

Supreme Court of India

B.L. Mandawat And Ors. vs Union Of India (Uoi) And Ors. on 16 August, 1993

Equivalent citations: JT 1993 (4) SC 610, 1993 LabLC 2164, (1994) IILLJ 1160 SC, 1993 (3) SCALE 444, 1993 Supp (4) SCC 10, 1993 Supp 1 SCR 575, 1993 (3) SLJ 97 SC, (1993) 3 UPLBEC 2057

Author: N Venkatachala

Bench: R Sahai, N Venkatachala

ORDER N. Venkatachala, J.

1. In this application, IA No. 1 of 1991 filed in W.P.No. 16044 of 1984 (W.P. No. 1470 of 1981) by the petitioner therein Smt. Nirmal Bhalla, it is prayed that appropriate directions shall be issued by this Court to the Respondents - (1) The Union of India, (2) The Chairman, Department of Atomic Energy, (3) The Chief Administrative Officer, Atomic Power Project, (4) The Principal, Atomic Energy Education Society, (5) The Chief Project Engineer, Rajasthan Atomic Power Project and (6) The Secretary, Atomic Energy Education Society, to make them carry out the assurance contained in letter No. 2/15(6)/81-PP Vol.II dated 27th July, 1984 of the Government of India, Department of Atomic Energy in the matter of absorbing her by Respondent-6 the Atomic Energy Education Society (the AEE Society) protecting her existing designation, grade, pay and allowances as a teacher in the Rajasthan Atomic Power Project School (the RAPP School).

2. The material facts and circumstances which form the basis of petitioner's application warrant mention, at the outset.

3. The petitioner was a teacher in the RAPP School ever since the year 1972 and had been in the year 1983 duly selected and promoted as Trained Graduate Teacher. Her service record was unquestionable. The Central Government desired that the RAPP School which was run by the Department of Atomic Energy should be transferred to the AEE Society, so as to enable the latter to run it independently of the Department of Atomic Energy, with its readiness to meet the whole expenditure to be incurred by the AEE Society in running that school.

4. The desired transfer of the RAPP School to the AEE Society came to be questioned by one of the teachers of the RAPP School in Writ Petition (C) No. 1470 of 1981 filed in this Court, apprehending retrenchment of existing RAPP School teachers by the AEE Society, in the event of the desired transfer taking place. The petitioner was a teacher who got impleaded in that writ petition and was treated as a writ petitioner in W.P.(C) No. 16044 of 1984. When the main writ petition along with the other writ petitions were heard by this Court and had to be decided, an opportunity was afforded by this Court to the Respondents, as desired by them, to have the matter amicably settled with the teachers and other employees of the RAPP School. Thereafter, letter No. 2/15(6)/81-PP Vol. II dated 27th July, 1984 sent by the Joint Secretary to the Government of India, to Respondent's learned Counsel, was placed for consideration of this Court. The material portion of that letter read:

WHEREAS the matter has been re-examined and reconsidered by the respondents No. 1 to 5 in the said writ petition, and WHEREAS the said respondents earnestly desire to help find a reasonable compromise of the said writ, I, S.K. Bhandarkar, Joint Secretary to the Government of India, in the Department of Atomic Energy on behalf of respondent No. 1 Union of India offer the following

proposals for consideration of the petitioners for an amicable compromise. The other respondents No. 2 to 5 are subordinate officers of respondent No. 1.

(1) In accordance with the Government of India's decision which has been approved by their Ministry of Labour too, the Government of India in the Department of Atomic Energy will close the Rajasthan Atomic Power Project Higher Secondary School (English Medium) on 31st of December, 1984.

(2) The petitioners and all other teachers will be paid at the time of closure retrenchment compensation payable in law.

(3) The Government of India in the Department of Atomic Energy will use their goods officers with the Atomic Energy Education Society which is substantially financed by the Government, to help find appropriate employment to the petitioners and other teachers of the RAPP Higher Secondary School (English Medium) and protection of their existing designation, grade, pay and allowances.

I understand that the Atomic Energy Education Society respondent No. 6 which is an autonomous body, and to which a request was already made by the Department of Atomic Energy to open a School at the Rajasthan Atomic Power Project site too has made its proposals to the petitioners for an amicable compromise.

I shall be grateful if the petitioners let the respondents know their reaction to the above proposals by 6th of August, 1984.

This Court, acting on the assurance contained in the said letter made an order on 8th May, 1987 dismissing Writ Petition (C) No. 1470/81 and discharging the Rule Nisi which had been ordered therein. That order read:

Having considered the grievances of the petitioner in this Writ Petition, we are of the opinion that in view of the letter No. 2/15(6)/81-PP Vol. II dated 27th July, 1984 of the Govt. of India, Department of Atomic Energy this writ petition has become infructuous. The grievances of the petitioner have been fully met by the assurance contained in the aforesaid letter. In that view of the matter, this application is dismissed. Rule Nisi discharged. There is no order as to costs. All interim orders are vacated.

5. By the dismissal of the main W.P.(C) No. 1470/81, the other writ petitions including W.P.(C) No. 16044 of 1984 of the petitioner, which were of the other teachers of the RAPP School who were allowed to be impleaded in the main writ petition, came to an end.

6. Subsequent evasive attitudes of Respondents when had inevitably led the petitioner and other teachers similarly treated by Respondents, to move this Court by filing a Contempt Petition, that petition was dismissed by an order made by this Court on 10th August, 1987, by stating thus:

We direct the Respondent(s) to consider the case of the petitioner and the petitioners who have not yet been absorbed, they will see the possibility to absorb the petitioners in accordance with law.

7. Again, on 25-4-1988, subsequent Contempt Petitions filed by the teachers against the Respondents having come up for orders before this Court, they were disposed of because of the undertaking of Mr. G. Ramaswamy, the then additional Solicitor General that Respondents 4 and 5 will absorb all the five petitioners on the footing of others. However, that undertaking when was recalled by this Court by its Order dated 10th May, 1988, Respondents-authorities were asked to consider the cases of five petitioners including the petitioner for absorption.

8. Thereafter, another order was made by this Court on 6th September, 1988 which read:

Having considered the facts and the circumstances of the case we had requested the learned Additional Solicitor General to look into this matter and to see if any appropriate chance for reconsideration of the case of the petitioners could be arranged for. He has assured the Court, having looked into the matter, though there was perhaps no legal infirmity in the process followed for selection of the petitioners by the respondents will give to the petitioners another reasonable opportunity at such date which will be intimated to the counsel for the petitioners so that the petitioners can appear for interview again according to the norms of the Selection Committee. The Selection Committee will consider the case of the petitioners objectively, dispassionately and sympathetically. This order will not be treated as a precedent as it is passed in the peculiar facts and circumstances of this case.

The Civil Miscellaneous Petition is disposed of accordingly.

9. Respondent-6 (the AEE Society) was in no mood to fulfill the assurance of the Respondents contained in the letter dated 27th July, 1984 placed before this Court leading to the dismissal of the writ petition and subsequent orders made by this Court, becomes obvious from its Chief Administrative Officer's letter dated 4th August, 1989 which reads:

Reference is invited to this office circular No. AEES/A(1.46) 89/2573 dated 20.3.1989 wherein the Ex-teachers of the RAPP Higher Secondary (E.M.) School, Ravat Bhata who were retrenched from service on the closure of the school, were requested to exercise their option either to retain the retrenchment and other terminal benefits received at on their retrenchment from RAPP School, in which even their past service in RAPP School will not count for pension under AEES, or

(b) to refund the retrenchment and other terminal benefits received by them at the time of their retrenchment from RAPP administration with interest thereon.

(a) 6% from the date of receipt of those benefits till the date of refund of the amount of AEES either in lumpsum or in monthly instalments not exceeding thirty six and count the service rendered in RAPP School for pension under AEEA.

10. Non-fulfilment of the assurance contained in the letter dated 27th July, 1984 on the footing of which this Court dismissed the main writ petition resulting in dismissal of other writ petitions including that of the writ petitioner (Smt. Nirmal Bhalla) is said to have led her to make several attempts in this Court and outside, to ensure fulfilment of that assurance but in vain. With no alternative left, she is said to have made the present application praying for issue of a direction to Respondents to fulfil the assurance of her absorption in service of the AEE Society Schools, which are run by the AEE Society.

11. How, clumsily the petitioner is treated by the Respondents, immediately they got the writ petition dismissed by this Court on 8th May, 1987, since becomes apparent from the notice dated 3rd August, 1987 issued to her, that notice is excerpted in full, thus:

GOVERNMENT OF INDIA Rajasthan Atomic Power Station Plant Site, Anushakti - P.O.

No.RAPS/09000/OM/87/S/900 Dt. 3 Aug., 1987 NOTICE Whereas implementation of the decision of Government of India, Department of Atomic Energy to close the Rajasthan Atomic Power Station Higher Secondary (English Medium) School in 1981 had been kept in abeyance following the stay order passed by the Hon'ble Supreme Court on 14.5.1981;

Whereas aforesaid stay and other interim orders were vacated by the Hon'ble Supreme Court's decision of 8-5-1987, in view of DAE.'s letter No. 2/15(6)/81-PP Vol. II of 27.7.1984;

Whereas the Department of Atomic Energy had informed the Ministry of Labour and Employment, New Delhi, vide their letter No. 2/10(24)/87-PP/1084 dated 25.5.1987 that the RAPS Higher Secondary (English Medium) School would be closed w.e.f. 25.7.1987.

Whereas the Department of Atomic Energy had also submitted notice for permission of closure vide their letter No. 2/10(24)/87-PP dated July 3, 1987, and now that authority had held that the permission for closure is not required in the present case;

Whereas pursuant to the above referred assurances contained in DAE's letter No. 2/15(6)81-PP Vol.II dated 27.7.1984, the existing teaching and non-teaching staff were advised to make their applications through RAPS by 25.7.1987 for employment in the Atomic Energy Education Society;

And whereas, the RAPS Higher Secondary (English Medium) School is closed w.e.f. 3.8.1987;

Now, therefore, Smt. Nirmal Bhalla designation T.G.T. is hereby given this notice that her services shall stand terminated w.e.f. 3.8.1987. Three months' wages (as applicable) in lieu of notice period is hereby offered and paid to her. She may collect her compensation as per rules from Pay & Accounts Officer, Rajasthan Atomic Power Station, during working hours any time after 6-8-1987 onwards.

Sd/-

(C.V. Nadkarny) Chief Superintendent Enclos. Cheque No. 085745 dated 3-8-87 for Rs. 6216.00
Smt. Nirmal Bhalla, T.C.T.

(Through Principal, RAPS Hr.

Secondary, E.M. School.

12. The tone of the letter, as could be seen therefrom is, that the Supreme Court, when by its order dated 8th May, 1987 has dismissed the writ petition and vacated the stay granted by it earlier in view of the letter dated 27th July, 1984, there is nothing in the way of terminating petitioner's services as a teacher of the RAPP School and it is now for her to have her fate determined by the AEE Society to which she was advised to make an application. However, one redeeming feature of this letter is that it says that the advise given to her to make the application was in pursuance of the assurance given in the letter placed before this Court of the RAPP School teachers employment, by the AEE Society.

13. In the counter-affidavit filed in opposition to the said application on behalf of Respondent -6, the Secretary, Atomic Energy Education Society, no doubt admits in para 5 thereof, that it is substantially funded by the Department of Atomic Energy through its grants and that an order is passed by this Court dismissing the writ petition on 8th May, 1987. But it is claimed that this Court made the order dismissing the writ petition although opposed by the petitioner. It is then said, that the erstwhile RAPP School has since been run by an independent AEE Society, the continuation of the services of the petitioner in the RAPP School run by the AEE Society, cannot arise. The stand so taken on behalf of Respondent-6, shows how Respondent-6 is trying to wriggle out of the situation arising from the letter of the Joint Secretary which was written at the instance of Respondent-6, as well. Moreover, when the AEE Society got her interviewed by its Selection Committee along with other candidates who had applied for appointment as teachers in the Schools of the Society, it is said that the petitioner's performance not being satisfactory, she could not be appointed. Thus, the grounds put-forth in the counter-affidavit filed on behalf of Respondent-6, the AEE Society for refusal of absorption of the petitioner, are two - (i) That this Court since dismissed the writ petition on merits, such dismissal does not impose an obligation on the part of Respondent-6, the AEE Society, an autonomous society which is independent from the Central Government to absorb the petitioner as a teacher in its RAPP School after the same was transferred to it by the Central Government (ii) That even if there was any obligation on the part of the AEE Society to absorb the petitioner in its school, it was unable to fulfil such obligation since her performance in the interview before the teachers' Selection Committee of the AEE Society did not satisfy the requirement of minimum marks of 50 per cent set down for the purpose.

14. Both the said grounds put-forth on behalf of Respondent-6, the AEE Society, to avoid absorption of the petitioner as a teacher in its schools, are untenable and warrant outright rejection, for the reasons we propose to state, now.

15. Ground (i), that this Court dismissed the writ petition on merits and the dismissal of the writ petition, therefore, did not obligate the AEE Society to absorb the petitioner who was a teacher in

the school handed-over to it, to say the least, does not speak well of the AEE Society, to which this Court had accorded a special status and treatment because of the involvement in its management of country's scientists of repute.

16. It shall not be forgotten, as has been done by the AEE Society now, that the Central Government could not transfer the RAPP School to the AEE Society because of the writ petitions of the petitioner and others and such transfer could be effected only after the main writ petition was dismissed by this Court. We have come across some Education Societies which are known for carrying on business in appointments of teachers and admission of students to their schools, coming forward with untenable pleas for refusing to admit students or to appoint teachers, but we feel even now, that the AEE Society should not have given the impression to this Court by its pleas that it is attempting to wriggle out of an assurance given to this Court on the basis of which alone this Court dismissed the main writ petition paving way for it to takeover the management of the school in which the petitioner was a teacher. When this Court had to decide in the writ petition as to whether the Central Government could transfer the RAPP School to the AEE Society jeopardising the services of teachers and other employees of the RAPP School, letter dated 27th July, 1984 written by the Joint Secretary to the Government of India, has been brought to the notice of this Court. That letter stated inter alia, that the Government of India in the Department of Atomic Energy will use their good offices with the Atomic Energy Education Society which is substantially financed by the Government, 'to help find appropriate employment to the petitioners and other teachers of the RAPP Higher Secondary School (English Medium) and protection of their existing designation, grade, pay and allowances'. It was stated in that letter itself that the AEE Society was also requested to open a school at the Rajasthan Atomic Project site and the letter was given, as this Court had given time to the parties to the writ petition to arrive at a settlement.

17. When this Court, on the basis of the said letter, dismissed the writ petition in the presence of counsel for all parties including that of Respondent-6, stating inter alia that 'the grievances of the petitioner have been fully met by the assurance contained in the letter', Respondent-6, in our view, cannot be permitted, having regard to its own conduct in the proceedings, to take up a plea that there was no obligation on its part to absorb the petitioner in its school either at Rajasthan Atomic Energy Project site or if the school is not there at present, elsewhere, in one of its schools. This Court, in all its subsequent orders to which we have adverted to earlier has, while sought to impress upon Respondent-6 and other Respondents, the need to fulfil their obligation of absorption of the petitioner and others similarly situated in the schools of the AEE Society, nowhere relived it of its obligation to absorb the teachers in terms of its assurance. Thus, first ground raised by Respondent-6 against absorption of the petitioner cannot, therefore, be sustained and calls to be rejected.

18. Coming now to the second ground of refusal of absorption of the petitioner as a teacher in the schools of the AEE Society for not securing 50 per cent marks in the interview held by the Selection Committee of the AEE Society, we feel that the same cannot be allowed to be put-forward by Respondent-6 as a ground to refuse absorption as teacher in its schools, of the petitioner who had admittedly rendered creditable service as a teacher of the RAPP School for over 18 years. Absorption of petitioner and persons similarly situated as teachers of the AEE Society Schools by a Selection

Committee as if they were recruiting them afresh, was not a condition of the assurance of absorption of teachers of the RAPP School contained in the letter dated 27th July, 1984 of the Joint Secretary to the Government of India placed before this Court. Subsequently, whenever this Court, has made orders as to absorption of teachers of the RAPP School in the AEE Society's schools, it has sought, as already pointed out, to impress upon the Respondents of the need to fulfil the assurance given by them to this Court. The tenor of the orders makes it obvious that they were never intended to enable Respondent-6 (the AEE Society) to put forward a plea, that the assurance was not possible of compliance on account of teachers of the RAPP School not being given 50 per cent marks by the Selection Committee. We have, however, gone through the proceedings of the Selection Committee which had interviewed the petitioner along with others who were seeking absorption as teachers in the schools of the AEE Society. The sheet of bio-data of candidates called for interview on 31.10.1988 (RAPP candidates no doubt mentions percentage of marks given to them but marks required for selection. It is difficult to comprehend how 5 Selection Committee members could give the common percentage of marks for each candidate. Criteria, if any which formed the basis on which marks had come to be allocated by the members' of the Selection Committee is not indicated in the marks-sheet. Further, the requirement of minimum marks for selection as teachers has been relaxed by the Management of the AEE Society in case of two candidates, showing thereby that the requirement of minimum marks was not a rigid rule of selection. While the earlier selection was given up by the AEE Society as quite unsatisfactory, the selection resorted to for the second time, is in no way better. The impression created on our minds by the selection process, thought of by the AEE Society, is to somehow wriggle out of the assurance contained in the letter dated 27th July, 1984 produced for getting the writ petition dismissed and not to carry out that assurance, on which this Court acted in dismissing the writ petition.

19. Thus, we have the least hesitation in concluding that the second ground put-forth on behalf of Respondent-6, the AEE Society, as a ground for refusal of absorption of the petitioner in one of its schools, is wholly unsustainable and warrants rejection.

20. If we have regard to the facts and circumstances of the case and the orders made by this Court from time to time in the writ petitions as well as contempt petitions, there could be no justification for us to entertain the pleas put-forth as excuses by the AEE Society to wriggle out of the assurance contained in the letter dated 27th July, 1984. Further, we are satisfied, in the facts and circumstances of the case that the least we should do is, to direct the Respondents to carry out the assurance contained in the letter dated 27th July, 1984 on the basis of which they got the writ petition dismissed, inasmuch, such direction could make the Respondents realise, that this Court will not hesitate to do what is necessary to meet the ends of justice.

21. Hence, we allow this application, direct Respondent-6, the AEE Society, to absorb the petitioner as a Trained Graduate Teachers in its school at Rajasthan Atomic Energy Project site and if there is no school there, in any other of its schools by protecting her designation, grade, pay and allowances retrospectively from the date of her termination as a Trained Graduate Teacher of the RAPP School, if unavoidable, by creating a supernumerary post for the purpose. The Central Government, as said in the letter containing the assurance, shall meet the expenditure needed for absorption of the petitioner in a school of the AEE Society with retrospective effect. Respondent-6 must, in absorbing

the petitioner in its school pay her all the benefits of the post to which she would have been entitled as if her services as a teacher were not terminated. The Respondents are given as a last chance, two months' time from today, to comply with these directions.

22. However, in the facts and circumstances of the case, we make no order as to costs on this application.