IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

S. B. CIVIL WRIT PETITION No. 7498/2009.

Prithvi Raj Singh Naruka & Ors.

Versus

State of Rajasthan & Ors.

Date of order: -

July 17, 2009.

HON' BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Hem Singh Rathore for the petitioners. Shri S. N. Kumawat, Additional Advocate General.

BY THE COURT: -

Petitioners, who appoi nted were as Vidhyarti Mitra under the vidhyarti Mitra Scheme on availability of possi bl e del ay in account candidates selected by the Rajasthan Public Service Commissi on through di rect recrui tment and Departmental Promotion Committee by promotion, have filed this writ petition assailing the order of their termination.

2) Co-ordinate Bench of this Court in Sarita and ors. Vs. State and ors. (SBCWP No. 4652/2009) vide order dated 8/5/2009 decided a batch of 633 writ petitions with the following directions: -

- "Accordingly, the writ petitions are disposed of as under:
- I. During continuation of the work, as detailed out hereinabove, the invocation of the last extension is arbitrary and illegal; and the consequential automatic termination orders of the petitioners.
- II. The RPSC/DPC selected candidates / employees are still not available and next academic session is about to start; even urgent temporary appointments under Rule 28 of the Rules of 1971 are not possible due to short span of one month and a half Left to start wi th the process admission and academic session, therefore, as per the aims and objects of the Scheme, respondents are directed to consider the cases of the petitioners for continuation servi ce till regul arl y sel ected candidates from RPSC/persons selected and recommended by the DPC for promotion are made available in the light of the above observations:
- III. Even in case of appropriate order of continuation in service till regularly selected candidates from RPSC/DPC selected persons are available, the petitioners are not entitled for wages of the vacations, in other words, when the schools are closed.
- IV. the regul arl y Ιn case sel ected candidates from RPSC/persons selected and recommended by the DPC for promotion are made available, then the respondents can terminate services of the petitioners after preparation of the seniority list on State level as per their date of appointment and merit assigned to them, by following the principle of `last come to the extent of availability of first go' the selected candidates and while doing so, the respondents will keep the interest the present students and prospective students in view."
- 3) Subsequently, large number of identical writ petitions including SBCWP No. 6728/09 (Ashok Kumar Vs. State of Rajasthan decided on 29/5/2009)

before thi s Bench in which the came up State Government was duly represented by their counsel. During hearing of these petitions, learned counsel i dem the parties were ad that controversy involved therein was squarely covered by the above referred to judgment of the co-ordinate Bench of this Court. On that basis, the writ petitions were disposed of with the order that the directions contained in Sarita supra shall mutatis mutandis apply to the case of those petitioners.

4) This matter involves identical controversy similarly wherei n peti ti oners are aggri eved termination of their servi ces and contend that action of the respondents invoking the clause of last extension be declared illegal and arbitrary and consequential automatic termination orders in each of their cases be quashed and set-aside in terms of directions contained in para 36 thereof. In earlier wri t peti ti ons al though Learned Addi ti onal Government Counsel appeared for the government. Today however, Shri S.N. Kumawat, Learned Additional Advocate General appears and submits that judgment of this Court in Anil Kumar Kothari Vs. State of Rajasthan (SBCWP No. 4276/08) decided on 5/5/2008 was wrongly distinguished in subsequent judgment of coordi nate Bench of this Court i n Sari ta supra. Learned counsel therefore submits that submissions on that aspect of the matter should be heard afresh so as to enable him to persuade this Court to take a

view different than the one which was expressed in Sarita supra.

- Although it may be true that this time, 5) represented by the learned State Government is Addi ti onal Advocate General. But then no such arguments were raised before me when number similar writ petitions were allowed earlier. those judgments, I have concurred with the view expressed by the co-ordinate Bench in Sarita supra. In Sarita supra, co-ordinate Bench has passed a very comprehensive and considered order also taking into consideration the judgment of this Court Kumar Kothari supra. Learned Single Judge has in para 28 of the judgment given three basic reasons why he took a view different than the one expressed Kumar Kothari. Much though the Learned Additional Advocate General argued to say that the case of Sarita supra was not correctly decided, he has however not been able to persuade me to take a different view. I having already concurred with that view expressed by the co-ordinate Bench in Sarita supra, see no reason to take a different view now, particularly when it is informed that the State Government has already preferred appeal against the above referred to judgments before the Division Bench.
- 6) In the result, the writ petition is allowed in terms of judgment rendered by the co-ordinate Bench of this Court in Sarita supra. The directions

contained in para 36 of Sarita supra shall *mutatis mutandis* apply to the present case.

7) At this stage, learned Additional Advocate General submitted that petitioners having approached this Court much after discontinuation of service, should not be held entitled to salary for the entire cl ear intervening peri od. Ιt is made that petitioners shall not be entitled to any salary for the intervening period when they have not actually discharged the duties till the date of their actual reinstatement.

Compliance of the judgment shall be made within a period of six weeks from the date its copy is produced before the respondents.

(MOHAMMAD RAFIQ), J.

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