
(2017) 12 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : 2092 of 2017

Jawala Prasad

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 15-12-2017

Acts Referred:

Citation : (2017) 12 SHI CK 0028

Hon'ble Judges : Tarlok Singh Chauhan, Chander Bhusan Barowalia

Bench : Division Bench

Advocate : K.D. Sood, Sanjeev Sood, Dhananjay Sharma, J. S. Guleria

Judgement

1. The petitioner is a permanent resident of Village and Post Office, Kamru, Tehsil Sangla, District Kinnaur, H.P. and currently employed as Sepoy in Dogra Scouts in the high altitude area. He applied for grant of nautor land comprised in Khasra Nos. 361/346/319 and 336/120/1, Kite 2, measuring 00- 92-24 hectares in Mohal Regsantang, Tehsil Sangla, District Kinnaur, H.P. The application was duly recommended by all the concerned. However, the Sub Divisional Officer (Civil), Kalpa vide his order dated 16.7.2016 rejected the application on the ground that the applicant did not satisfy condition No.4 which reads thus: "4. The area is situated at a minimum distance of one kilometer (ground distance) from Perennial/Natural Water Source."

2. The petitioner assailed the aforesaid order by filing an appeal before the Deputy Commissioner, Kinnaur, however, the same has been rejected only on the basis of the instructions issued by the Government vide letter No.Rev.B.F(12)1/2008-Vol-II dated 20.4.2017 wherein it has been mentioned that no nautor case is to be considered for issuing pattas in favour of Government employees as SLP (C)CC No. 2044/2016 in case titled State of H.P. vs. Narender Lal Negi is lying pending for decision before the Hon"ble Supreme Court of India and as per the report of the Revenue Field Agency received from the Tehsildar, Sangla vide letter dated 5.7.2016, the grantee is a Government employee.

3. Being aggrieved by the orders passed by the Sub Divisional Officer (C), Kalpa dated 16.7.2016 (Annexure P-2) and the order dated 20.4.2017 (Annexure P-4) passed by the Deputy Commissioner, Kinnaur , the petitioner has filed the instant petition on the ground that the authorities below have ignored the fact that being a serving member of armed force the petitioner was entitled for the grant of nautor as a matter of right under a special category and mere fact that he happens to be a government employee would not come in the way of such grant, more particularly, when the same has been duly considered and recommended by all concerned including Panchayat, Forest Department, Co-villagers etc.

4. The respondents opposed the petition by filing reply wherein it is averred that the petitioner being a Government employee and having income more than what is prescribed in the Nautor Rules, is not eligible for grant of nautor and further that the land applied for does not fall within the category of allotable pool and, therefore, the same cannot otherwise be allotted to the petitioner. Lastly, it is claimed that the petitioner has failed to specify his special category and, therefore, also he is not entitled to grant of Nautor. We have heard learned counsel for the parties and have gone through the material placed on record.

5. At the outset, we may notice that indubitably the case of the petitioner has been rejected by the Deputy Commissioner only on the basis of the instructions issued by the Government on 20.4.2017 (*supra*) and the justification as has now been put-forth by the respondents with regard to land applied for not forming a part of the allotable pool, is clearly an after thought.

6. There is no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that an Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action.

7. If precedent is required for this proposition it can be found in the celebrated decision of the Hon^{ble} Supreme Court in case titled Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi (1978) 1 SCC 405, of which the following paragraph deserves extraction:- "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1952) 1 SCR 135: Public orders publicly made, in exercise of statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language

used in the order itself."

8. Apart from the above, we really wonder how the respondents could have feigned ignorance regarding the special category to which the petitioner belongs, particularly when they have not disputed that he is serving as Sepoy in Dogra Scouts which is an armed force. If only the respondents had cared to read the Nautor Rules, then such defence probably would not have been raised by them because Rule 7 of the Himachal Pradesh Nautor Land Rules, 1968 clearly provides for preference of various categories which include service personnel in the armed forces and Ex- Servicemen as would be evident from a bare perusal of Rule 7 itself, which is extracted below: "7. Eligibility for nautor land. - Save for the widow and the children of a member of an armed force or semi armed force, who has laid down his life for the country (whose widow and children were eligible for grant anywhere within the Tehsil subject to the conditions mentioned in the wajib-ul-Arj in respect of the areas where the land applied for is situated) no one who is not the resident in the estate in which the land applied for is situated, shall be eligible for the grant. Every resident of the estate in which the land applied for lies will be eligible in the following orders of preference:-

(a) Such persons who have less than ten bighas of land under self cultivation on 1.1.1974, whether as owners, or as tenants, or as lessees, either individually or collectively, or have an income of less than Rs. 2.000 per annum from all sources including lands. Provided that in this category a dependent of one who has laid down his life for the defence of the country will get preference over his counterparts.

(b) Scheduled Castes and Scheduled Tribes applicants; and

(c) The deponents of those who have laid down their lives for the defence of the country service, for the defence of the country will mean service in a uniformed force as well as in the capacity of civilian, so long as the death occurs on a front be it military or civil.

(d) Services personnel in the armed forces and Ex- Servicemen.

(e) Panchayats.

(f) Others.

Provided that a bonafide landless resident of Spiti shall be eligible for the grant of land in Nautor within the Spiti Sub-Division."

9. It does not require solomon's wisdom to visualize why such special categories have been carved out in the Rule. Joining the defence service is not only for personal gain but the person would also strive hard and risk his life to secure the borders of the country and therefore provision of such incentives like the above is necessary at the same time it is also in the public interest. Even during the so-called "peace time", armed forces are faced with war like situations. They have faced with difficult situations of proxy war and have also to deal with problems of

insurgency and terrorism. These armed personnel are risking their lives while dealing with the aforesaid difficult situations and, in fact, the casualties and fatalities of the soldiers are on the rise.

10. Here it shall be apposite to refer to the observations of the Hon"ble Supreme Court in case titled Union of India and another vs. C.S. Sidhu (2010) 4 SCC 563, wherein dealing with a armed personnel, who had been treated shabbily by the Government, it was observed as under: "9...The Army Personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities, particularly, in respect of their emoluments, pension and other benefits."

11. Now, as far as the applicability of the instructions issued by the Government on 20.4.2017, we are clearly of the view that the same would not apply to the case of the petitioner because admittedly he is serving as armed personnel and even though he is a Government employee, but nonetheless he belongs to a preferential category and has therefore a preferential right of allotment. The instructions would not apply to his case as he enjoys a special status and has a preference in eligibility as per Rule 7 framed by the Government itself. His case cannot be clubbed with other Government employees, who are not serving Army personnels so as to deny him the benefit of Nautor, if otherwise found eligible. On the same analogy, even the criteria of income would not apply to the case of the petitioner since he is serving as armed personnel and obviously the rule making authority was aware that such persons would be drawing salary.

12. That apart, even if it is assumed though not conceded that the notification of the Government dated 20.4.2017 was applicable to the case of the petitioner, even then, his claim for grant of Nautor could not have been rejected by dismissing the appeal. The only course open to the Deputy Commissioner was to adjourn the appeal sine die till the time the Hon"ble Supreme Court did not ultimately decide the SLP pending before it, but in no event could the appeal be dismissed.

13. For all the reasons stated above, we find merit in this petition and the same is allowed and accordingly the matter is remitted back to the Deputy Commissioner, Kinnaur for a decision afresh. Both the parties or their duly authorized representative, shall appear before him on 08.01.2018.

14. The petition is disposed of in the aforesaid terms, so also the pending application(s), if any, leaving the parties to bear their own costs.