
(2011) 03 SHI CK 0077
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 9705 of 2008

Bhupinder Kumar Sharma

APPELLANT

Vs

Dr. Y.S. Parmar University of Horticulture and Forestry

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21
Contract Act, 1872 — Section 23

Citation : (2011) 2 ShimLC 256

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed on daily wage basis in the Respondent-University on 17.04.1995. He continued to discharge his duties on daily wage basis till 04.11.1996. Thereafter, he was engaged as Technician in Centre Sponsored Scheme w.e.f. 05.11.1996 to 30.10.1999. The name of the Petitioner was shown in the seniority list of daily paid labourers at Sr. No. 497 in 1998. His name figured at Sr. No. 290 in the seniority list issued in the year 1999. He was engaged as Field Assistant in "Micro Propagation and Multi Locational Trial of Apple Root Stocks" on 01.11.1999 till 31st July, 2003. Name of the Petitioner figures at Sr. No. 149 in the seniority list of D.P. Ls. issued in the year 2000. Thereafter, name of the Petitioner was deleted from the seniority list of D.P. Ls. Petitioner made a detailed representation for including his name in the seniority list of D.P. Ls. on 03.06.2000. Thereafter, the Petitioner has again made a detailed representation vide Annexure A-7 on 21.08.2001, for including his name in the seniority list. Petitioner has also given the instances of similarly situate persons, whose appointment was on co-terminus basis, however, their names were retained in the seniority list of D.P. Ls. Petitioner has given the instances of 12 persons. The representation made by the Petitioner was rejected without a speaking order on 20.05.2003. Petitioner made a fresh representation on 27.06.2003, giving therein specifically the name of Shri Manohar Lal, who was

similarly situate to the Petitioner. He also mentioned names of Shri Parkash Chand, Shri Prem Kumar and Shri Yash Pal. The representation made by the Petitioner was rejected on 29.07.2003. The services of the Petitioner were also terminated after completion of project w.e.f. 31.07.2003 on 28.07.2003 vide Annexure A-11.

2. Mr. P.P. Chauhan, learned Counsel for the Petitioner has strenuously argued that the Respondent-University could not terminate the services of the Petitioner on 28.07.2003 vide Annexure A-11. According to him, the name of the Petitioner was required to be re-included in the seniority list of D.P. Ls. after the closure of the project and he was required to be at least continued on daily wage basis. According to him, similarly situate person, namely, Shri Manohar Lal, Shri Parkash Chand, Shri Prem Kumar and Shri Yash Pal as Beldars, have been retained by the Respondent-University after their services were terminated.

3. Mr. Rupinder Thakur, learned Counsel for the Respondent has vehemently argued that since the appointment of the Petitioner was co-terminus with the project, his name could not be included in the list of D.P. Ls.. He has also relied upon undertaking given by the Petitioner on 03.11.1999 at the time of his engagement as Field Assistant. He further contended that the case of Shri Manohar Lal and similarly situate persons was considered for inclusion in the seniority list since they have put in number of years in the Respondent-University on daily wage basis.

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

5. It is not in dispute that the Petitioner was engaged on 17.04.1995. He has worked in this capacity till 04.11.1996. Thereafter, without any break, the Petitioner was appointed as Technician in Centre Sponsored Scheme w.e.f. 05.11.1996 to 30.10.1999. He was engaged on 01.11.1999 to 31.08.2003 as Field Assistant in the project. His name figured in the seniority lists of 1998, 1999 and 2000 of daily paid laborers. His name was abruptly deleted in 2001, which led to the representation made by the Petitioner vide Annexure A-6, dated 03.06.2001. Petitioner has given the instances of 12 persons in Annexure A-7, dated 21.08.2001, who were also engaged in the projects and after termination of the project, they were continued as Beldars on the basis of their names being included in the seniority list. It is evident from the reply filed by the Respondent-University that as far as Shri Manohar Lal is concerned, his name was re-included in the seniority list of 2000, after his services were terminated from the project. The only reason assigned for re-inclusion of the name of Shri Manohar Lal, is that he had worked with the Respondent-University for four years as D.P.L.. In the instant case, the Petitioner had been working without any break with the Respondent-University w.e.f. 17.04.1995 till 31st August, 2003. The Respondent-University has taken the decision to include the name of Shri Manohar Lal in the seniority list, after seeking clarification from the Registrar, C.S.K.K.V., Palampur, District Kangra on 12th September, 2001. The text of the letter dated 12th

September, 2001 reads thus:

Some persons were engaged on daily paid basis in this University, during 01.09.1994 and 17.04.1995, later they have been appointed as Field Assistant etc. either on fixed salary or in the regular scale in the different projects under operation on co-terminus basis after conduction proper interview by the University on 2.7.98 & 30.10.96. Now, these persons are claiming/representing for seniority as DPL. You are, therefore, requested to kindly intimate the procedure being followed in such cases in the CSKKV. It may also be confirmed whether the name of such persons are being included in the seniority list of DP Ls. or they are, loosing their seniority as DPL from the date of their appointment. An early response is solicited please.

6. In sequel to letter dated 12th September, 2001, the Deputy Registrar of C.S.K.K.V., Palampur had sent a communication to the Respondent-University on 4th October, 2000. The text of the same reads thus:

I am directed to refer to your office letter No. HF. Regr. E-II-3-3/Vol-V/14067, dated 12.9.2001 on the subject cited above. In this connection, it is intimated that the daily paid workers so appointed as Field Assistant etc. on fixed salary in various adhoc projects under operation on co-terminus basis after conducting proper interviews are being again deployed as daily paid workers in the Vishvavidyala without disturbing their seniority even after completion of projects.

However, this Vishvavidalaya has not given any appointment as Field Assistant etc. to the daily paid workers in regular scale in adhoc Project yet.

7. It is evident from the contents of Annexure R-5, dated 4th October 2001 that the daily paid workers appointed as Field Assistant on fixed salary in various adhoc projects on co-terminus basis after conducting proper interviews, were again deployed as daily paid workers in the University without disturbing their seniority even after completion of the projects. It is intriguing to note that the case of the Petitioner has not been considered for continuation of his name/ re-inclusion of his name in the D.P. Ls." list and for employment, on the analogy of Shri Manohar Lal. Petitioner and Shri Manohar Lal were equally situated. Respondent-University could not treat equals as un-equals. Rather, the Petitioner has been discriminated against by the Respondent-University, by not considering his case at par with Shri Manohar Lal, whose name has been re-included in the seniority list and has been engaged as Beldar, after his stint with the project. Similarly, Shri Parkash Chand, Shri Prem Kumar and Shri Yash Pal were also appointed in the regular pay scale of `3120-5160/- Their services were terminated on 30.06.1999 after completion of the project. They served the University with a demand notice. In sequel thereto, they were appointed as Field Man/Beldars w.e.f. 24.12.1999. However, the Petitioner has again been discriminated against by not considering his case on the analogy of Shri Parkash Chand, Shri Prem Kumar and Shri Yash Pal. Petitioner has given the names of these persons in his representations. However, the same have been rejected

without speaking order. Once the representation has been made by an employee, it is required to be decided with due application of mind, that too after taking into consideration all the pleas/grounds taken in the representation. There is no merit in the contention of Mr. Rupinder Thakur that the Petitioner could not seek re-inclusion in the seniority list and re-employment on the basis of undertaking furnished by him on 03.11.1999. These kinds of undertakings have been considered by their Lordships of the Hon'ble Supreme Court in Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, . Their Lordships have held that apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an agreement, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. Their Lordships have further held that an agreement that if a person is promoted to the higher posts or put to officiate on that post or, as in the instant case, a stop gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would therefore be unenforceable in view of Section 23 of the Contract Act, 1872. Their Lordships have held as under:

8. Learned Counsel for the Appellant attempted to contend that when the Respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the Appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The Respondent being an employee of the Appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.

8. Moreover, the Respondent-University cannot take advantage of its superior bargaining power. Petitioner belongs to the lowest strata of the society. These kinds of undertakings obtained from the Petitioner and similarly situate persons are violative of Articles 14, 16 and 21 of the Constitution of India.

9. Mr. P.P. Chauhan, learned Counsel for the Petitioner has also drawn the attention of the Court to Circular No. 01/2003, dated 23.05.2003. A bare perusal of the same makes it clear that the appointment with project "Indigeneous Honeybees in the Himalayas" though was purely on temporary basis and coterminus, however, the seniority of the D.P.L. appointed as Bee-Keeper was

kept intact and the incumbent was to be re-deployed as DPL after termination of the adhoc project. The Respondent-University has over-looked Annexure A-12, dated 23.05.2003 while considering the case of the Petitioner. Shri Yashpal has been appointed to the post of Master Craftsman/Potter on 24.02.2000, after the issuance of office order dated 24.12.1999. The Respondent-University, being the State within the meaning of Article 12 of the Constitution of India, should have consistency in the day-today administration. It cannot be permitted to discriminate the similarly situate persons. The Respondent-University should act like a model employer while dealing with the case of a person like the Petitioner, who had served the University w.e.f. 17.04.1995 till 31.07.2003. His case was required to be considered for regularization instead of dispensing his services w.e.f. 31.07.2003 vide office order dated 28.07.2003. His name was to be maintained in the seniority list of D.P. Ls. at par with Shri Manohar Lal, Shri Parkash Chand, Shri Prem Kumar and Shri Yash Pal. Even, as per Annexure A-12, as noticed above, the person, who was to be appointed on temporary basis in the "Indigeneous Honeybees in the Himalayas", was to be re-deployed as D.P.L. after the termination of the adhoc project.

10. The Respondent-University, as far as Shri Manohar Lal Sharma's case is concerned, at its own level sought the clarification from the sister's University, i.e., C.S.K.K.V., Palampur. The Registrar of the Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya has approved the services of the persons, whose services are terminated after the closure of the Scheme/Project and re-employed on the basis of their seniority. Petitioner has also filed a supplementary affidavit, whereby advertisement No. 25/2006, dated 15.09.2006 was placed on record. According to the advertisement, applications were invited for filling up the post of Technical assistant and Lab. Attendant at a fixed salary of `5000/- per month and `3500/- per month respectively purely on contractual basis, co-terminus with the project titled "In Vitro propagation of clonal rootstocks of stone fruits"). The existing Daily Paid Labourers working in the University were also eligible to apply for the posts as per condition No. 8. It was specifically mentioned in condition No. 8 that the seniority of Daily Paid Labourers shall remain intact in case of their appointment as Technical Assistant or Lab. Attendant and they would be re-deployed as D.P. Ls. after the termination of the project. Condition No. 8 contained in the advertisement dated 15.09.2006 reads thus:

The existing Daily Paid Labourers working in this University can also apply for the said posts after depositing the requisite fee mentioned at Sr. No. 3. Their seniority will remain intact in case of their appointment as Technical Assistant or Lab. Attendant and they will be re-deployed as D.P. Ls. after the termination of the project.

11. In case the Respondent-University has treated the case of the Petitioner at par with similarly situate persons, he would not have lost his livelihood. He would have continued to be deployed on daily wage basis w.e.f. 2003 onwards.

12. In view of the observations and discussions made hereinabove, the petition is allowed. Annexures A-8, dated 20.05.2003, A-10, dated 29.07.2003 and A-11, dated 28.07.2003 are quashed and set aside. Petitioner shall be deemed to be in continuous employment with the Respondent-University as D.P.L., however, he shall only be entitled to notional benefits. It is made clear that the Petitioner will not be entitled to any back wages. No costs.