
(2015) 01 SC CK 0074

In the Supreme Court Of India

Case No : C.A. No. 390 of 2015 (Arising out of SLP(C) No. 32707 of 2013)

Arjun Singh and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 15, 79(C)

Citation : (2015) 2 SCALE 115 : (2015) 2 SCT 508

Hon'ble Judges : N.V. Ramana, J.;Sudhansu Jyoti Mukhopadhaya, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted. This appeal has been preferred by Appellant against the order dated 27th June, 2013 in CWP No. 1553/2013 passed by the High Court of H.P. at Shimla.

2. The only question that arises for determination is whether the Appellants are entitled for regular appointment in view of the fact that they were appointed after following all procedure of selection including recommendation of the Public Service Commission and are continuing in service since long.

3. The factual matrix of the case is as follows:

In exercise of power conferred Under Section 79(C) read with Section 15 of the Electricity (Supply) Act, 1948, the H.P. State Electricity Board (hereinafter referred to as "Electricity Board") by notification dated 1st November, 2006, repealed the 1975 "Recruitment and promotion regulations for the post of Assistant Accounts Officer Class-I (Gazetted)" and framed new regulations known as "The H.P. Electricity Board Recruitment and Promotion Regulations for the post of Assistant Accounts Officer, 2006". The said regulation prescribes the total number of posts, scale of pay, the percentage of posts to be filled up by direct recruitment/contract/by promotion, qualification etc. Relevant portion of

the 2006 regulation reads as follows:

4. After publication of Regulation 2006, the Electricity Board decided to fill up the posts of Assistant Accounts Officer through H.P. Public Service Commission. By letter dated 14th March, 2007, the Electricity Board requested the Principal Secretary (Power), Government of Himachal Pradesh to take steps to fill up 14 posts by direct recruitment on regular basis and to send requisition to the Public Service Commission. The letter dated 14th March, 2007 reads as follows:

"HIMACHAL PRADESH STATE ELECTRICITY BOARD

Dated: 14.3.07 No. HPSEB(SECTT)/102-13/07-124431-32

To

The Pr. Secretary (Power) to the Govt. of H.P. Shimla-2.

Subject:- Recruitment of Assistant Accounts Officers on regular basis.

Sir,

I am directed to say that as per R and P Regulations notified by the Board vide dated 1.11.2006, for filling up the posts of Assistant Accounts Officers, a provision has been made to fill up 30% post by method of direct recruitment and 70% posts by method of promotion from amongst the Superintendent (Divisional Accounts) who passes SAS Part-II examination. The entire cadre posts of Assistant Accounts Officers in the Board are 46 posts out of which 32 posts are to be filled by promotion and 14 posts are to be filled in by direct recruitment. Since the officers in feeder grade could not qualify the SAS Part-II examination and as also to induct professionally qualified persons with qualification like Chartered Accountant, MB (Finance etc.) in the cadre, the provision for filling up 30% posts of Assistant Accounts Officers by direct recruitment has been made.

At present, all the 14 posts meant for direct recruitment are lying vacant and the work in various units is suffering. The matter was informally discussed in full Board meeting held on 16.10.2006 and the consensus was that requisition may be sent to HPPSC.

The prescribed form-23 i.e. requisition for the recruitment of candidates for appointment to the post of Assistant Accounts Officers duly filled in is sent herewith in triplicate for furnishing the same to H.P. Public Service Commission. The copy of the R and P Regulations of Assistant Accounts Officers is also enclosed herewith.

You are therefore, requested to kindly allow filling up these post and send requisition to H.P. Public Service Commission to process the case for recruitment of Assistant Accounts Officers to fill up the above posts on regular basis.

Yours faithfully, Sd/- Secretary H.P. State Electricity Board Vidyut Bhavan, Shimla-4."

5. In the form 23, attached with aforesaid requisition for recruitment of candidates to the posts of Assistant Accounts Officer on regular basis, scale of pay, the number of posts etc. were shown, relevant portion of which reads as follows:

"Requisition for the recruitment of candidates for appointment to the post(s) of Assistant Accounts Officer on regular basis

From the aforesaid requisition, it is clear that 14 regular posts of Assistant Accounts Officers were requisitioned to be filled up in the regular pay scale of Rs. 7750-13,300 with clear stipulation that the selected candidates will be on probation for a period for 2 years subject to such further extension for a period not exceeding one year as may be ordered in special circumstances for reasons to be recording in writing.

6. However, when the Himachal Pradesh Public Service Commission issued advertisement No. IX/2007 on 13th November, 2007 inviting applications to the post of Assistant Accounts Officer Class-I, for the reasons not disclosed by Respondents the scale of pay was shown 50% of the regular pay and the nature of appointment on contract basis as apparent from Clause (c) of the advertisement which reads as follows:

"(C) Department of M.P.P. and Power, H.P.

7. Pursuant to the said advertisement, Appellants applied for the post of Assistant Accounts Officer Class-I and after written test and interview and on being selected, their names were recommended by the Himachal Pradesh Public Service Commission and intimated through Press Note. Therein it was mentioned that their appointment to the post of Assistant Accounts Officer will be on contract basis. The said Press Note reads as follows:

"Himachal Pradesh Public Service Commission PRESS NOTE

Himachal Pradesh Public Service Commission has declared the result of the interviews held from 24th to 28th February, 2009 and 2nd to 6th March, 2009 for recruitment to the post(s) of Assistant Accounts Officers (on contract basis) in the Department of MPP and Power, H.P. The names of following candidates are being recommended to the Government for appointment:-

The result is also available on Commission's Website at www.himachal.nic.in/hppsc.

Sd/- Under Secretary H.P. Public Service Commission's Shimla-171002"

8. Thereafter the Secretary of the Himachal Pradesh Electricity Board by letter dated 2nd July, 2009 forwarded the names of Appellants to the Chief Medical Officer, Deen Dayal Upadhyaya Hospital, District Hospital, Shimla (H.P.) with a request to constitute a Medical Board to conduct Medical Examination of the Appellants and other recommended candidates. Having found fit, the Appellants were appointed in the year 2009 to the Post of Assistant Accounts Officer (Class

I) but on contract basis.

9. Having found fit and in absence of any allegation against them, their period of contract was extended from time to time and now they have completed more than 5 years of service.

10. Learned Counsel appearing for the Appellants contended that all procedure for regular appointment having been complied with including recommendation by the Public Service Commission, there was no occasion for the Respondents to employ them on contract basis and there should not be any difficulty to provide them regular appointment.

11. Learned Counsel for the Respondent opposed the prayer on the ground that their appointment were made in terms of Regulation 2006 on contract basis and there is no provision for regularization of service.

12. We have considered the rival contention, perused the record and the Regulations framed by the Government.

13. From the facts as noticed above, we find that the Electricity Board was in need of regular Assistant Account Officers Class I and their being 14 posts vacant, they made requisition to fill up all the 14 posts on regular basis. Respondents have failed to disclose the circumstances in which the advertisement was published by the Public Service Commission, the scale of pay was shown @ 50% of the regular pay and the nature of appointment on contract basis.

14. In fact in the said advertisement for the post of Assistant Accounts Officer Class-I, the posts reserved for different categories were shown i.e. Gen.-09, SC-01, ST-01, OBC-01, Ex-Servicemen Gen.-01, Disabled person (Low Vision)-01 (Total-14 posts). Thus, we find even the rule of reservation was also followed.

15. The action on the part of the Respondents/State authorities including the Public Service Commission prescribing 50% of the Regular pay of Rs. 7750 + DP on contract basis initially for one year, extendable on year to year basis is against the requisition and the decision taken by Electricity Board. Such action on the part of the authorities not only amounts to unfair employment practice but also arbitrary and violative of Article 14 of the Constitution of India.

16. It is clear that the terms of conditions of payment at the rate of 50% of regular pay and nature of appointment on contract basis was inserted in the advertisement by the state authorities and the H.P. Public Service Commission at later stage just to deprive the candidates from their regular pay and their right to continue in the service. The High Court failed to noticed the aforesaid fact and erred in holding that the regularization of service is not permissible. In fact it was not a case of regularisation of service of the Appellants but is a case wherein direction ought to have been issued on the Respondents to provide the Appellants with orders of regular appointment from the date of their initial appointment and to treat the initial period of two years as probation and to

provide them with other consequential benefits.

17. For the reasons aforesaid, we set aside the impugned judgment dated 27th June, 2013 passed by the High Court of Himachal Pradesh at Shimla in CWP No. 1553 of 2013-F and direct the Respondents to provide letter of regular appointment to the Appellants w.e.f. the date of their initial appointment treating the initial two years as on probation with further direction to provide the Appellants with consequential benefits including regular scale of pay, increment, arrears of pay, seniority etc. to which they are entitled under the law. The formal orders in compliance with this Court's order to be issued within two months and consequential benefits should be paid within three months. The appeal is allowed with aforesaid observations and directions, no costs.