

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B.Civil Writ Petition No. 318 / 2017

Ms Shashi Choudhary

-----Petitioner

Versus

State Of Raj And Ors

-----Respondent

For Petitioner(s) : Mr. R.K. Mathur

For Respondent(s) : Mr. Rajendra Prasad, AAG with
Mr. Ashish Sharma

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

17/02/2017

Learned Senior Counsel appearing for the petitioner submitted that an advertisement was issued for the post of Secretary Grade-III. The eligibility for Secretary Grade-III required a Certificate of English Shorthand and type writing speed of 120/40 w.p.m. from a recognized University or institute. The selection was conducted on the basis of test held in BIP and also on basis of interview. She appeared in the test held on 2.9.2011 and thereafter, was issued appointment order on 13.9.2011.

In the appointment order, it was mentioned that her confirmation would be subject to attaining a prescribed standard for the post within two years after completing her probation with the condition that it may be extended. It is further submitted that the petitioner joined in 2011 and completed her probation. When no action was taken for confirmation/regularization, she submitted

representation. It is her case that quarterly progress reports were prepared after assessment of her work wherein she was graded as outstanding/very good.

It is further submitted that the petitioner had again requested for confirmation as she was getting fixed salary instead of pay scale. However, the respondents took a view that the petitioner had not achieved the prescribed standard and thus, could not be confirmed on the post. The BIP terminated the services of similarly situated other petitioners vide Order dt. 8.9.2014, while the present petitioner preferred writ petition against her impending termination. All the three writ petitions came to be decided and this court directed that the petitioner may appear in the test of English shorthand and type test of 140/40 w.p.m. and achieve the prescribed standard. Against the said order appeal was filed which came to be decided allowing petitioner to file review petition.

It has been informed that in the review petition the learned Single Judge kept the petitioner free to challenge any subsequent order of termination.

The petitioner's services have been again terminated by passing order dt. 13.11.2016 which has been challenged by her before this court.

The respondents have filed caveat and objected to the maintainability of the writ petition on the ground of res judicata. Further it is submitted that the petitioner did not appear for the test and relying upon her test conducted earlier the termination

order had been passed which does not call for any interference.

Prima facie this court is of the view that the principle of res judicata would not apply as earlier the court has allowed the petitioner to challenge her subsequent termination in review petition. It is also informed that the petitioner was on family way and had taken maternity leave and therefore could not appear for the test after maternity leave. The petitioner submits that she was entitled to be given reasonable time. It is also submitted that under RTI it has been informed that there is no prescribed standard laid down under the Rules. Prima facie this court is of the view that the condition of confirmation mentioned in the appointment regarding achieving prescribed standard does not contemplate that a candidate must score 120/40 w.p.m. Practically every time when the type test is conducted, one cannot deny the fact that if individual is asked to appear for type test several times he/she will have a different score on different occasion. What is important is his/her performance during the intervening period and if it is found out above the minimum standard, merely on the basis of scoring less marks in the type test, would not be sufficient to terminate the services. It is seen that the petitioner scored at one time 90 w.p.m. while on the other she scored 100 w.p.m.

The case requires hearing.

Admit.

Issue notice to unserved respondents if any.

Heard on stay application.

In the meanwhile and till disposal of the writ petition, the operation of order dt. 13.11.2016 is stayed and petitioner shall be allowed to continue on the post of Secretary Grade-III and shall also be allowed to draw regular pay till disposal of the writ petition.

(SANJEEV PRAKASH SHARMA)J.

M.Meena/121



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