
(2016) 01 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWP No. 2007 of 2008

Ajit Singh

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 HimLR 610

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Parmod Thakur, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.(oral) - Petitioner was informed on 9.8.2008 that his name has been recommended for appointment as Part Time Water Carrier. He was ordered to be present in the office of Deputy Director on 17.6.2008. He was informed on 26.7.2008 by respondent No. 3 that the Gram Panchayat has been directed to issue appointment letter to him. Pradhan, Gram Panchayat asked him to execute a bond with the Gram Panchayat and report for duty on or before 15.8.2008. Agreement was entered into between the petitioner and Gram Panchayat in sequel to order dated 5.8.2008. He joined his duties vide annexure P-15 on 5.8.2008. Petitioner was informed on 19.9.2008 that a complaint has been received against him from respondent No. 5. Petitioner was directed to reach Panchayat Bhawan Bhikar on 26.9.2008 at 12.00 noon. Thereafter, appointment of the petitioner was cancelled on 7.10.2008. In the meantime, Additional Director has sent a communication to the Deputy Director Elementary Education on 23.7.2008 that the name of respondent No. 5 has been recommended by the competent authority for the post of Part Time Water Carrier in Government Middle School Sai Da Ghat. She joined her duties on 21.10.2008. Appointment letter was issued to respondent No. 5 under Rule 12 of the Scheme.

2. Mr. Dushyant Dadwal, Advocate, has vehemently argued that the name of

petitioner finds mention in communication dated 9.5.2008 and the name of respondent No. 5 was not mentioned in this communication. He then contended that no inquiry was held before cancelling the appointment letter on 7.10.2008.

3. Mr. Parmod Thakur, Additional Advocate General has also vehemently argued that the appointment of the petitioner under Rule 12 of the Scheme was never approved.

4. Decision to appoint the petitioner has been taken by respondent No. 3 at his own level. The Court on 31.7.2012 has directed respondent No. 2 to conduct inquiry with regard to appointment of petitioner as well as respondent No. 5. Respondent No.2 was directed to consider all the documents and to decide the matter in accordance with Rules. In sequel to direction issued by this court, respondent No. 2 has filed affidavit along with copy of decision dated 24.9.2012 (annexure DIV). Gist of the affidavit is that request for appointment as Part Time Water Carrier was received from the petitioner in the office of Director Elementary Education. It was sent to respondent No. 3 i.e. Deputy Director Elementary Education vide letter dated 9.5.2008 to examine the case as per policy and submit report so as to put the case before competent authority. Order dated 9.5.2008 is annexure DI. However, Deputy Director Elementary Education Hamirpur instead of examining the case, straightway offered appointment to the petitioner on the basis of which he joined as Part Time Water Carrier in Government Middle School Sai Da Ghat on 8.8.2008, as per annexure P-16.

5. Mr. Parmod Thakur, Additional Advocate General has drawn the attention of the Court to Clause 12 of the Scheme dated 27.7.2001 According to Clause 12, Government has the power to appoint any candidate as Part Time Water Carrier on compassionate basis without following selection process if the candidate is a widow or deserted woman or other destitute persons etc. In the present case, respondent No. 5 is a widow and belongs to BPL family. She had also applied under clause 12 of the Scheme and her case was specifically approved by the Government as per annexure D-II on 23.7.2008. She joined her duties on 21.10.2008.

6. There is merit in the contention of Mr. Parmod Thakur, Additional Advocate General that the appointment of the petitioner was not approved by the competent authority under Clause 12. Respondent No.3 at his own level has informed the petitioner on 17.6.2008 about selection to the post of Part Time Water Carrier. Pradhan, Gram Panchayat asked him to enter into an agreement with Gram Panchayat as per letter dated 5.8.2008. Matter was required to be looked into in the circumstances in which petitioner whose name has not been recommended under Clause 12 of the Scheme was offered appointment. Matter has been looked into by respondent No. 2, as directed by this Court. Fact of the matter is that appointment of the petitioner was never approved by the State Government under Clause 12 of the Scheme. Name of respondent No. 5 was duly approved under Clause 12 of the Scheme, pursuant to which she joined her duties on 21.10.2008. Appointment of the petitioner was in breach of the

Scheme and same was rightly cancelled as per letter dated 7.10.2008. Respondent No.5 is a widow and also belongs to a BPL family. The respondent State has rightly rectified the mistake by cancelling appointment of the petitioner and offered appointment to the respondent No. 5. Since appointment of the petitioner was in violation of the scheme, no formal inquiry was required to be held against him before cancellation of the appointment letter.

7. Accordingly, there is no merit in the present petition and the same is dismissed, so also the pending applications, if any.