

(2016) 06 SHI CK 0085

In the High Court Of Himachal Pradesh

Case No : CWP No. 2479 of 2015.

Bachittar Singh - Petitioner @HASH H.P. Ex-servicemen Corporation and another

Date of Decision : 24-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) ILRHP 2186

Hon'ble Judges : Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Mr. Onkar Jairath, Advocate and Mr. G.R. Palsra, Advocate in respective petitions, for the Petitioners; Mr. Vikas Chauhan, Advocate and Mr. Mukul Sood, Advocate in respective petitions, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Sureshwar Thakur, J.(Oral) - Both the aforesaid writ petitions are being disposed of by a common order as they involve common questions of facts and law.

CWP No. 2479 of 2015.

2. Briefly stated the facts of the case are that in the year 2002, the petitioner herein stood discharged from Army. In the year, 2008, as unfolded by Annexure P-4, truck No. HP-22-5591, financial assistance whereof for its purchase by the petitioner from one Shri Sher Mohammed son of Shri Alif Deen stood purveyed by the H.P. Pradesh State Co-operative Bank, stood attached on 31.7.2008 with the ACC Ltd., Barmana, for carriage of cement on behalf of the Himachal Pradesh Ex-Servicemen Corporation, Hamirpur (for short "respondent-Corporation"). In the year 2012, the petitioner on standing offered appointment by the Food Civil Supplies and Consumer Affairs, Department of the Government of Himachal Pradesh (for short "Food Civil Supplies Department"), accepted the aforesaid offer, whereupon he as submitted by the learned counsel appearing for the petitioner executed a contract with the authorised officer of the Food Civil Supplies Department. Contractual appointment of the petitioner as Inspector

Grade-1 with the aforesaid department stood renewed vide Annexure P-5. The petitioner stands aggrieved by Annexure P-6, whereby the order qua enlistment of his truck bearing No. HP-22-5591 now with the respondent-Corporation for carriage of cement from ACC, Barmana stood recalled. The ground for the respondent-corporation, for recalling its previous order qua the apposite enlistment of the truck aforesaid owned by the petitioner stands underscored therein to be stirred by his reemployment in Government service. The writ petitioner stands aggrieved by Annexure P-6, hence, prays for its being be quashed and set aside.

CWP No. 2850 of 2015.

3. The facts necessary for adjudication of the instant writ petition are that the petitioner stood discharged from the Army. As unfolded by Annexure P-1, truck bearing No. HP-65A-7211 owned by the petitioner stood attached on 03.10.2011 with the J.P. Cement Plant, Bagga, for carriage of cement/clinker on behalf of the respondent-Corporation. In the year 2014, the petitioner on standing offered appointment by the Deputy Director Elementary Education, Mandi, (Education Department), accepted the aforesaid offer, whereupon he as submitted by the learned counsel appearing for the petitioner executed a contract with the authorised officer of the Education Department comprised in Annexure P-5. The petitioner stands aggrieved by Annexure P-6, whereby his truck bearing No. HP-65A-7211 enlisted with the respondent-Corporation for carriage of cement from ACC, Barmana stood delisted therefrom. The ground for the respondent-corporation, for recalling its previous order qua the apposite enlistment of the truck aforesaid owned by the petitioner stands underscored therein to be stirred by his reemployment in Government service. The writ petitioner stands aggrieved by Annexure P-6, hence, prays for its being quashed and set aside.

4. The apposite orders qua the recalling of the hitherto orders qua enlistment of the respective trucks of the petitioners, orders whereof stand constituted in Annexures P-6, palpably stand generated by a verdict of this Court recorded in CWP No. 2402 of 2008, titled as Baldev Singh v. H.P. Ex-Servicemen Corporation & Ors., preferred hereat by an ex-serviceman against the Himachal Pradesh Ex-servicemen Corporation, wherein the petitioner therein had asked for a relief of his second truck being directed to be attached by the respondent-Corporation, relief whereof stood declined to him. However, this Court had rendered certain directions upon the Himachal Pradesh Ex-Servicemen Corporation for ensuring its bye-laws, Rules and Regulations standing amended in the manner as delineated therein. The relevant paragraphs whereof stand extracted hereinafter:-

1. In future only one truck of an ex-serviceman shall be attached with the Corporation.
2. As far as the attachments already made are concerned, if there are more than two trucks of any ex-serviceman attached with the Corporation after 1.4.2011 only two trucks will be attached and the remaining trucks shall not be attached.

3. The Corporation shall ensure that on and w.e.f. 1.4.2012, only one truck of each ex-serviceman shall be attached. Thus, an ex-serviceman will have a period of one year to either dispose of the excess trucks or to make alternate arrangement for their plying.
4. The Corporation shall invite applications from all ex-servicemen of Himachal Pradesh by publishing advertisements in two English and two Hindi newspapers having wide circulation in the State. The advertisements be published on or before 31.1.2011 and last date for receipt of applications shall be 28.2.2011.
5. The ex-servicemen who are desirous of plying and attaching their truck with the Corporation shall file their applications latest by 28.2.2011.
6. The Corporation shall draw up a list of candidates and seniority shall be given in order of retirement, i.e., a person who has retired earlier shall be placed senior in the seniority. If two candidates have retired on the same date then the candidate who has put in longer service in the Armed Forces shall rank higher in seniority. Henceforth all attachments shall be made strictly in accordance with the seniority list, so maintained. This list be drawn up latest by 25.3.2011. The list shall be displayed on the Notice Board of the respondent No. 1-Corporation and shall be open for inspection to all ex-servicemen. The ex-servicemen can file their objections with the Corporation to the said list.
7. For the future every year, the respondent-Corporation shall invite applications from ex-servicemen for including their names in the list by issuing advertisement as aforesaid. These advertisements shall be published by 31st December of each year and applications shall be invited latest by 31st of January and the list shall be prepared by 28th of February of the subsequent years. These lists shall be applicable from 1st April of the subsequent years.
8. The vacant positions for the trucks which are detached only after 1.4.2011 will be offered to the ex-servicemen who are next in the waiting list.
9. In case an ex-serviceman dies, his widow shall be entitled to inherit the right to have a truck attached till her life time.
10. In case there is no widow or the widow voluntarily gives up her right, the attachment can be transferred to one son/daughter of the ex-serviceman but in such eventuality, the right to ply the truck shall only be for a period of 5 years. After the death of the widow or on expiry of 5 years, the attachment shall cease to exist and the slot shall be given on the basis of seniority.
11. No transfer of any attachment with the Corporation shall be permitted. Any ex-serviceman who does not want to ply the truck will have to surrender the attachment to the Corporation who shall offer it to the next person in the seniority list.
12. In case the ex-serviceman is re-employed, his truck will not be attached and if his truck has been already attached and the ex-serviceman re-employed in

Government service/public sector undertakings, Banks etc. then he shall have to surrender his right to get the truck attached and the vacant slot shall be given to the ex-servicemen next in the waiting list.

13. In case a truck of an ex-serviceman is stolen or meets with an accident then the ex-serviceman shall have a right to replace his stolen/ unserviceable truck and get it attached with the Corporation. However, only one truck shall be attached at one time.

14. That when a truck of any ex-serviceman is attached with the Corporation, the Corporation shall give a distinctive year-wise number to every attached truck and on the body of the truck, the ex-serviceman shall ensure that the following information is depicted:-

"This truck No. _____ is attached with the H.P Ex-Servicemen Corporation vide attachment No. _____ of the year _____."

15. That if there are more than one Society for different cement plants, the ex-serviceman shall have a right to attach one truck with only one Society and it shall not be open for an ex-serviceman to become a member of more than one Society and thereby attach more than one truck."

5. The learned counsel appearing for the respondent state at bar that in pursuance to the decision of this Court recorded in CWP No. 2402 of 2008 whereby a mandate was enjoined upon the respondent-Corporation to in consonance with the proposals incorporated therein, proposals whereof stand extracted herienabove beget amendments to its bye-laws, Rules and Regulations, it effectuating the relevant amendments therein. Consequently, with the rendition of this Court standing implemented by the respondent-Corporation, especially qua trite Clause 12 encapsulated therein, clause whereof bars re-employed ex-servicemen to, on theirs standing reemployed, in the year 2012 and in the year 2014, respectively, with their respective Government departments, seek continuation of enlistment of their respective trucks with the respondent-Corporation for theirs plying goods thereon, whereupon given hence the attraction qua them of the embargo constituted therein against theirs holding any entitlement qua continuation of the enlistment of their trucks by the respondent-Corporation, concomitantly rendered them dis entitled to seek continuation of enlistment of their trucks by the respondent-Corporation for the purpose of goods standing carried thereon.

6. The respective learned counsel appearing for the petitioners contend of the parlance borne by the word "re-employed" occurring therein not taking within its ambit the contractual employment of the petitioners herein with their respective departments concerned. However, the aforesaid submission warrants its being rejected straightway as this Court in its decision recorded in CWP No. 2402 of 2008 wherein at clause 12, it had barred a re-employed ex-serviceman from sustaining any claim for his truck hitherto attached with the respondent-Corporation being unamenable for its being detached therefrom, besides had

barred a reemployed ex-serviceman to stake any entitlement for any continuation qua its enlistment by the respondent-corporation, yet this Court not excluding from the purview of the phrase "re-employed" either any contractual reemployment of any ex-serviceman or his reemployment in any capacity other than of his reemployment against a substantive post, as a corollary, the bar aforesaid stood attracted even qua a reemployed ex-serviceman, even when, he stood not reemployed in a substantive capacity against a substantive post. For reiteration, also this Court in its decision recorded in CWP No. 2402 of 2008 had not therein held of reemployment of an ex-serviceman against a substantive post only alone standing encompassed within the phrase "reemployed" occurring therein. Only when this Court in its decision recorded in CWP No. 2402 of 2008 had excepted contractual reappointment of an ex-serviceman from the purview of the phrase "re-employed" as constituted therein, would this Court hence proceed to hold of contractual re-appointments of petitioners in their respective relevant departments of the Government of Himachal Pradesh not rendering them for theirs being construable to be "reemployed in service", also would constrain a conclusion from this Court of the embargo constituted therein against theirs holding any entitlement to seek continuation of enlistment of their trucks by the respondent-corporation, not holding any clout when they stand reemployed in service on a contractual basis, prominently only when the apposite phrase aforesaid standing pronounced by this Court in its judicial verdict recorded in the aforesaid CWP No. 2402 of 2008 to exclude from its ambit their respective contractual re-employment. Contrarily, with this Court not excepting the contractual re-appointments of the petitioners in their respective departments of the Government of Himachal Pradesh from theirs falling within the purview of "reemployment", renders their respective contractual reemployment in the relevant departments of the Government of Himachal Pradesh constituting theirs standing "reemployed" whereupon concomitantly this Court holds of theirs not holding any right or entitlement for claiming continuation qua enlistment of their trucks by the respondent-Corporation. Moreover they hold no right to contend of the embargo constituted in the aforesaid relevant clause of the verdict of this Court in CWP No. 2402 of 2008, standing not attracted against them nor they can espouse thereupon of the respondent-corporation holding no clout to hence order qua the detachment or de-enlistment of their respective trucks. In aftermath, Annexure(s) P-6, in both the petitions, impugned before this Court at the instance of the petitioners, do not suffer from any legal infirmity. Conversely, they are in consonance with the decision recorded by this Court in CWP No. 2402 of 2008 aforesaid, in pursuance whereof relevant amendments stand enacted in the apposite bye-laws, Rules and Regulations of the respondent-Corporation. Also the aforesaid inference constrains this Court to hold with formadibility of the submissions addressed before this Court by the respective learned counsel appearing for the petitioners, of the contractual re-appointments of the petitioners under the Government of Himachal Pradesh while being amenable to theirs being not construed to be substantive appointments against substantive posts, hence, rendering their

apposite re-appointments to fall outside the purview of the phrase "reemployment" occurring in clause 12 of the verdict of this Court recorded in CWP No. 2402 of 2008, holding no vigour and strength.

7. Be that as it may, the learned counsel appearing for the petitioner in CWP No. 2479 of 2015 contends with force of the apposite clause in the afore extracted verdict of this Court in the afore-referred writ petition enjoins its holding sway and operation in futuro whereas his truck standing enlisted by the respondent-corporation in the year 2008, would in case this Court validates the impugned orders rendered by the respondent-Corporation tantamount to its inaptly affording retrospectivity to the apposite clause existing in the verdict of this Court recorded in CWP No. 2402 of 2008, verdict whereof stood rendered subsequent thereto. Even, the aforesaid submission addressed before this Court by the learned counsel appearing for the petitioner is grossly off the legal tangent as with an emphatic mandate with peremptoriness standing embodied therein of the truck of any reemployed ex-serviceman if already attached also suffering the ill-fate of its owner not holding any entitlement to stake any claim for any continuation qua its enlistment by the respondent-Corporation, whereupon hence with this Court validating the retrospective application of its decision qua any truck of any reemployed ex-serviceman attached by the respondent-corporation prior to his reemployment in service besides prior to the rendition recorded by this Court. In aftermath, even if, the enlistment of the truck of the petitioner in CWP No. 2479 of 2015 by the respondent-Corporation occurred prior to his re-employment, it yet did not preclude the respondent-Corporation to, on his subsequent reemployment in service, proceed to detach or de-list it.

8. For the foregoing reasons, there is no merit in the instant petitions, hence, both the petitions are dismissed. All pending applications also stand disposed of. No order as to costs.