
(2011) 05 SHI CK 0165
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 5075 of 2008

Hari Chand Akrot

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 05 SHI CK 0165

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—By means of this petition the Petitioner claims that his services should have been taken over as Assistant Librarian and not as Lab Attendant and that he should be paid salary for the entire period for which he worked.

2. The undisputed facts are that the Petitioner joined the National College Amb as clerk on and w.e.f. 1.8.1970. He was confirmed on 1.7.1991 and thereafter appears to have been promoted/designated as Assistant Librarian.

3. The State of H.P. formulated a policy for taking over privately managed colleges in the State of Himachal Pradesh and notification in this behalf was issued on 25.8.1994. As per this notification the services of qualified teaching and non-teaching staff who were appointed at least one year prior to taking over would be taken over and they would be placed at the bottom of the cadre in which the services were taken over.

4. The National College, Amb was taken over by the State of Himachal Pradesh vide notification dated 27th June, 1997. The services of all the employees were taken over but the services of the Petitioner were not taken over. A committee constituted in this behalf to oversee the taking over considered the case of the applicant and found that he did not fulfill the requisite educational qualifications for being appointed as Assistant Librarian. As per the rules the essential qualifications were matriculation with certificate in library science. The Petitioner

no doubt was a matriculate but did not possess a certificate in library science and therefore, the case for taking over his services was rejected.

5. Thereafter, the Petitioner filed the original application before the learned Tribunal on 2nd June, 1998. After this petition was filed the State issued a notification dated 30th March, 1999 in which the services of the Petitioner were taken over as Lab Attendant. It would be pertinent to refer to the notification in detail

Notification.

In continuation of this department notification of even number dated 27th June, 1997 and notification No. Cha(15)-3/86-Shiksha-Ka, dated 25th September, 1995, the Governor, Himachal Pradesh is pleased to order that the services of the following left out teaching & non-teaching staff appointed by the Privately managed National College Amb, Distt. Una, H.P. and Pt. Amarnath Samarak Mahavidyalays, Jogindernagar, Distt. Mandi, H.P. are taken over by the Department of Education, Govt. of Himachal Pradesh with immediate effect in relaxation of educational qualifications/sanctioned posts and also in relaxation of the terms and conditions of notification No. Cha(15)3/86 Shiksha-Ka dated 25.08.1994.

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xxx.... xxx.... xxx... xxx...

The services of both the above said lecturers College Cadre are taken over with the condition that they would clear the SET/NET within a year after their services are taken over.

B. Ministerial Staff To be taken over

1. Sh. Hari Chand, Library Asstt. Lab. Attendant.

xxx.... xxx.... xxx... xxx...

6. I have heard Ms. Shweta Julka learned Counsel for the Petitioner and Shri Vivek Thakur, learned Additional Advocate General for the Respondents-State. Ms. Shweta Julka, learned Counsel for the Petitioner urges that persons who were employed as clerks in the college much after the Petitioner i.e. Respondents No. 4 and 5 were absorbed as Senior Assistants whereas the services of the Petitioner were taken over as Lab Attendant. She further submits that when the department had decided to relax the educational qualifications and also relaxed the sanctioned posts then the Petitioner should have been appointed as Assistant Librarian and not as Lab Assistant.

7. As far as the first prayer of Ms. Shweta Julka, Advocate, is concerned, I am unable to agree with the same. It may be true that the Petitioner was senior to Respondents No. 4 and 5 and may have been appointed prior to them in National College, Amb. However, as admitted by the Petitioner himself he left the cadre of

clerks and became an Assistant Librarian. Once he joined as Assistant Librarian he could not now claim seniority in the cadre of clerks/Superintendents. It is also not disputed that Respondents No. 4 and 5 were working as Superintendent and Senior Assistant when their services were taken over as Senior Assistant. The Petitioner on the other hand was an Assistant Librarian and he cannot compare his job with that of Respondents No. 4 and 5.

8. However, as far as the second limb of the argument is concerned, once the State took a conscious decision not only to relax the qualifications but also to make relaxation with regard to the sanctioned posts then the case of the Petitioner should have been considered for being appointed as Assistant Librarian and not as Lab Attendant. The qualifications for Assistant Librarian and Lab Attendant are totally different. True it may be that the Petitioner did not have the necessary qualification of certificate of Library Science but the fact remains that for more than a decade he had been actually functioning as Assistant Librarian in the college.

9. This Court may not have directed the State to relax the essential qualifications but once the State itself relaxed the essential qualifications and also the sanctioned post then the case of the Petitioner should have been considered for appointment as Assistant Librarian only. The Petitioner has suffered immensely because he appears to have been appointed in the college much prior to Respondents No. 4 and 5 but due to a quirk of fate he was asked to work as Assistant Librarian resulting in his not being considered for appointment as Senior Assistant, which post is in higher scale.

10. Therefore, the interest of justice demands that the Petitioner should be treated to have been absorbed as Assistant Librarian in the college with effect from the date of his joining pursuant to the notification dated 30.3.1999. He shall be entitled to all consequential benefits including difference in salary.

11. Another grievance of the Petitioner is that he was made to work as Assistant Librarian in the college even after it was taken over but was not paid his salary. Certificate issued by the Principal of the College has been attached as annexure A-12. This certificate was issued on 20th August, 2010 and it shows that the Petitioner was present in college and performed his duties as Assistant Librarian w.e.f. 18.6.1997 to 16.12.1997 and 29.12.1997 to 1.4.1998. In case the Petitioner has not been paid salary for this period he shall be entitled to the same at the minimum of the pay scale of Assistant Librarian as it existed on the said date.

12. In view of the above discussion the writ petition is disposed of in the aforesaid terms. The Respondents are directed to pay the salary of the Petitioner for the period 18.6.1997 to 16.12.1997 and 29.12.1997 to 1.4.1998 as well as the difference of salary between Lab Attendant and Assistant Librarian from the date of his joining as Lab Attendant till the date of his superannuation along with interest @ 6% per annum. The needful be done latest by 31st October, 2011

failing which the State shall be liable to pay interest @ 12% per annum. No costs.