
(2011) 03 SHI CK 0285
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 7005 of 2008

Himanshu Sharma

APPELLANT

Vs

H.P. State Electronics Development Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0285

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

Bench : Single Bench

Judgement

V.K. Sharma, J.—The Petitioner was in the employment of Respondent No. 1-Corporation. At the relevant time, he was working as Senior Technician in one of the units of the said Corporation that is, T.V. factory at Chambaghat. It is seen that the said unit was closed and the entire staff including the Petitioner was declared as surplus. It was in such situation that vide office order dated 23.9.2000, Annexure A-3, the staff members were absorbed in the Education Department against clerical posts. The Petitioner was also offered post of clerk subject to protection of his pay. However, he did not accept the same and instead prayed for being adjusted against equivalent technical post in some other Govt. department vide representation dated 27.9.2000, Annexure A-6, but without any result.

2. Against the above backdrop, the Petitioner has been filed on the following prayers vide para 7(i) and (ii):

(i) That the Respondents may be directed to absorb the applicant against a post carrying the pay scale of Rs. 5480-8925. They may be further directed to absorb the applicant against a post of technical nature where the services of the applicant can be better utilized.

(ii) That the Respondents may be further directed not to insist upon implementation of order dated 23.9.2000 and 25.9.2000 until an appropriate

decision is taken to absorb him against an equivalent post carrying an identical or higher pay scale.

3. In the reply, Respondent No. 1 has taken the following stand vide paras 6(vi) and 10(A) and (C):

6(vi) the contents of this para are admitted to the extent that the applicant was absorbed in Education Department as Clerk like other employees of the factory. In fact the applicant had himself been insisting for his absorption as had been done in case of other employees of the factory. A copy of one such representation dated 16-8-2000 is placed at Annexure R-1 to which the applicant is also a signatory. It is further stated that other employees of the factory who were either similarly situated or were working even in higher pay scales on higher posts have been absorbed in other Departments as Clerks and in the same manner the applicant has also been offered employment in Education Department in accordance with the guidelines issued by the Government for absorption of staff of Public Sector Undertakings in Govt. Departments. According to these guidelines the pay of the employee to be absorbed is protected. In case of the applicant also, his pay is being protected.

10(A) The contents of this paragraph are not correct. The applicant has been absorbed in Education Department in accordance with the guidelines of absorption as contained in letter No. Fin. IF (C) 15/7/91 dated 1-8-95 as placed at Annexure R-2 which provides for protection of pay and not the pay scale. It is further submitted that as per Govt. decision communicated vide letter No. Fin(F)1-A(4)-2/2000 dated 26-9-2000 the Government has approved budgetary support for Voluntary Retirement Scheme/Retrenchment in Public Sector Undertakings where Government has taken decision to close/wind up a discrete loss making activity and presently T.V. Factory, Chambaghat falls under this category for which a decision of closure has already been taken by the Government. A soft loan of Rs. 1.5 crores has also been provided by the Government for meeting the liability under Voluntary Retirement Scheme/Retrenchment in this case. Thus in case the offer of absorption is not acceptable to the applicant, the Replying Respondent will be left with no alternative except to proceed further to retrench his services in accordance with law.

(C) The contents of this paragraph are not correct. Mrs. Ranjana Sood, who was working in much higher pay scale than the applicant has also been absorbed as Clerk in Education Department. As regards the absorption of Shri R.K. Sharma, the official was on deputation with the Election Department and has been absorbed according to R and P Rules of that department with the consent of the borrowing department. Similarly in case of Sh. Pardeep Krishan also the borrowing department has given their consent for his absorption in accordance with their R and P Rules.

4. Respondent No. 2 has taken the following stand vide paras 6 to 9 of the short affidavit:

6. That as per guidelines contained in letter No. Fin. IF(C)15-7/91 dated 1-8-95 regarding absorption of staff the pay of employee is protected and not the pay scale and seniority. Accordingly the benefit of pay protection has been allowed in all the cases of absorption of staff of T.V. Factory in accordance with these instructions and there has not been any decrease in emoluments of these employees on absorption. It is further stated that the State Government has introduced Master Pay Scales w.e.f. 1-1-86 and 1-1-96 to ensure that there is no stagnation of employees and also there is no loss on account of subsequent increments in the master scale. According to the revised master scale even on completion of the scale of a particular post, an employee would continue to earn future increments and would not stagnate at the maximum of the scale. It is submitted that with the absorption of the applicant as Clerk, the applicant is not going to suffer any monetary loss in shape of future increments also.

7. That although Respondent No. 1 forwarded the bio data of TV Factory employees to various departments, yet it is ultimately for the departments concerned to adjudge as to which employee is to be absorbed in view of R and P Rules of the respective department. The contention of the applicant that he should be absorbed on equivalent status and pays scale can not be entertained. The list of vacancies in various departments appended by the applicant as Annexure A-8 has also been examined by the Replying Respondents also which revealed that either the applicant did not fulfill the requirements prescribed in the R and P Rules of those posts or the posts were meant to be filled upon on 100% by promotion.

8. So far as the contention of the applicant that his option for absorption was not obtained the same is not maintainable. In case of factories established under the Factories Act, the employee can be straightway retrenched by paying retrenchment compensation as per law. At the most in such cases the employees can be offered alternatives like Voluntary Retirement. In his case the applicant was also offered Voluntary Retirement Scheme but the applicant did not opt for that also. The applicant had himself been representing that he should also be absorbed like other employees of the factory as per Annexure R of Reply of Respondent No. 1, the applicant was offered the pensionable post of Clerk in Education Department where his pay has been protected and no monetary loss is going to be caused to the applicant due to this absorption rather than his retrenchment. Even after making such strenuous efforts the Employer of the factory cannot continue to wait and pay idle wages to an individual till he gets the appointment of his choice and in such a case the Employer can resort to the process of retrenchment and subsequently make efforts for his absorption elsewhere. With great efforts, Respondent No. 1 has arranged employment to the applicant as Clerk where there is no decrease in his emoluments and, if even in spite of this the offer is not acceptable to him, there is no alternative left with the Respondents except to retrench him as per law.

9. The replying Respondent also submits that the policy with regard to absorption

of staff has been revised as per instructions issued by the Government vide letter No. Fin(F)1-1A(4)-2 dated 26.9.2000 (Annexure R2-I). As per para viii of these instructions no surplus employee of any Board/Corporation will be absorbed in Government. In view of these instructions of the Government it is not possible to absorb the applicant in Govt. Deptt. Para (xi) of these instructions is quite relevant in this case which stipulate that Budgetary support for VRS in PSUs will be limited to situations where a decision is taken to close/wind up a discrete loss making activity or a decision is taken to phase out/close down an entire loss making organization. In this case a decision has been taken to close down T.V. Factory. The Government has already provided a soft loan of Rs. 1.50 Crores for payment of retrenchment compensation/VRS and other dues of the employees in August, 2000. Therefore, in view of these revised instructions the question of absorption of the applicant does not arise in view of change in policy of the Government. Even the other 8 employees of the factory, who were ordered to be absorbed as Radio Mechanics in the Department of Information and Public Relations in December 97, are still continuing in factory as a result of Stay Order granted by this Hon''ble Tribunal. They can not now be absorbed in the Government Department and may have to be retrenched once stay is vacated.

5. Admittedly, the Petitioner is out of employment since 25.9.2000, when he was relieved in pursuance of the aforesaid office order dated 23.9.2000, Annexure A-5.

6. In the peculiar facts and circumstances of the case, the petition is disposed of with a direction to the Respondents to consider the case of the Petitioner for absorption against an existing vacancy of Senior Technician/equivalent post, in the Respondent No. 1-Corporation, in the first instance and in case no such post is available with the said Corporation, in any other Govt. Department/Board/Corporation, within three months from the date of production of copy of this judgment by the Petitioner, In accordance with law after affording an opportunity of being heard to him, if so advised. However, it is clarified that since the Petitioner has neither joined nor worked against the post of clerk offered to him, he shall not be entitled for any back-wages on the principle of "no work no pay".

7. The petition, so also pending application(s), if any, stand disposed of in the above terms.