
(2011) 03 SHI CK 0189
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 12759 of 2008

Jai Singh Thakur

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2011) 03 SHI CK 0189

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The Respondent-State doubted the genuineness of the certificate obtained by the Petitioner, on the basis of which, he sought public employment. Petitioner approached the learned erstwhile Himachal Pradesh Administrative Tribunal for the redressal of his grievance by way of Original Application No. 452 of 1998. The same was disposed of by the learned Tribunal on 28th July, 1999. The order reads thus:

This Tribunal has been informed that all these applications can be disposed of at this stage on the basis of order passed by the Apex Court in similar type of cases. The Apex Court decided Civil Appeal No. 7835-7842 of 1996 on December 9, 1997. According to the learned Counsel for the applicants some Review Petition before the Apex Court reviewing the aforesaid order was also filed which according to learned Addl. Advocate General was not considered favourably.

2. For the sake of convenience the order as passed by the Apex Court is being reproduced hereunder:

The High Court allowed the writ petitions of the Respondents mainly on the ground that the contesting Respondents have not been given an opportunity to show that their appointments were on the basis of correct and genuine certificates and not on false/fake certificates, as alleged by the Appellants (vide

para 22 of the judgment). There is no ground to interfere with the Tribunal's judgment except to modify it slightly with the direction to the Appellants to give an opportunity to the Respondents individually to show cause and establish that the certificates are not false and fake and that their appointments were on the basis of genuine certificates. As and when they establish the fact that the certificates were genuine and not faked ones, it must be taken that their appointments were valid. In view of the long pendency of the matter, the Appellants are directed to commence and complete the enquiry within six months. The appeals are disposed of accordingly.

3. On the basis of aforesaid order in the present application also the Respondents are directed to commence and complete the enquiry within six months. The applicants if not satisfied with the said enquiry they are permitted to avail of any legal via media to redress their grievances.

With these observations and directions, all these applications stands disposed of. The parties to bear their own costs.

2. Thereafter, the Petitioner made a representation on 4th October, 1999, seeking re-appointment. Petitioner also sought implementation of the judgment vide communication dated 2nd March, 2000. It is apparent that the Petitioner filed a contempt petition for implementation of order dated 28.07.1999. The same was dismissed by the learned Tribunal on 30.12.2004. Petitioner assailed the order dated 30.12.2004 by way of C.W.P. No. 206 of 2005. The same was dismissed by a Division Bench of this Court on 12.05.2005. The judgment reads thus:

After hearing the learned Counsel for the parties, we feel that in the facts and circumstances of this case, the Tribunal was justified in dismissing the contempt charge against the Respondents because undoubtedly, no contempt charge was made out. Vide judgment dated 28.07.1999 passed in O.A. No. 152 of 1988, the Tribunal had directed the Respondents to commence and complete the inquiry within six months. This direction actually emanated from an order passed by their Lordships of the Supreme Court on 9th December, 1997 in Civil Appeal No. 7835-7842 of 1996. From what we have seen, the inquiry indeed was completed, but unfortunately for the Petitioner, he could not participate in the inquiry because according to him, the letter dated 05.11.1999 sent to him at his New Delhi address did not reach him. As far as Respondents are concerned, they performed their part by dispatching the letter. Contempt charge in any case is not made out. Petition stands dismissed.

3. Thereafter, the Petitioner preferred an SLP against the judgment dated 12.05.2005. The same was dismissed by the Hon'ble Supreme Court on 07.11.2005 by making the following observations:

In view of the fact that the Petitioner has a remedy of questioning the order passed by the Respondents, we do not intend to exercise our jurisdiction under Article 136 of the Constitution. The SLP is dismissed.

4. According to the Respondents, the Petitioner was informed vide letter dated 05.11.1999 to make himself available for the purpose of inquiry on 22.12.2004. However, the Petitioner did not avail this opportunity and, ultimately, the inquiry report was furnished by the inquiry officer vide Annexure A-7, dated 24.01.2000.

5. Mr. Ajay Sharma, learned Counsel for the Petitioner has strenuously argued that his client has never been served with letter dated 05.11.1999. He further argued that once the learned Tribunal has directed the Respondent-State to commence and complete the inquiry within a period of six months, the same was to be concluded in accordance with law, after following the principles of natural justice.

6. Mr. P.M. Negi, learned Deputy Advocate General has vehemently argued that the Petitioner has been informed vide letter dated 05.11.1999. However, he did not appear on that date, which culminated into the issuance of Annexure A-7, dated 24.01.2000.

7. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

8. The Original Application No. 452 of 1988, as noticed above, was disposed of on 28th July, 1999, with a specific direction to the Respondents to commence and complete the inquiry within a period of six months. According to Mr. Ajay Sharma, learned Counsel for the Petitioner, his client has never been served with office order dated 05.11.1999. He has further argued that it was in the interest of his client to participate in the inquiry proceedings.

9. Mr. P.M. Negi, learned Deputy Advocate General has also brought to the notice of this Court that the Petitioner had obtained his J.B.T. certificate from Bihar Shiksha Parishad. He then argued that the certificate obtained by the Petitioner was sent to the Assistant Secretary, Bihar Vidyalya Pariksha Samiti, Patana for verification through the Deputy Director of Primary Education, H.P., Shimla. The Bihar Vidyalya Pariksha Samiti, Patna informed the Respondent-State that this certificate was never issued by them nor any institution was authorized to issue the same. Thus, there was confusion whether the certificate issued to the Petitioner was genuine or not. The inquiry was directed to be commenced and completed within a period of six months to find out whether the certificate obtained by the Petitioner was genuine or not. In order to ascertain whether the certificate was genuine or not, a regular inquiry, in accordance with law, was required to be held after following the principles of natural justice. Petitioner was required to be informed about the precise charge levelled against him with regard to genuineness of the certificate. After receiving his reply, further inquiry has to commence. The evidence was to be led by the department and thereafter, an opportunity was required to be given to the Petitioner. However, in the instant case, Annexure A-7, dated 24.01.2000 is sketchy and vague. It is an out-come of non-application of mind. What is mentioned in the inquiry report Annexure A-7, dated 24.01.2000, is that the Petitioner was given an opportunity to establish the

veracity of the genuineness of the certificate vide letter dated 05.11.1999. Thereafter, the Inquiry Officer has held that similar opportunity was also given to the candidates when the inquiry was conducted by Shri T.D. Verma, Deputy Director of Primary Education, Himachal Pradesh in the year, 1998. The report abruptly concludes by stating that since the Petitioner has failed to present himself, therefore, nothing can be said about the veracity of the genuineness of certificate possessed by him. It was for the Inquiry Officer to give a specific finding whether the certificate obtained by the Petitioner was genuine or not. He could proceed against the Petitioner ex-parte. The department has to prove on the basis of tangible evidence that the certificate obtained by the Petitioner was from a non-recognized institution. The correspondence entered by the Respondent-State as per the averments contained in the reply to the effect that the letter was written to the Bihar Vidyala Pariksha Samiti, Patna was required to be discussed. A specific finding was also required to be given that the institution, i.e., Bihar Shiksha Parishad was not a recognized institution. The negative burden could not put on the Petitioner to establish that the certificate obtained by him was from a recognized institution. It is the State, who has alleged that the certificate obtained by the Petitioner was not genuine. In these circumstances, it was for the State to prove during the course of inquiry that the certificate obtained by the Petitioner was not genuine.

10. Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexure A-7, dated 24.01.2000 is quashed and set aside. Respondents are directed to hold a fresh inquiry, in accordance with law and complete the same within a period of three months, after informing the Petitioner by way of registered letter to participate in the inquiry.