
(2019) 08 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 307 Of 2018

Hiramani

APPELLANT

Vs

State Bank Of India & Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16, 19, 21

Citation : (2019) 08 SHI CK 0024

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : C.N. Singh, Arvind Sharma

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The petitioner has filed the instant petition for grant of the following substantive prayers:-

(i) Issue writ of Mandamus or other appropriate writ or direction as this Hon'ble court deems fit in considering the case of the petitioner for absorption in regular bases as have been done in cases of similarly situated persons on their completion of ten years of part time, contractual service in a time bound manner.

(ii) Issue writ of Mandamus or other appropriate writ or direction to the respondents to release the undisputed due and admissible monthly salary of Rs.10,000/- for the last six months period immediately in a time bound manner.

(iii) That the respondent may be directed to pay interest @ 12% on the due and admissible amount of salary, which has not yet been released in his favour for the last 6 months.

2. It is not in dispute that the petitioner vide letter dated 14.06.2012 was appointed as a Care Taker purely on contract basis and when his services were sought to be dispensed with, he approached this Court and is now working by

virtue of interim order passed by this Court.

3. The sole basis of this petition is the plea of parity raised by the petitioner based upon the regularization of the services of one Leela Dhar, however, this plea is not tenable as Leela Dhar was working with the respondents on daily wage basis and as per policy decision the services of all the daily wagers were decided to be regularised whereas the petitioner was appointed on contract basis and admittedly the contract period has come to an end.

4. It would be relevant to reproduce the order of appointment in its entirety, which reads as under:-

"Our Ref. No.:AGM/SM/STAFF/

Date: 14/06/2012

Sh. Hiramani

S/o Sh. Anant Ram

Vill-Batar

P.O.-Hadaboij,

Teh-Sundernagar (H.P.)

APPOINTMENT AS CARETAKER FOR BANK'S GUEST HOUSE AT MALL SHIMLA
PURELY ON CONTRACT BASIS.

With reference to your Application regarding the captioned subject, we inform that Bank has decided to engage you for the services of Care Taker at the VIP Guest House situated at Shimla (Mall) Branch on the following terms & conditions:-The engagement will be on purely contract basis w.e.f. 15/06/2012 for a period of 12 months at a lump sum payment of Rs.5000/- per month.

You will have to make your own arrangements for boarding and lodging.

You will have to discharge your duties of cleansing, dusting etc. of Bank's Guest House & will prepare food for Guests. Disinfectant material etc. will be provided to you by the Bank.

You will have to take care of assets, equipments, Gadgets etc. lying in Guest House.

Bank reserves the right to terminate this contract at any time without giving any notice.

Your engagement as Care Taker is purely on contractual basis only and it does not create any employer-employee relationship. You will have no right to claim any employment whatsoever from the Bank.

Sd/-

Asstt. General Manager-II

Shimla

5. It is next contended by learned Counsel for the petitioner that the services of the number of daily wagers like Inderdev, Chhavi Ram and Leela Dhar have been regularized.

6. On instructions, Shri Arvind Sharma, learned counsel for the respondents, submits that there is no person by the names of Inderdev or Chhavi Ram, even though there is one Inder Dutt, but he is working with the respondents for the last more than 20 years and there is Chabi Lal who is in employment since 23.01.1986 on regular basis. Therefore, even this contention of the petitioner is without merit.

7. As observed above, the petitioner is working by virtue of interim order, which as per the settled law does not confer any right on the petitioner.

8. Admittedly, the respondent is a State within the meaning of Article 12 of the Constitution of India and while granting employment, it requires to scrupulously ensure that the constitution mandate is followed. It is more than settled that all eligible persons who are aspiring to secure public employment must be considered for employment to such posts through open competitive process or else the person appointed will have to be treated as a back door entrant.

9. In State of Haryana and others vs. Piara Singh and others, AIR 1992 SC 2130, the Hon'ble Supreme Court has deprecated back door entry into service.

10. In case of State of Himachal Pradesh vs. Suresh Kumar Verma and another, AIR 1996 SC 1565, the Hon'ble Supreme Court has held that judicial process cannot be utilised to support the mode of recruitment de hors the rules.

11. In State of U.P. and another vs. Kaushal Kishore Shukla, 1991 (1) SCC 691 and Director, Institute of Management Development, U.P. vs. Smt. Pushpa Srivastava, AIR 1992 SC 2070, the Hon'ble Supreme Court held that appointment limited by time does not confer any right to the post and on expiry of time limit, the appointment ceased automatically.

12. Adverting to the facts of the case, it would be noticed that the letter of appointment, which has been reproduced above, leaves no manner of doubt that the appointment of petitioner was a limited one. The respondents at the given time had never offered to the petitioner that he would continue in service or that his services would be regularized. Here also, it is not the case of the petitioner that there is any uncertainty or ambiguity in the appointment made by the respondents as to the tenure on the post on which he had been appointed. The petitioner had voluntarily accepted the appointment granted to him subject to the condition stipulated in the appointment letter. The appointment subject to the conditions has been accepted with his eyes wide open, therefore, now he cannot turn around claiming higher rights ignoring the conditions subject to

which the appointment had been accepted.

13. Similar issue has been considered in detail by me in a recent judgment bearing CWP No. 2680 of 2015, titled Kunal Brahma vs. The Board of Trustees of IRMT & others, decided on 09.07.2019, the petitioner therein was appointed as Administrator with the respondents trust purely on contract basis and thereafter his services were ordered to be terminated. It was then the petitioner approached this Court complaining that the termination of his services was illegal, violative of the principles of the Constitution of India, more particularly, Articles 14, 16, 19 and 21. While rejecting the said contention, this Court observed as under:-

7. A careful reading of the letter of appointment leaves no manner of doubt that the appointment offered to the petitioner was a limited one. The respondents at the given time had never offered to the petitioner that he would continue in service or that his services would be regularized. It is not even the case of the petitioner that there was any uncertainty or ambiguity in the appointment made by the respondents as to the tenure on the post on which he had been appointed.

8. There is a clear distinction between public employment governed by the statutory rules and private employment governed purely by contract. No doubt with the development of law, there has been a paradigm shift with regard to judicial review of administrative action whereby the writ court can examine the validity of termination order passed by the public authority and it is no longer open to the authority passing the order to argue that the action in the realm of contract is not open to judicial review. However, the scope of interference of judicial review is confined and limited in its scope. The writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract.

9. However, judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the administrator to decide whether more reasonable decision or course of action could have been taken in the circumstances. (Refer Gridco Ltd. & Another vs. Sadananda Doloi & Ors, AIR 2012 SC 729).

10. The petitioner has failed to place before this Court any material to show that the action of the respondents is either unreasonable or unfair or perverse or irrational. As observed earlier, the service conditions of the petitioner makes it abundantly clear that petitioner had been appointed on contractual basis, that too, on a non-statutory scheme.

11. It may be noticed that the petitioner had voluntarily accepted the appointment granted to him subject to the conditions clearly stipulated in the scheme. The appointment subject to the conditions has been accepted with his eyes wide open, therefore, now the petitioner cannot turn around claiming higher rights ignoring the conditions subject to which the appointment had been

accepted.

14. In view of the aforesaid discussion, I find no merit in this petition and the same is accordingly dismissed. Interim order is vacated. Pending application(s), if any, also stands disposed of.