

(2022) 05 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3731 Of 2019

Balbir Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Citation : (2022) 05 SHI CK 0001

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : G. C. Gupta, Meera, Desh Raj Thakur, Gaurav Sharma

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive reliefs:

"i) That a writ in the nature of certiorari may kindly be issued thereby quashing the order dated 2nd August, 2019 (Annexure P-13) whereby the representation of the petitioner for promotion as Head Master was rejected.

ii) That a writ of mandamus may kindly be issued directing the respondents to promote the petitioner considering him at Sr. No. 2809 in the corrected Seniority List to the post of Head Master and fix his seniority accordingly with all consequential benefits".

2. The case of petitioner is that he was appointed as Trained Graduate Teacher (TGT) by respondents and joined as such on 13.12.1988. Petitioner was promoted as Lecturer in History (School Cadre) in September, 2005 but he was allowed to forego the promotion on his request on account of compelling family circumstances. Vide letter dated 6.5.2006, petitioner applied to respondent No.2 to post him as Lecturer in History, in pursuance to his promotion order, as his domestic problem had settled. Petitioner was accordingly allowed to join as

Lecturer in History (School Cadre) and since then had been working as such.

3. On 31.7.2014, petitioner made a written representation to respondent No.2 against non-inclusion of his name in the list of incumbents, promoted as Headmasters, issued on 2.1.2014. It was submitted that petitioner was at Sr. No. 2809 of the seniority list of TGTs and though the incumbents finding place at Sr. No. 2840 of seniority list had been considered for promotion but the name of the petitioner had been ignored. The representation of the petitioner was rejected in October, 2014 on the ground that the petitioner had already opted for promotion to the post of Lecturer and option once exercised by him could not be changed.

4. Petitioner approached the Himachal Pradesh State Administrative Tribunal by way of Original Application No. 3784 of 2017, which was decided on 14.6.2017 in following terms: -

"In view of the above, the original application is disposed of in terms of the aforementioned judgment in CWP No. 1545 of 2011-B and the connected matters with a direction to the respondents/ competent authority that subject to the above verification and on finding the applicant to be similarly situate as above, benefit of the said judgment, if the same has attained finality/ implemented, shall be extended to him alongwith consequential benefits, if any, as per law, within three months from the date of production of certified copy of this order along with copy of the aforesaid judgment before the said authority by the applicant."

5. Petitioner again submitted a detailed representation to respondent No.2 on 14.3.2017, specifically denying the fact that he had ever opted to be promoted as Lecturer. The respondents again rejected the representation of the petitioner in July, 2019 on the ground that the petitioner was promoted as Lecturer vide order dated 12.9.2006 as per his option dated 6.5.2006 and thus his case was not similar to the petitioners in CWP No. 1545 of 2011 and, therefore, he would not be entitled to the benefit of this judgment, hence, this petition.

6. In response, respondents have tried to justify the rejection of the claim of petitioner on the ground that petitioner was not entitled to the benefit of judgment, passed by this Court in CWP No. 1545 of 2011, decided on 5.7.2012, whereby there was a direction that only those TGTs, who were promoted as Lecturers prior to 26.4.2010, without having been afforded opportunity of option, would be entitled to be considered for promotion to the post of Headmaster on the basis of his/her position in the seniority list in the cadre of TGTs. Since petitioner had exercised the option and was promoted as Lecturer in September, 2006, he was not entitled to the benefit of aforesaid judgment.

7. I have heard learned counsel for the parties and have also gone through the record carefully.

8. Noticeably, the respondents have not placed on record any document, evidencing option allegedly exercised by the petitioner on 6.5.2006. However,

petitioner has placed on record a document Annexure P-6, through which he offered himself for the post of Lecturer, in pursuance to his promotion order, which he earlier had forgone. This document carries an endorsement dated 6.5.2006 at the bottom, evidently made by Principal Government Senior Secondary School, Jaisinghpur, District Kangra, H.P. Mr. Desh Raj Thakur, learned Additional Advocate General has not been able to affirm as to whether Annexure P-6 is the same correspondence, which has been referred to by respondents in their response? On the other hand, petitioner is categoric in his stand that no option was ever called for from him by the respondents and he had no opportunity to opt either for post of Lecturer or Head master. Thus, the respondents have failed to substantiate their defence that petitioner had opted for the post of Lecturer and hence was not entitled to be promoted as Headmaster, even in pursuance to the directions issued by this Court vide judgment dated 5.7.2012 in CWP No. 1545 of 2011.

9. As regards document Annexure P-6 is concerned, it is noteworthy to reproduce its contents for adjudication of issue. The relevant contents of Annexure P-6 read as under: -

To

The Director of Education

Higher Education

Shimla

Sub: Option for lecturer in the subject history

Sir,

Reference to your letter No.EDN-H(19)B(2)6/2003,Dated 14 September 2005, in which I was allowed to forgo my promotion due to my domestic problem.

Now my domestic problem has settled and I am hereby opting myself for the post of lecturer in History. Copy of promotion is attached herewith.

You are requested to do the needful and oblige please.

Tanking you in anticipation.

Yours faithfully

"Forwarded in original to the Director of Education DEHP Shimla vide this office letter No.EDN.GSS/ JSP(April)/2075 dated 6/6/2006 for favour of necessary action please".

10. Before advertng to the background and import of aforesaid correspondence Annexure P-6, it will be gainful to notice the relevant part of judgment, passed by this Court in CWP No. 1545 of 2011, decided on 5.7.2012, which reads as under: -

"12. In CWP 814 of 2012-B another ancillary question has been raised. It has been prayed in this petition by HP Promotee School Lecturer Association that in terms of the judgment delivered by one of us (Deepak Gupta, J) in CWP(T) No. 14932 of 2008, titled Neela Kaushal vs. State of H.P. & others, decided on 26.7.2010, those TGTs who were promoted prior to 26.4.2010 and from whom no option was sought should also be considered for filling up the posts of Headmaster.

13. The grievance of the petitioner is that despite such clear cut orders, the department is not considering these Lecturers for being promoted to the posts of Headmaster. It would be pertinent to mention that this Court in the aforesaid writ petition specifically dealt with the following question of law as is apparent from para-1 of the judgment which reads as follows: -

This writ petition raises an interesting question of law. The question which arises is whether the trained Graduate Teachers working in the department of Education in the Government of Himachal Pradesh, who were promoted as Lecturers in the Higher Secondary Schools (now Senior Secondary Schools) can be considered to be eligible for the post of Head Master/Head Mistress in the High Schools."

14. Thereafter, this Court held as follows:-

"11. A perusal of the rules and instructions set out in detail above clearly show that what was envisaged in the rules and instructions was that when there are two avenues of promotion, the person in the feeder category must be asked to exercise his option as to for which promotional category he wants to be considered. Once such option is exercised then the same cannot be withdrawn. If options are taken then even if lien is retained that will not help the employee. However, if no options are taken then the promoted employee would be justified in claiming that he can be considered against the other post." and finally the following directions were issued:-

"13. In view of the aforesaid discussion, this petition is disposed of with the following directions:

a. That no promotions made prior to 26th April 2010 shall be affected by the outcome of this petition. However, since the promotions made after 26th April, 2010 were made expressly subject to the result of this petition they shall abide by the following directions.

b. That henceforth and w.e.f 26th April,2010 before making any promotions to the post of Lecturers or Head Masters an option shall be sought from the concerned employee.

c. Once an employee gives an option he/she will not be permitted to change the option.

d. Once an employee opts to be promoted as Lecturer/ Head Master he cannot claim that he should be considered for the other post.

e. The Principal Secretary (Education) to the Government of Himachal Pradesh, the Director of Higher Education and Director of Elementary Education i.e respondents No. 1 to 3 are made personally responsible for compliance of these directions in letter and spirit.

f. All promotions, if any, made after 26th April, 2010 shall be reviewed and after seeking options of the employees in terms of the aforesaid directions the promotions shall be made.”

15. Though an appeal has been filed against this judgment but there is no stay order whereby the operation of the judgment has been stayed.

16. A combined reading of the judgment leaves no manner of doubt that if no option was taken from the TGTs who were promoted as Lecturers they would be justified in claiming that they should be considered for being appointed against the post of Headmaster. It has been brought to our notice that the Law Department has been giving contradictory opinion as to what is to be done. In our opinion, there is no ambiguity in the judgment and any law officer who tried to draw a different meaning from the judgment probably did not understand the judgment or gave the opinion for extraneous reasons. To set the record straight, we are clarifying that as per this judgment any TGT promoted as Lecturer prior to 26.4.2010 without obtaining option from him would be entitled to be considered for promotion against the post of Headmaster and can be promoted to the post of Headmaster on the basis of his position in the seniority list in the cadre of TGTs.

Therefore, the State while making efforts to fill up the posts on the basis of promotion shall also consider the names of those TGTs who are promoted as Lecturers and from whom no option was taken.”

11. The aforesaid interdict did not leave any manner of doubt as to the import and purpose of judgment, passed in the case of Neela Kaushal vs. State of H.P. & others, CWP(T) No. 14932 of 2008, decided on 26.7.2010. It was clearly held that the TGTs promoted as Lecturer prior to 26.4.2010, without obtaining option from him/her would be entitled to be considered for promotion against the post of Headmaster and could be so promoted on the basis of his/her position in the seniority list in the cadre of TGTs.

12. Now, coming to the import of correspondence Annexure P-6, this Court has no hesitation to hold that it cannot be equated with the option contemplated by aforesaid judgment. The respondents issued office order dated 13.9.2005, whereby petitioner was promoted as Lecturer in History. There is nothing on record to show that any option was obtained from the petitioner before promoting him as Lecturer.

13. It is not in dispute that promotion, to the post of lecturer, in the first instance had been forgone by the petitioner and he was promoted subsequently in September 2006 when he made request by way of correspondence Annexure

P-6. It is not the case of the respondents that there was some other order whereby the petitioner was promoted as Lecturer after having afforded him with opportunity to opt. That being so, the case of the petitioner clearly fell within the ambit of directions issued by a Division Bench of this Court in CWP No. 1145 of 2011, decided on 5.7.2012. Annexure P-6 dated 6.5.2006 cannot be said to be an act of petitioner exercising option as envisaged by aforesaid judgment.

14. In light of above discussion, the impugned rejection order Annexure P-13 is quashed and set aside. The respondents are directed to promote the petitioner as Headmaster w.e.f. the date his immediate junior was promoted to the post and to grant him all consequential benefits ensuing from above directions, within a period of eight weeks from today.

15. In the aforesaid terms, the present petition is disposed of. Pending applications, if any, also stand disposed of.