

(2011) 02 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : CWP No. 6900 of 2010

Deepak Sharma	Vs	APPELLANT
The State of H.P. and Others		RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 14, 15(2), 38, 38(2)
Fundamental Rules — Rule 9(21)

Citation : (2011) 02 SHI CK 0003

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 12(i) and (ii):

12(i) That impugned Annexure P-9 or any other subsequent orders passed by the Respondents may kindly be quashed and set aside.

(ii) that the Petitioner may be allowed to continue in service with all consequential benefits.

2. The Respondents have taken the following stand vide paras 1 and 3 of preliminary submissions:

1. That the father of the Petitioner Shri BalakRam Sharma was working as Teacher in the Education Department and while working as Centre head Teacher in the Education Department he sought retirement on medical ground as he was declared completely and permanently incapacitated for further service.

Whether reporters of Local Papers may be allowed to see the judgment? Yes As Sub-Rule-(2) of Rule-38 of CCS Pension Rules 1972 provides that a Govt. servant can apply for invalid pension and in this regard he shall have to submit a medical certificate of incapacity from the medical authority namely:

- a. A medical board in the case of the Gazetted Government servant and of a non-Gazetted Government servant whose pay, as defined in Rule-9(21) of the fundamental Rules, exceeds (two thousand and two hundred rupees) per mensem;
- b. Civil surgeon or District Medical Officer or Medical Officer equal status in other cases.

And as per the policy of the Govt. Which has been issued for appointment of son/daughter/near relation of a Govt. servant a compassionate appointment can be given to the family of the Govt. servant who got retirement on medical grounds under Rule 38 of the CCS (Pension Rule-1972). It is further stated that Sub-clause (c) of clause-5 of the policy of the Government as issued for providing the employment on compassionate ground provides that:

In all cases where one or more members of the family are already in Govt. service or in employment of autonomous bodies/Board/Corporations etc. of the State/Central Govt. Employment assistance should not under any circumstances be provided to the second or third member of the family.

Since at the time of submitting the application for providing employment on compassionate grounds, the sister of the Petitioner Kumar Anita was in Govt. service as she was appointed as JET teacher on 01.08.98 and after completion of five year service as volunteer Teacher and the fact regarding employment of Kumari Anita was not disclosed by the Petitioner in his application submitted for appointment on compassionate grounds and moreover, in the application which was submitted by the Petitioner for appointment on compassionate grounds she was not at all shown as a family member in column (6) of the application. The copy of the application form is annexed and the same is marked as Annexure R-1.

2. That it is further submitted that after employment was received through the Govt. And on the receipt of the complaint the inquiry was conducted. After the conclusion of the inquiry the Govt. came to the conclusion that the Petitioner had violated the provision of CCA conduct Rule by way of producing false certificate to get a Govt. job. The detail has been given in Annexure P/4 in the copy of memorandum as annexed by the Petitioner with the present civil writ petition. It is further submitted that after issuing the Annexure P-4 to the Petitioner the Petitioner gave the reply to the same which was sent to the Govt. However, the Government vide Annexure P-7 as annexed by the Petitioner with the present civil writ petition informed that the reply to the show cause notice was not satisfactory, therefore, the Petitioner be removed immediately from service. On the receipt of the Annexure P-7 the replying Respondents vide office order dated 2-8-2004 has ordered to remove the Petitioner from service with immediate effect.

3. Thus, it is manifest that the Petitioner had joined the employment of the Respondent-department as clerk on compassionate grounds after his father had sought retirement on medical grounds. One of the conditions of the government policy for appointment on compassionate grounds in respect of government

employees who sought retirement on medical grounds is that no other member of his family is in the employment of the State / Central Government / Autonomous Body / board / Corporation etc. However, it is alleged that later on it transpired that the Petitioner had made a wrong representation that no other member of the family was in such employment. Accordingly, charge sheet dated 30.09.2003, Annexure P-2, was served upon him to which the Petitioner filed reply, Annexure P-3, dated 20.10.2003. The departmental proceedings culminated in exoneration of the Petitioner vide report dated 30th April, 2004, Annexure P-5, operative part whereof is under:

Findings. Article1

As per Article1Sh. Deepak Sharma before his appointment mislead the appointing authority by way of producing false certificate that no member of his family is in government job and violated the Government policy.

In this context, it is submitted that after getting the matter inquired into I found that unemployed certificate produced by Shri Deepak Sharma, issued by Sub Divisional Magistrate, Theog on 28.5.2001 is not false because no member of the family of Shri Deepak Sharma was in Government job at the time of his appointment. It is true that one of his sister named Miss Anita Sharma is in Govt. Job w.e.f. 3.3.92 as V.T and 1.8.98 as J.B.T at the time of giving appointment in favour of Sh. Deepak Sharma but she is living separately from his family members w.e.f. 5.7.2000 due to some differences between with the family members, as per order of sub Divisional Officer (C) Theog vide their order No. THGReaderPeshi/2K969, dated 5.7.2000. Whereas Shri Deepak Sharma appointed on compassionate grounds to the post of Clerk vide Director of Pry. Education, H.P Officer Order No. Shiksha(Pra)H(1)B(6)9 97, dated 10/11.9.02 and joined on 19.9.2002 in the Office of Block Primary Education Officer, Pooh, District Kinnaur, H.P

CONCLUSION

Sh. Deepak Sharma did not mislead the appointing authority by way of producing false certificate. As his sister named Miss Anita Sharma living separately from the family members of Shri Deepak Sharma before the appointment.

4. However, the disciplinary authority without giving any tentative reasons for disagreement with the Inquiry Report, Annexure P-5, proceeded to issue Memorandum dated 3rd June 2004, Annexure P-4 to the Petitioner, which reads as under:

MEMORANDUM

Whereas, Sh. Deepak Sharma, Clerk, O/o the BPEO Pooh, Distt. Kinnaur H.P. had been served upon with a Memorandum of charge under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide this Director at eletter no. EDN H Pry (1)B(6) Inq/99 dated 30th September, 2003 for violating the policy by way of producing false certificate that no member of his family is in

Govt. service.

And whereas, as Inquiry Officer had been appointed to find found the truth of the allegation levelled against the above said Sh. Deepak Sharma, clerk.

Whereas, the Inquiry Officer has submitted his inquiry report vide his letter No. nil dated 18th Mach, 2004.

And whereas, on careful consideration of the Inquiry Report the govt. has come to a conclusion that sh. Deepak Sharma, clerk O/ O the BPEO Pooh, Distt. Kinnaur H.P. has violated the provisions of conduct Rules 3(1) (i), 3(1)(ii) and 3(1) (iii) Rules, 1964 by way of producing false certificate to get a Govt. job. The gravity of the misconduct committed by Sh. Deepak Sharma, clerk is such as to warrant the imposition of a major penalty and the undersigned proposes to impose on him the penalty of removal from Govt. Service.

Now, therefore, Sh. Deepak Sharma, clerk is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed above will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt fo this Memorandum by Sh. Deepak Sharma.

The receipt of this Memorandum should be acknowledged by Sh. Deepak Sharma, Clerk.

Enclosed: InquiryReport.

21. In the present case, the Controlling Authority while calculating the gratuity payable to the Workman has counted the entire period from March, 1982 to 31.10.2001, i.e. Twenty years and has directed the Executive Engineer, Irrigation & Public Health Division, Sarkaghat to pay a sum of Rs. 53,873/initially and after deducting a sum of Rs. 17,269/finally directed the State to pay sum of Rs. 36,604/.

22. In view of the above discussion, the Controlling Authority was required to calculate the gratuity for the period w.e.f. March, 1982 to 31.12.1993 under the payment of Gratuity Act, 1972 and for the remaining period, i.e. 1.1.1994 to 31.10.2001 (regular period only), the state was bound to pay the gratuity under the CCS (Pension) Rules, 1972. Accordingly, the writ petition is disposed of with the following directions:

(i) The workman is entitled to get the gratuity for the period w.e.f. March, 1982 to 31.12.1993 under the Payment of Gratuity Act, 1972 with interest as per law laid down by the Hon"ble Supreme Court in H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd.,

(ii) The workman is held entitled and is to be paid the gratuity w.e.f. 1.1.1994 to 31.10.2001 (regular period) under the CCS (Pension) Rules, 1972 with interest @ 9% per annum. The copy of the judgment be sent to the Secretary, Labour &

Employment for its distribution to the Controlling as well as Appellate Authority constituted under the Payment of Gratuity Act, 1972.

5. Annexure P-6 is the reply filed by the Petitioner to the above Memorandum dated 3rd June 2004, Annexure P-4. However, the same did not find favour with the disciplinary authority, who referred the matter to Respondent No. 1, who vide letter dated 24th July 2004, Annexure P-7, advised the disciplinary authority to remove the Petitioner from service immediately. Being aggrieved, the Petitioner moved the erstwhile H.P. State Administrative Tribunal by way of Original Application No. 2170 of 2004, which, on abolition of the said Tribunal was transferred to this Court and was registered as CWP No. 10991 of 2008 and was finally disposed of vide judgment dated March 20th 2010, Annexure P-8, text whereof is as under:

The Petitioner has challenged Annexures A-4 and A-7. As per Annexure A-4, the Petitioner has been served a notice based on Annexures A-5 enquiry report that the Government proposed to impose a major penalty of removal from service on the ground that the Petitioner had produced false Certificate to get Government job. That was the Article of Charge, Annexure A-2. Annexure A-5 is enquiry report, wherein the case has been concluded by the Inquiry Officer that the delinquent is not guilty of charge. If the Disciplinary Authority does not agree with the enquiry report, certainly the said authority is free to disagree. But before proceeding further, a notice has to be given to the delinquent. We do not find that any such notice has been given in this case. Based on the same enquiry report without stating any thing further, the Disciplinary authority proposed to remove the Petitioner from service. Annexure A-7 is the order. Thus, both Annexures A-4 and A-7 do not stand the test of law in view of what we have stated above. Therefore, we set aside Annexures A-4 and A-7. However, we made it clear that this judgment will not stand in the way of the Respondents for the proceedings being ...8...

conducted in accordance with law against the Petitioner, if required.

6. However, strangely enough, without complying with the direction issued vide the aforesaid judgment dated March 20th 2010, Annexure P-8, the disciplinary authority (Respondent No. 2) has again issued Memorandum dated 16.9.2010, Annexure P-9, which is virtually a verbatim re-production of Annexure P-4, which stood already quashed. Such a course adopted by the disciplinary authority is in flagrant violation of the law laid down by the Hon'ble supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, R.R. Gabhane Vs. State of M.P. and Others, and SBI and Ors. v. Arvind K. Shukla AIR 2001 SC 2398.

7. In view of the above, when the Enquiry Officer had come to the conclusion that the Petitioner was not guilty of any misrepresentation of facts and had proceeded to exonerate him and the disciplinary authority did not comply with the provisions of Sub-rule (2) of Rule 15 of the CCS (CCA) Rules and failed to record any tentative reasons for disagreement with the findings of the Enquiry

Officer initially when he passed Memorandum dated 3rd June 2004, Annexure P-4, which was quashed by this Court vide judgment, Annexure P-8, dated March 20th 2010 and later on when the impugned Memorandum dated 16th September, 2010, Annexure P-9, was issued.

8. In view of the above, the petition is allowed and Memorandum, Annexure P-9, dated 16th September, 2010 is quashed.

9. The petition stands disposed of, so also pending CMP(s), if any.