HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 1011/2024

Executive Engineer, Public Health Engineering Department, Block- District Bhilwara.

----Appellant

Versus

Mahesh Chandra Pareek son of Shri Bheirulal Pareek, resident of Shahopura, District Bhilwara through General Secretary, Jakday Shramik Sangh, Bhilwara.

----Respondent

For Appellant(s)	:	Mr. Sajjan Singh Rathore, AAG with Ms. Mehali Mehta
For Respondent(s)	:	--

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Order

04/12/2024

This Special Appeal Writ has been filed to challenge the order dated 6th May 2024 passed in S.B. Civil Writ Petition No.4345 of 2023.

2. By the order dated 14th September 2023 passed in D.B. Review Petition (Writ) No.198/2019 titled *"State of Rajasthan and Ors. v. Ranjeet and Anr.",* the order dated 28th February 2019 passed in D.B. Special Appeal Writ No.83 of 2019 has been reviewed and the reviewing Court has held that the terms and conditions as indicated in order dated 16th February 2022 passed in D.B. Special Appeal Writ No.475/2021 titled *"The Executive Engineer, PHED Division, Bhilwara v. Rameshwar Lal and Anr."* shall be followed in that case also.

3. The findings of the Court in D.B. Special Appeal Writ No.475/2021 titled *"The Executive Engineer, PHED Division, Bhilwara v. Rameshwar Lal and Anr." are* reproduced hereinunder:-

> *"We find that in the present case the respondent employee has been conferred the status of semi permanent employee on the basis of Rules of 1964 which were framed by the Governor in exercise of the powers conferred under proviso to Article 309 of the Constitution of India but remained in force till 17.02.1995 when these Rules were repealed vide notification F.5(6) DJP/A-II/ 92 dated 17.02.1995. This legal position being not in dispute, we hold that the respondent was not entitled to the semi permanent status of employee under the law. This is for the reason that the respondent employee's status as semi permanent is recognized under the law and not de-hors the Rules. The respondent employee was engaged in the year 1996 and by that time, the Rules had already been repealed, and therefore, in absence of Rules, status of semi permanent employee could not be granted to the respondent employee. True it is that this repeal was not brought to the notice of the learned Single Judge but, at the same time, this is not something pertaining to any disputed questions of facts but an admitted legal position going to the root of the matter. Therefore, once it is brought to the notice of the Court, the order of grant of semi permanent status cannot be allowed to stand in law. Therefore, we are inclined to interfere with that part of the order by which the respondent employee was declared to be entitled to semi permanent status without affecting the order of the Labour Court to the extent the reinstatement was ordered in favour of the respondent employee…..*
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> *….Considering the fact of continuance of respondent in the work where he was engaged and reinstatement under a judicial order, he needs to be considered for regularisation in accordance with law as early as possible preferably within a period of three months. The appeal of the State is accordingly partly allowed in the manner and to the extent as stated above."*

4. In view of the above, the present Special Appeal is not the appropriate remedy for the appellant-State of Rajasthan.

5. In view of the order passed in D.B. Review Petition (Writ) No.198/2019, this Court is not required to adjudicate the writ Court's decision not to interfere with the award passed by the Labour Court and the present Special Appeal is disposed of with a liberty to the appellant-State of Rajasthan to seek review of the

order dated 12th December 2017 passed in S.B. Civil Writ Petition No.14697 of 2016.

6. As the appellant-State of Rajasthan was prosecuting this Special Appeal to lay a challenge to the writ Court's decision, if a review petition is filed by the appellant-State of Rajasthan, delay, if any, in filing such a review petition shall be condoned in view of the provisions under section 14 of the Limitation Act, 1963.

7. D.B. Special Appeal Writ No.1011 of 2024 is disposed of with liberty to the appellant-State of Rajasthan to seek review of the order passed in S.B. Civil Writ Petition No.14697 of 2016.

(MADAN GOPAL VYAS),J **(SHREE CHANDRASHEKHAR),J**

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