

(2012) 12 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 8407 of 2012-A

Anil Kumar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2013) 1 ShimLC 497

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Jyotsna Rewal Dua, for the Appellant; Vikas Rathore, D.A.G. for the Respondent No. 1, Mr. D.K. Khanna, Advocate for the Respondent No. 2 and Mr. M.S. Chandel , with Mr. N.S. Chandel, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner, while working as Medical Officer (Dental), was designated as Lecturer in H.P. Govt. Dental College, Shimla vide letter, dated 06.03.2010. Pursuant to letter, dated 06.03.2010, the petitioner was designated as Lecturer in H.P. Government Dental College, Shimla vide office order, dated 10.03.2010. The designation of the petitioner was for a period of one year. The petitioner approached this Court by way of CWP No. 1032 of 2010. The same was disposed of by this Court on 14.07.2010. The Court has directed the Government to consider the case of the petitioner for appointment as Lecturer for a period of three years, subject to availability of vacancies in the post of Lecturer in Government Dental College, Shimla. In sequel to the judgment dated 14.07.2010, the petitioner was re-designated as Lecturer in H.P. Government Dental College for a further period of two years w.e.f. 10.03.2011 vide letter, dated 28.03.2011. The petitioner was promoted as Lecturer on regular basis in the Himachal Pradesh Government Dental College, Shimla in the specialty of Oral and Maxillofacial Surgery vide notification, dated 25.11.2011. The respondent-State has notified the Recruitment and Promotion Rules for the post of Assistant

Professor (Dental) (Gazetted) Class-I, in the Department of Medical Education, Himachal Pradesh, vide notification, dated 16th August, 2012. The post of Assistant Professor is a selection post. The minimum educational and other qualifications prescribed under Rule-7 are BDS degree of an Indian University or an equivalent qualification with Post-Graduate qualification/Diploma of National Board in the subject and with three years teaching experience after post graduation.

2. Rule-10 prescribes the method of recruitment. According to Rule-10, 50% posts are to be filled up by promotion, failing which by direct recruitment on regular basis or by recruitment on contract basis, as the case may be. 50% posts are to be filled up by way of direct recruitment on regular basis or by recruitment on contract basis, as the case may be.

3. Rule-11 reads thus:

11. In case of recruitment by promotion, deputation, transfer, grade from which promotion/deputation/transfer is to be made-By promotion from amongst the Lecturers (Dentistry) subject to possessing of educational qualification as prescribed for direct recruitment against Column No. 7 above with three years regular service or regular combined with continuous ad hoc service rendered, if any, in the grade failing which by promotion from amongst the Members of Himachal Pradesh Civil Dental Service (General Wing) subject to possessing of educational qualification, as prescribed for direct recruitment against column No. 7 above with at least three years teaching experience as Lecturer (Dentistry) in the concerned specialty.

4. One post of Assistant Professor in the specialty of Oral & Maxillofacial Surgery became available in the month of May, 2012. The respondent-State commenced the process for filling up the post of Assistant Professor by seeking necessary approval from the Finance Department and Cabinet. The post was advertised on 08.09.2012 to be filled up by way of direct recruitment. The last date of receipt of application was 08.10.2012.

5. Ms. Jyotsna Rewal Dua, learned Counsel for the petitioner has vehemently argued that the action of the respondent-State to fill up the post of Assistant Professor by way of direct recruitment instead of promotion as per advertisement, dated 08.09.2012 is illegal, arbitrary, unreasonable and, thus, violative of Articles 14 and 16 of the Constitution of India. According to her, the petitioner would become eligible on 09.03.2013 and till then, the post should not be filled up by way of direct recruitment and in case, the post is still to be filled up, it may be filled up on contract basis. She also contended that the respondent-Government is filling up the post in utter haste.

6. Mr. Vikas Rathore, learned Deputy Advocate General, Mr. D.K. Khanna, learned Counsel for respondent No. 2 and Mr. M.S. Chandel, learned Senior Counsel for respondent No. 3 have vehemently argued that since none of the candidates was eligible for promotion including the petitioner, there is no arbitrariness in the

action of the respondent-State to fill up the post by way of direct recruitment as per advertisement, dated 08.09.2012. According to them, since the petitioner has been promoted on regular basis as Lecturer on 25.11.2011, he would become eligible for promotion as Assistant Professor (Dental) only on 24.11.2014. They also contended that to fill up the post of Assistant Professor by way of direct recruitment in the eventuality of the eligible candidate being not available for promotion, is a policy matter and the scope of judicial review is very limited.

7. I have heard the learned Counsel for the parties and gone through the pleadings carefully,

8. The petitioner was designated as Lecturer while working as Medical Officer (Dental) on 10.03.2010. The post of Lecturer is to be filled up strictly as per the Recruitment and Promotion Rules framed under Article 309 of the Constitution of India. Neither of the parties have placed on record any rules, regulations or instructions, under which the petitioner could be designated as Lecturer. The designation to a particular post must be on the basis of Rules framed under Article 309 of the Constitution of India or valid instructions issued on this subject. The post of Lecturer is an important post, more particularly, in a Dental College. The petitioner was designated initially as Lecturer for one year and the same has been extended by two years w.e.f. 10.03.2011, on the intervention of this Court vide letter, dated 28.03.2011. The petitioner has been promoted as Lecturer on regular basis only on 25.11.2011 vide Annexure P-5.

9. According to the reply filed by the respondent-State, neither the petitioner nor any other candidate was eligible for promotion to the post of Assistant Professor in the specialty of Oral and Maxillofacial Surgery. In these circumstances, the State Government has got the approval from the Finance Department and the decision was taken by the Cabinet to fill up the post by way of direct recruitment. Thereafter, the advertisement was issued on 08.09.2012 and the last date of receipt of application was 08.10.2012. The respondent No. 3 has applied pursuant to advertisement, dated 08.09.2012, before the last date prescribed, i.e., 08.10.2012, for considering his candidature for the post of Assistant Professor by way of direct recruitment.

10. It is admitted case of the petitioner that he would become eligible for promotion to the post of Assistant Professor only when he completes three years of service as Lecturer on 09.03.2013. The requirement strictly as per the Recruitment and Promotion Rules, notified on 16.08.2012 is that the incumbent must possess three years regular service or combined with continuous ad hoc service in the Grade.

11. The Court is of the considered view that the experience of the petitioner is to be counted from the date he was regularly appointed as Lecturer, i.e., 25.11.2011 and not w.e.f. 10.03.2010. If the petitioner has been designated as Lecturer strictly as per the Recruitment and Promotion Rules or on the basis of

some instructions, in that eventuality, he could get this period counted from 10.03.2010 instead of 25.11.2011. The petitioner would become eligible for promotion to the post of Assistant Professor on 24.11.2014. The decision taken by the respondent-State to fill up the post by way of direct recruitment instead of promotion would fall in the realm of policy.

12. It is not in the interest of the institution to keep the post vacant for years together when the same could be filled up by way of direct recruitment as per the Recruitment and Promotion Rules. The Court cannot direct the respondent-State not to fill up the post till the petitioner becomes eligible. The petitioner has only right to be considered for promotion, that too, strictly in accordance with the R & P Rules, notified on 16.08.2012. It has also not been clarified by the State Government whether the decision to designate the petitioner as Lecturer has the approval of the Dental Council of India.

13. It is clear from the plain phraseology employed in Rule-10 that if the post cannot be filled up by way of promotion, it can be filled up by way of direct recruitment on regular basis or by recruitment on contract basis. Whether the post is to be filled up on regular basis or contract basis, is to be decided by the State Government. This Court will not substitute its judgment for the wisdom of the State Government. The decision of the respondent-State to fill up the post by way of direct recruitment cannot be treated as hasty decision.

14. Now, as far as the reliance placed on letter, dated 14.12.2011, by the petitioner is concerned, the same cannot come to the rescue of the petitioner. It is for the State Government, being the principal employer, to ensure that all the posts are filled at the earliest to maintain highest standards of education in Dental College. The teaching experience can be counted only if the person has been appointed in accordance with law after considering the cases of all the eligible persons. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this petition and the same is dismissed. The interim order, dated 16.10.2012, is vacated. The respondent-State is directed to complete the selection process within a period of three months from today. The pending application(s), if any, also stands disposed of. No costs.