

(2013) 06 SHI CK 0103
In the High Court Of Himachal Pradesh
Case No : CWP No. 1553 of 2013-F

Arjun Singh and Others	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Citation : (2013) 06 SHI CK 0103

Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : Ankush Dass Sood and Ms. Sweta Julka, for the Appellant; Shrawan Dogra, Advocate General, with Mr. Romesh Verma and Mr. Anup Rattan, Additional Advocate Generals and Mr. Vinay Kuthiala , with Mr. Rajpal Thakur, Advocate, for respondents No. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. By this petition, the petitioners, who were appointed as Assistant Accounts Officers, pursuant to the advertisement issued on 13th November, 2007 and appointment letters issued on 2nd July, 2007, have challenged the decision of the respondent-Company, Annexure P-12, which purports to initiate selection process for filling in the vacancy of Assistant Accounts Officer in the Establishment. The grievance of the petitioners, primarily, is that the Regulations governing the appointments of Assistant Accounts Officers clearly provide that, after appointment, depending on the performance reports and the assessment to be made by the Committee, the concerned employee must be appointed on regular basis after completion of two years contractual service. Similar provision obtains in respect of other category of employees, namely, Assistant Finance Officer and Assistant Engineer (Civil/Mechanical). This position is not in dispute at all.

2. At the same time, what we find from the material placed before us is that the Regulation governing the appointment to be made on the post of Assistant Accounts Officer clearly predicates that as a policy, the appointment should be on

contract basis initially for one year. This provision is found in clause 15 of the Regulation. One year contract period is extendable on year-to-year basis depending on the performance of the employee concerned and also his work and conduct on the job. The services of the employee could be terminated even prior to completion of one year or the extended period, on issuance of one month notice or payment in lieu of the notice of one month.

3. Clause 15(A)(b) reiterates the position that the Secretary, HPSEBL, after obtaining approval of the Full Board, can fill the vacant post on contract basis. Sub clause (d) of the same provision stipulates that the contract appointee, so selected under the said Rules, will not have any right to claim regularization or permanent absorption in HPSEBL.

4. No doubt, in clause 15(IV), which deals with the issue of selection process, sub-clause (ii) thereof provides that for assessment of work, annual performance report will be maintained at the Chief Accounts Office level. Sub clause (iii) of the same provision stipulates that the performance reports will form basis of assessment by the Committee to make recommendations for regular appointment after completion of two years contractual service. That, however, does not mean that each of the petitioners before this Court has a right to be appointed on regular basis. At best, he can expect his case to be considered by the employer for being appointed on regular basis, having completed two years of contractual service.

5. The moot question is - whether the petitioners have any right to be appointed on regular basis, merely because, in relation to some other cadre, namely, Assistant Engineer (Civil/Mechanical) and Assistant Accounts Officer, the employees, who were appointed on contract basis by the Board, were regularized at different point of time? In the first place, the policy in respect of the said cadre is not comparable with the policy of the employer for regularization of employees in respect of the cadre in which the petitioners have been appointed i.e. Assistant Accounts Officer. Secondly, we find that the regularization of appointees, who were appointed on contract basis, was done by Himachal Pradesh Power Corporation Limited, which is an independent entity and not the private respondent before us. That regularization decision was taken on 20th October, 2009. The said contract appointees were appointed pursuant to separate selection process and in any case were not appointed against the cadre of Assistant Accounts Officer as such.

6. In our opinion, it is not open to the petitioners to take clue from the factual position emerging prior to 3rd December, 2009, when the Board was reconstituted and the respondent-Company was formed, taking over the activities of the Board to the extent made applicable under the hiving off scheme of the Board. The question is-whether the petitioners have any right to be regularized? As aforesaid, the advertisement against which the petitioners came to be appointed was issued under Regulation at page 29, governing the appointments of Assistant Accounts Officer. We have already adverted to the

relevant provisions of the said Regulation, which makes it amply clear that the initial appointment "shall" be on contract basis only and the contract appointee cannot claim any right for being regularized in service merely on completion of two years of contract service. None of these provisions are subject matter of challenge before us.

7. The challenge is to the decision of the respondent-Company to initiate selection process afresh inviting applications from all aspiring candidates. There is nothing on the record to indicate that the respondent-Company intends to exclude participation of the petitioners in the said selection process. Further, the background, in which this decision has been taken, can be culled out from the opinion recorded in the decision of the Chief Accounts Officer, HPSEBL, F&A Wing, dated 22nd May, 2012. The same reads thus:

Seen in Finance. The proposal has been examined and advised that in the instant case, Govt. of H.P. policies should be followed. However, regularization of the A.A.Os would enable HPSEBL to fill the large gap in the cadre of SAS at the level of A.O. and above. Since as contract employees, they are not being considered for promotion as A.Os.

It is also a fact that person recruited through contract method, may not necessarily represent the best talent. Since these posts were advertised on lower emoluments basis, an alternative method to accommodate/regularize such person is to advertise AAO posts on a regular basis where naturally these persons too can apply based on a larger pool of competitive talent. Such a method would also not invite competing demands. This bears approval of the Director (F&A).

Sd/- Sr. Accounts Officer (Fin.) For Chief Accounts Officer,
HPSEB Ltd. F&A Wing, Shimla-4. 22/5"

7. The factual position noted in this opinion has not been assailed at all. What has been noticed by this Authority is that the earlier advertisement, against which the petitioners were appointed, was for lower emolument basis and the fresh advisement would be issued for appointment on regular basis, which naturally would be attractive and larger pool of competitive talent would be available. It is not open for this Court to sit over the said subjective satisfaction of the Appropriate Authority. Moreover, the Selection Committee, which considered all aspects of the matter, was of the considered opinion that, if the claim of the petitioners for regularization was to be taken forward, it would be in deviation with the State Government policy of regularization.

8. Suffice it to observe that the petitioners have not been able to establish any right on the basis of which their claim for being regularized and to restrain the respondent-Company from proceeding with the selection process for appointment of candidates on regular basis can be entertained. Merely because in some cases, the decision was taken by the Board, which, however, was in respect of

candidates who were appointed on contract basis pursuant to separate selection process and, as aforesaid, in separate cadre, cannot be the basis for the petitioners to succeed in their challenge. In our opinion, therefore, no interference is warranted in the fact situation of this case. Hence, the petition deserves to be dismissed. In view of the above discussion, there is no merit in the petition and the same is dismissed, so also the pending application(s), if any.