.....A distinction has to be drawn between a general teacher who has received complete training and is in a position to teach all the subjects and a teacher who has received training in a particular craft and can, therefore, properly teach that particular craft only. Under the relevant rules for appointment to the post of Primary School Teacher it is necessary to have BSTC or a training qualification recognised as equivalent to BSTC by the State Government. The BSTC course is a two years’ training course wherein the training is given in various subjects. The NTC is granted by the ITI after a course of training in a particular craft. By order dated November 8, 1979, the State Government recognised the NTC given by ITI for teaching vocational subjects in Secondary Schools in certain specified crafts, namely, wood work, tailoring, leather work and spinning & weaving. This recognition is limited to teaching the aforesaid vocational subjects only. In the circular dated August 6, 1984, reference has been made to the order dated December 11, 1974, whereby certificates of

A Industrial Examinations of the Rajasthan Government were recognised as equivalent to Arts and Handicraft Examinations of Vidya Bhawan, Udaipur, and it was directed that since the Handicraft Diploma Certificates of Vidya Bhawan have been recognised as equivalent to basic training (BSTC) by the Education Department, the Industrial Examination of the State Government has also been treated as

B equivalent to BSTC. The said circular does not run counter to the limited nature of recognition granted to NTC by order dated November 8, 1979. This was clarified by circular dated January 7, 1985 wherein it has been stated that the NTC holders have been given recognition to teach industrial subjects in the secondary schools for conferring

C NTC and that candidates holding NTC are not eligible for the post of teachers in the Panchayat Samities. The last circular dated November 6, 1985 only gives effect to the directions contained in the earlier circular dated January 7, 1985. It would thus appear that limited recognition was given to NTC by order dated November 8, 1979 in the matter of teaching vocational subjects of the certificate and the

D subsequent circulars dated August 6, 1984, January 7, 1985 and November 6, 1985 do not detract from that position. The circular dated August 6, 1984 cannot be construed as giving a fresh recognition to NTC and, therefore, the question of withdrawal of recognition granted earlier by the subsequent circulars dated January 7, 1985 and

E November 6, 1985 does not arise. The principle of promissory estoppel is not attracted and the decision of this Court in *Suresh Pal v. State of Haryana*¹ on which reliance has been placed by the High Court, also has no application.

F In view of the limited recognition that has been granted to NTCs the holders of NTCs cannot claim appointment as general teachers and can only be appointed to the post of craft teachers in the craft for which they hold the NTC. For teaching subjects other than the craft for which they hold the NTC the position of the holder of NTC is no different from that of an untrained teacher. The need for appointment of properly trained teachers has been emphasised by this Court in

G *Andhra Kesari Educational Society v. Director of School Education*² wherein it has been observed: (SCC p. 399, para 20)

H “It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill-trained or sub-standard teachers would be detrimental to our educational

system; if not a punishment on our children.”

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In view of the said decision of this Court, the services of all the teachers who did not possess the requisite qualification were directed to be terminated by an order dated 7.4.1994. It is not clear as to whether any order to that effect was served on the Respondent. Only on 31.5.1995 an order of termination was served on her. She again filed a writ petition, which was marked as W.P. No.2973/94 before the High Court challenging the said order of termination. An interim order of stay was passed therein. Pursuant to or in furtherance of the said interim order of stay, she continued in service.

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Ultimately both her writ petitions, namely, W.P.Nos.2973/94 and 1383/87 were dismissed by a learned Single Judge of the High Court by an order dated 22.8.1995. Letters Patent Appeals were preferred thereagainst by the Respondent No.1 and by reason of the impugned judgment, the Division Bench of the High Court directed:

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“For the foregoing circumstances, we are of the opinion that the appellant is entitled to a direction as made in *Neera Joshi's* case, *Lomb Singh's* case. We therefore, quash the order of termination and direct the Government to determine whether the qualifications possessed by the appellant entitles her to be continued in service and in the event of coming to the conclusion that the appellant does not possess the requisite qualification, to give her training as had been done in other cases and on her successful completion of the training, regularize her services. We direct the State Government to determine Appellant's qualification with a period of two months from the date of receipt of this judgment and proceed further in accordance with law.

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The High Court noticed that the appointments have been given to the teachers on contract basis but they did not acquire the qualification in the meantime. The High Court furthermore noticed that the State has issued a circular on 30.8.2000 in relation to the teachers who underwent the service training and acquired qualification as vocational teachers for the purpose of grant of promotion.

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The High Court, however, did not notice that Rules of 1959 were substituted by Rajasthan Panchayati Raj Rules, 1996, wherein the educational qualification of temporary teacher was laid down in the following terms:

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A	S. No.	Name of the Post and pay scale	Source of Recruitment with percentage		Qualification and experience for direct recruitment	Promotion		Remarks
			Direct	By Recruitment		Post From Which Promotion will be considered	Qualification/ Experience will be considered for promotion	
B								
C								
D	5.	Primary School Teacher	100%		(i) Senior Secondary under New (10+2) Scheme or Higher Secondary under Old Scheme from Rajasthan Board of Secondary Education or equivalent. (ii) B.S.T.C. Course.			
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It is beyond any controversy that the Respondent herein did not pass the Senior Secondary Examination. She was, therefore, asked to enhance her qualification by a letter dated 4.12.2003 stating:

F “.....Your aforementioned examination result has been declared on the condition that result of second year Teachers Training (Correspondence Course will not be declared until you pass the minimum qualification of Higher Secondary Examination or its equivalent examination.

G However, during the pendency of this special leave petition, she was directed to undergo training and it is not disputed that she had completed the same.

H Mr. Aruneshwar Gupta, learned counsel appearing on behalf of the appellant would submit that in view of the decision in *Shyam Lal Joshi* (supra) and further more, having regard to the amendments made in the Rules

within the year 1996, the Respondent being not possessed of the essential educational qualification, the impugned judgment cannot be sustained. A

Mr. Manu Mridul, learned counsel appearing on behalf of the Respondent, on the other hand, would submit that in equity her services should not be directed to be terminated as she had been continuing therein pursuant to the interim orders passed by the High Court for a long time. It was also submitted that there are large number of teachers who have been allowed to continue in service despite the fact that they were similarly situated. B

The services of the Respondent had been terminated on the ground that she lacked essential educational qualification. The High Court passed an interim order in her favour. Such orders were being passed on the ground that the State had been making discrimination amongst the teachers in the matter of sending them for obtaining training; such in-service training being permissible. However, we are not concerned with such a situation in this case. C D

The Respondent herein did not possess the requisite qualification. Only because the order of termination of service of Respondent was directed to be stayed and in obedience of the interim orders passed by the High Court, she was allowed to continue in services, the same, in our opinion, can not lead to the conclusion that she had been validly holding the post or the order of termination was bad in law. After *Shyam Lal Joshi* (supra), it is not disputed that the teachers were required to possess a Short Training Certificate. As the respondent did not possess such essential qualification, she has no legal right to continue in service. The orders of termination passed, both in 1987 and 1994, which were the subject matter of the Writ Petition No.1383/87 (being against the order dated 11.5.87) and Writ Petition No.2973/94 (being against the order dated 31.5.1994), cannot, thus, be held to be bad in law. E F

In *Mohd. Sartaj & Anr. v. State of U.P. & Ors.*, [2006] (1) SCALE 265, this Court clearly held that possession of an essential educational qualification was mandatory for obtaining the right to continue in the post. A legal right in this behalf cannot be said to be derived by an employee only because an interim order was passed by the High Court. G

Actus Curiae neminem gravabit is a well known maxim. The orders passed by the appellant could not, thus, have been directed to be set aside by the High Court on the grounds stated therein. The High Court did not arrive H

A at a finding that the Respondent was possessed of basic essential qualification, both as regard general education as well as the training.

B It is also not a case where equity is in favour of the Respondent. Only because an interim order was passed in favour of the Respondent, the same would not mean that despite the fact that she did not possess requisite qualifications, her services would be allowed to continue. Even the old Rules were not applicable in her case. The matter would have been different had she acquired the requisite qualification prior to issuance of order of termination in 1994. Admittedly, she had not by then completed her training. Even at that point of time, she was not possessed of the Short Training Certificate. Her services had, thus, rightly been terminated and in that view of the matter, C purported acquisition of qualification by her in 1996 would be of no significance.

For the reasons afore-mentioned, the impugned judgments cannot be sustained, the same are set aside. The appeals are allowed.

D No costs.

N.J.

Appeals allowed.