

(2009) 06 SHI CK 0005
In the High Court Of Himachal Pradesh

Jia Lal Chauhan

APPELLANT

Vs

Tarun Kapoor

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Himachal Pradesh Kanungo Service Rules, 1951 — Rule 12

Citation : (2009) 2 ShimLC 366

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The petitioner was respondent No. 4 in Civil Writ Petition No. 238 of 2000 titled Devinder Singh Kalta v. State of H.P. and Ors. decided by this Court on 15th December, 2006 whereby the order of Erstwhile H. P. Administrative Tribunal passed in O.A. No. 572 of 1989 Annexure-PH to the CWP) was set aside and the Office Order dated 3rd September, 1988 (Annexure PA) to the writ was quashed and respondents No. 1 and 2 were directed to re-draw the seniority of the petitioner and private respondents, as per Rule 12 of H. P. Kanungo Service Rules, 1951, which has precedence over the Executive Instructions.

2. Rule 12 reads as under:

12. The seniority of the members of the service shall be determined by the date of their substantive appointment provided that if two or more members are appointed substantively on the same date, their seniority shall be determined according to the orders in which their names are entered by the Director of Land Records in the list of Kanungo candidates maintained in his office.

3. Sh. Devinder Kalta and the private respondents in the writ including the petitioner herein were appointed substantively on the same date, therefore their seniority was ordered to be redrawn as per Rule 12 above, according to the order in which their names were entered by the Director of Land Records (DLR) in the

list of Kanungo candidates maintained in his office.

4. The respondent in his reply submitted that the judgment of this Court was complied with in its letter & spirit but the petitioner alleged that the respondent has admitted that no such list was maintained in the office of D.L.R. in conformity with the said Rule and the seniority was wrongly redrawn, thus committed a contempt and sought action by filing the present contempt petition.

5. We have heard the learned Counsel for the parties and have gone through the record.

6. Both the parties agree to the judgment passed by this Court in CWP No. 238 of 2000. But according to the petitioner, the qualification of the Kanungo candidates was required to be brought to the DLR's list, as per para 2.5-A of the Land Record Manual which was not done.

7. The respondent in his reply and also by filing his affidavit dated 6th May, 2009 stated and clarified that there were two types of merit list of the Kanungo candidates, one was prepared on the basis of selection test for training of the Kanungos and second was on the basis of qualifying the Departmental Examination of Kanungo. The seniority list of the Kanungos was earlier prepared on the basis of merit obtained in the Departmental Examination of Kanungos vide order SML-EK-XIX(70)/88-vol-VI-19045-50 dated 3rd September, 1988 which was quashed by this Court vide its detailed judgment dated 15th December, 2006 passed in CWP No. 238 of 2000 above. It was further submitted that to comply the orders of this Court, the respondent made a reference to the Director of Land Record H.P. to send the list of Direct Kanungo Candidates, as prepared in his office under Rule 12 but in turn it was intimated vide letter No. Rev.(LR) 238/2000-1990 dated 29th March, 2007 that the Deputy Commissioner was competent to draw the seniority list, on the basis of substantive appointments, as per Rule 12 of the R & P Rules, 1951 the register maintained in the office of Director of Land Records is a copy of selection of Kanungo candidates made by the District Collector and as such the list maintained in the office of Collector is authentic for making the substantive appointments, which is entirely within the authority of District Collector.

8. In fact at the time of initial appointment of Kanungos, the selected candidates are called Kanungo-candidates and Rule 12 *ibid* speaks about list of Kanungo candidates to be prepared by the Director of Land Records. According to the respondent, in case had there been a list prepared by Director of Land Records, the same would have been prepared on the basis of merit of select list. Since there was no list prepared by the Director of Land Records but the office of the Deputy Commissioner was having the list of Kanungo-candidates on the basis of merit of select list, as such the same was made basis for compliance of the order's of this Court and the seniority was re-fixed in accordance with the provision of Rule 12 *ibid*.

9. As a matter of fact, the contention which is now being raised in the Contempt

Petition was neither raised by the petitioner or the respondent during the proceedings in the writ petition. The judgment/order passed by this Court in the Civil Writ Petition is quite clear and unambiguous, as to how the seniority of the members of service is to be drawn in accordance with rules. The question, how the list of Kanungo candidates was required to be maintained by the D.L.R. under Rule 12 aforesaid, was neither raised nor was determined by us. The respondent contended that Rule 12 was adhered to in re-fixing the seniority of Kanungo candidate as directed by the court.

10. Thus the petitioner has failed to prove willful disregard of the judgment/order passed by this Court in CWP No. 238 of 2000.

11. Therefore, in the facts and circumstances of the case in hand, this Court cannot pass supplemental order to the main order, passed in the writ petition aforesaid nor further directions can be issued by this Court for implementing the judgment / order in a particular way, which would have an effect of its review. Since the petitioner has failed to prove willful disobedience and contumacious conduct of the respondent as such, the contempt petition is dismissed.