

(2011) 06 SHI CK 0258
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 16136 of 2008

Dr. Sandeep Chauhan and Another	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0258

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Respondent-University issued an advertisement bearing No. 3/2006 whereby applications were invited for filling up the posts of Lecturers in Chemistry (Organic). The last date for the receipt of application was 12.12.2006. Petitioners being fully eligible and qualified submitted their applications for considering them against the posts of Lecturer in Chemistry (Organic). Petitioners were interviewed on 28.9.2007. They were issued appointment letters dated 8.10.2007 vide Annexures A-17 and A-18. They were called upon to join their duties within a period of 10 days by the Respondent-University on 22.11.2007. Petitioners made representations that they were required to be offered appointment on regular basis instead of contract basis. It is in these circumstances that the present petition has been filed.

2. Mr. Onkar Jairath has strenuously argued that as per the advertisement, Petitioners ought to have been offered appointment on regular basis instead of contract basis.

3. Mr. Vikas Rathore, learned Deputy Advocate General and Mr. Vinod Thakur have vehemently argued that according to advertisement No. 3/2006, the University had reserved the right to fill up or not to fill up the posts, except the post of Professor, Reader and Statutory Officer and the University also reserved the right to fill up the posts either on contract (basic +50%) or on regular basis.

They have further contended that the University has taken a decision not to fill up the posts on the basis of the communication dated 28.5.2007 addressed by the State Government to the Respondent-University. They have further contended that the decision has been taken by the Executive Council of the Respondent-University on 29.9.2007 to fill up the posts on contract basis.

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

5. It will be apt at this stage to reproduce the relevant portion of advertisement No. 3/2006 (Annexure A-14) issued by the University whereby it was decided to fill up the posts of Lecturer of Chemistry (Organic). It reads thus:

The University reserves the right to fill or not to fill up the posts except for the posts in Professor, Reader and Statutory Officer. University reserves the right to fill in the above posts either on contract (basic +50% D.A.) or on regular basis.

6. It is thus evident that the Respondent-University had reserved the right to fill or not to fill up the posts on regular basis. The Petitioners in these circumstances were offered appointment on contract basis vide Annexures A-17 and A-18. Petitioners though called upon to join their duties within a period of 10 days, but they have failed to do so. The decision not to fill up the posts on regular basis has been taken by the University as per the records made available during the course of the hearing on the basis of letter dated 28.5.2007 issued by the State Government. This letter was put up before the Executive Council of the University, which is the highest decision taking body of the University. Therefore, on the basis of the decision of the Executive Council dated 29.9.2007, the University has decided to fill up the posts only on contract basis. It is for the employer to fill up the posts either on regular or contract basis. Petitioners knew at the time when the advertisement was issued that the Respondent-University had reserved the right to fill or not to fill up the posts either on contract (basic + 50% D.A.) or on regular basis. Petitioners had not chosen to challenge condition No. 6 and have appeared in the interview held on 28.9.2007 and in view of this now they are estopped from challenging the condition imposed in the advertisement. It is not one of those cases where no reason has been assigned by the employer to fill up the posts on regular basis or contract basis. The decision not to fill up the post on regular basis has been taken vide letter 28.5.2007 addressed by the State Government to the University. Thereafter, this letter has been duly considered by the Executive Council on 29.9.2007. The posts were advertised in the year 2006 and the appointment letters have been issued to the Petitioners on 8.10.2007. Petitioners were already working as regular Lecturer (School Cadre) and were drawing more than `20,000/- salary per month. This could be the reason for the Petitioners not to join the post as Lecturer in Chemistry (Organic) on contract basis. There is neither any unreasonableness nor any arbitrariness in the decision of the Respondent-University not to fill up the posts on regular basis strictly as per the terms and conditions incorporated in the advertisement.

7. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed. No costs.