

(2021) 03 SHI CK 0193
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4803 Of 2020

Amit Kumar Suman

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 23-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 03 SHI CK 0193

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Neel Kamal Sharma, Balram Sharma, Abhishek Dulta, Gurjeet Singh

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present writ petition under Article 226 of the Constitution of India is maintained by the petitioner against the respondents praying therein for the following substantive reliefs :-

(i) "That the present writ petition may kindly be allowed by way of issuing a writ of certiorari and by way of quashing Annexure-P4, dated 26.10.2020;

(ii) That the respondents may kindly be directed to give extension to the present petitioner against the post of Dental Officer in ECHS Polyclinic, Barsar, District Hamirpur, H.P. Since no Ex-serviceman candidate is available;

(iii) That the respondents may kindly be directed to regularize the services of the present petitioner against the post of Dental Officer."

2. As per the petitioner, he was in search of job, because he belongs to a poor family and till 2015, he could not succeed in getting job. However, in 2015, he was selected as Dental Officer by respondent No.2 and was posted in ECHS Polyclinic, Barsar, District Hamirpur, H.P. on contract basis, where he joined in the month of December, 2015. He has further submitted that the contract was for

one year and that weightage is being given to the Ex-servicemen.

3. It has been submitted that the petitioner continued with the respondents, as Dental Officer, in ECHS Polyclinic, Barsar till 16.09.2020 and his services were discontinued on 17.09.2020 and that the respondents have formulated a policy, according to which, the civilian candidates are being hired for 11 months and after the expiry of 11 months, the post shall be advertised and if no Ex-servicemen candidate apply for the post, the civil candidates, who are already employed, shall be given extension as per their satisfactory performance based on previous years and no fresh interviews shall be conducted.

4. It has been averred that the past services of the petitioner are satisfactory and there is nothing adverse against him. Despite this, the services of the petitioner were dispensed on 17.09.2020, i.e. after expiry of 11 months and an advertisement was issued on 6. 09.2020, vide which three posts of Dental Officers were advertised by the respondent-department. As per the petitioner, 22 candidates had applied, out of which, only 17 persons participated in the interview on 5. 10.2020 and the petitioner was also one of them, who appeared in the interview and out of 22 candidates, none was Ex-servicemen. The petitioner has further submitted that result was not declared by way of putting the same on the website or in any other way and when the petitioner contacted respondent No.2, he was told that his services will be continued keeping in view Annexure-P2, since none of the Ex-servicemen had applied against the above mentioned post. It has been submitted that on 27.10.2020, respondent No.4 came to ECHS Polyclinic, Barsar and told to the officer-incharge that he will be coming on 2 nd November, 2020 for submitting his joining, as such, the petitioner came to know that respondent No.4 has been selected as Dental Officer by the respondents, though he was not an Ex-serviceman. As such, the petitioner started inquiring about the matter and he could lay down his hands with great difficulty to the letter dated 26.10.2020, issued by the respondents, in which it has been mentioned that respondent No.4 will report in ECHS Polyclinic, Barsar on 02.11.2020.

5. Reply to the petition filed and as per the respondents, it is well settled principle of law that the employment of the contractual employees is governed strictly by the conditions stipulated in the Contract, which is binding at law for the employer as well as the employee. Further that the petitioner is in deliberate and willful breach of the Contract dated 19.10.2019 (Annexure-R1), to which he is a signatory and which is legally binding on him. It has been submitted that the petitioner has intentionally attached only partial Contract with the writ petition to misguide the Hon'ble Court. It has also been submitted that the services of the petitioner are guided strictly by the terms and conditions entailed in the Contract (Annexure R-1), the advertisement (Annexure R-3) and Government of India Policy letter dated 22.09.2003. It has been submitted that the petitioner was no longer an employee of ECHS on the filing of the petition on 30.10.2020, because he had relinquished the charge of the post of Dental Officer at ECHS Polyclinic,

Barsar on 16.09.2020 itself. Further that the petitioner became ineligible for further extension of ECHS by virtue of Annual Assessment Report dated 31.07.2020, hence, the prayer of the petitioner to regularize his services and grant him automatic extension of service in ECHS is without merit and deserves dismissal.

6. We have heard the learned counsel for the parties and gone through the record of the case.

7. Learned counsel for the petitioner has argued that the respondents have recruited another person ignoring the petitioner and they should have continued the services of the petitioner. On the other hand, it is argued by the learned counsel for the respondents that the recruitment was only for 11 months and the other person was recruited, as he was more meritorious than the petitioner. He has referred the Policy wherein the recruitment to the civilians is only for 11 months.

8. In rebuttal, the learned counsel for the petitioner has argued that in spite of making fresh recruitment, the respondents should have continued the services of the petitioner.

9. After going through the record, this Court finds that the petitioner has remained unable to find a place in the merit and he was not selected because he was not meritorious and the person selected was more meritorious than the petitioner.

10. As far as the averments, which have come in the reply that the conduct of the petitioner was not up to the mark and his conduct was reported to be not good. The averments of the learned counsel for the petitioner that these adverse reporting cannot be taken into consideration without being communicated to the petitioner, is of no relevance, as the same was not the reason of not continuing the petitioner on the post. We are satisfied after going through the record that adverse reporting was not taken into consideration while not selecting the petitioner and this was only mentioned by the respondents in their reply to controvert the averments of the petitioner that he was a competent officer.

11. As the adverse reporting was not taken into consideration by the respondents while making selection. This fact has no relevance, as far as the decision on the present lis is concerned, as the respondents have made the recruitment only on the basis of the merit of the candidates considering their educational qualification and experience. As pointed out in the Court, the minimum experience is required to be five years for awarding any marks and as the petitioner was not having minimum experience of five years, he was not awarded the marks for experience. So far as the reporting of adverse remarks against the petitioner are concerned, we find that those were not taken into consideration at all while making the recruitment. The simple reason that the petitioner was not selected, was that he could not find a place in the merit.

12. Furthermore, there is no averments/ arguments with respect to the malafides on the part of the respondents while making the recruitment. As the respondents have made the recruitment as per the Policy and merit, no interference is required for.

13. For the foregoing observations, we find no merit in the instant writ petition, which deserves dismissal and the same is dismissed accordingly. The parties are left to bear their own costs.

14. Pending application(s) if any, shall also stands disposed of.