
(2011) 07 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWP No. 2059 of 2010

Hridye Prakash

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 3 ShimLC 144

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—In the above titled petitions, the Petitioners who are reemployed ex-servicemen in the Education Department sought the following relief:

(a) To issue a writ of mandamus, appropriate writ, order or direction in nature thereof, directing the Respondents to deem the Petitioners to have been appointed w.e.f. 18.12.2002, [and in the case of CWP No. 2072 of 2010, Mukesh Kumar v. State of HP, with effect from 17.1.2003] for all purposes and intents entitling the Petitioners for benefits under CCS (Pension) Rules, 1972 as prior to issuance of notification dated 15.5.2003, with all the consequential benefits and deduction of their CPF may kindly be stopped forthwith.

2. The Petitioners herein joined the Indian Army on the different dates and later got discharge. They were Trained Graduate Teachers (TGT) before getting their civil employment. The Ex-servicemen Employment Cell, sponsored their names in response to the requisition received from the Respondent. Department for the post of TGT (Arts) with stipulation to give appointment letters to the Petitioners within 15 days. The dates of sponsorship and their appointments of each of the Petitioners are as under:

Sr. No.

No. of CWP

Name of the Petitioner.

Date of sponsorship

Date of appointment.

1.

CWP No. 2059/ 2010

Hridye Prakash

03.12.2002

20.09.2003

2.

CWP No. 2068/2010

Mohan Lal

03.12.2002

01.10.2003

3.

CWP No. 2072/ 2010

Mukesh Kumar

02.01.2003

02.11.2004

4.

CWP No. 2073/ 2010

Rajinder Kumar Jamwal

03.12.2002

29.09.2003

5.

CWP No. 2074/ 2010

Pratap Singh Chauhan

03.12.2002

September 2003.

6.

CWP No. 2078/ 2010

Raj Kumar

03.12.2002

26.09.2003

7.

CWP No. 2079/ 2010

AminChand Sharma

03.12.2002

01.10.2003

3. As a matter of fact, the selection procedure qua the ex-servicemen takes place at the level of "State Selection Committee" of the Ex-servicemen Employment Cell, Directorate of Sainik Welfare, Himachal Pradesh at Hamirpur. They maintain the panel of the candidates and send the names to the concerned Departments on receiving the requisitions.

4. Circular letter bearing No. 8-34/73-D.P.(Niyukti-II)-Vol.VI dated 31.3.1990 of the Respondent-State, addressed to all the Secretaries, Heads of Departments, clarifies that ex-servicemen, nominated by the Ex-Servicemen Cell aforesaid against the posts reserved for ex-servicemen, be given appointment letter within 15 days. Further it took note of that these directions were not being complied with by some of the Departments, as they were not issuing the appointment letters till the selection process against the unreserved post is not complete, which is entirely illegal. Thus these instructions contained in Hand Book on Personnel Matters Vol-I page 806 clearly depict that in case of ex-servicemen as soon as the nomination is received from the Cell aforesaid the appointment letters be issued to those nominees within 15 days.

5. Pursuant to this circular, the Ex-servicemen Employment Cell also requested the Respondent-Department to issue the appointment letters to the candidates nominated by them within 20 days instead of 15 days from the receipt of their letter for nomination allowing them 15 days time to join the post.

6. According to the Respondents, the appointment letters could not be issued because of ensuing Assembly Elections and the imposition of Code of Conduct which remained in force from 1.1.2003 to 17.3.2003 in the non-tribal areas up to 13.6.2003. The records show that the Petitioners were given the appointment letters even six months or more than six months thereafter, as indicated in the above table flouting the above instructions.

7. According to Shri A.K. Bansal, learned Additional Advocate General, the Government decided to withhold the result and appointments in various departments vide letter No. PER(AP-C)B(19)-1/2003, dated 13.3.2003.

8. I have perused the said letter. It does not apply to the Petitioners. The

Government only decided that on going selection process, interviews etc. shall be stopped and results if not declared shall be withheld. But in the instant case, neither on going selection process was going on nor any interview was required to be held since the Petitioners having been nominated by the Ex-servicemen Cell of the State, thus their appointment was required to be made in accordance with circular aforesaid issued by the State Government dated 31.3.1990.

9. Further Annexure P-3 dated 28.8.2003 sent by the Principal Secretary (Education) to the Government of Himachal Pradesh on the reference of the Respondent-Director conveys that the approval of the Government stood already conveyed to him vide Department letter dated 24.4.2003 with respect to the appointment of ex-servicemen. Therefore, he was directed to take immediate and necessary steps. This also makes it abundantly clear that the Respondent-State never intended to stop the appointments of the ex-servicemen against the reserved ex-servicemen quota. Therefore, no fault can be attributed to the Petitioners. The Respondents were required to issue the appointment letters within the stipulated time as per the instructions aforesaid. This delay has resulted in severe civil consequences to them, on 15.5.2003 the Respondent-State has issued notification whereby CCS (Pension) Rules, 1972 stood amended by making the pensionary benefits inapplicable to the incumbents appointed after the issuance/publication of the said notification in the Rajpatra. Thus, the inaction on the part of the Respondent-Department has resulted into the deprivation of the pensionary benefits to the Petitioners, which is required to be reversed.

10. Therefore, for the reasons aforesaid, the petitions are allowed. The Petitioners are deemed to have been appointed with effect from within 15 days from the receipt of their sponsorship/nomination from the Ex-servicemen Employment Cell, entitling them for the benefits under the CCS (Pension) Rules, 1972 with all consequential benefits as they were entitled prior to notification dated 15.5.2003 referred to above.

11. All the petitions stand disposed of in above terms.

12. In view of the disposal of all the petitions, all pending applications in all the petitions shall also stand disposed of.