
(2014) 12 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 6218/2014

Kehar Singh

APPELLANT

Vs

Himachal Pradesh State Electricity Board Limited

RESPONDENT

Date of Decision : 31-12-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2014) 12 SHI CK 0023

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Advocate for the Appellant; Rajpal Singh, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—An amendment was carried out in the existing Recruitment and Promotion Regulations for direct recruitment Class-II, III and IV posts vide notification dated 7.12.2007 whereby after the relevant column of Method of Recruitment of all Class-II, III and IV direct recruitment posts notified by the Board, the following columns were inserted:

(b) the Cadre controlling Authority after obtaining the approval of the Whole Time Members of the Board to fill the vacant posts on contract basis will place requisition with employment exchanges in the Pradesh in term of The Employment Exchanges (Compulsory Notification of Vacancies) Act 1959 (Act No. 31 of 1959) and also advertise the posts in two leading newspapers and invite applications from candidates having the prescribed qualifications and fulfilling the other eligibility conditions as prescribed in these Rules.

(c) Candidate selected for appointment on contract basis will be initially appointed for one year which could be extended further depending upon requirement of the services of such appointees and further subject to high standard of work conduct and performance of such appointees. However, their services may be terminated even prior to the completion of contract period by issuing of one month notice or payment of one month wages in lieu of the notice.

If their services are not required due to nonavailability of work, for which principle of first come last go shall be followed. Their services may also be terminated during the contract period if their conduct and performance is not found satisfactory for which notice with due opportunity of being heard shall be given.

(d) The Contract appointee will be paid monthly emoluments in initial of the pay scale of the post plus dearness pay therein, if any.

(e) Contract appointee so selected under these Rules will not have any right to claim regularization or permanent absorption in H.P.S.E.B.

(f) (i) The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good.

(ii) Contract appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contract appointee. He/she shall not be entitled for medical reimbursement & LTC etc. Only maternity leave will be given as per rules.

(iii) Un authorized absence from the duties without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for wages for the period of absence from duty.

(iv) Contract appointments will be made against vacant posts in difficult and tribal areas or any other specific jobs as per requirement. Transfer of contract appointee will not be permitted from one place to another. However, at the time of renewal of contract if any, such appointee can be appointed at different place or office on administrative grounds.

(v) Selected candidate will have to submit a certificate of his/her fitness from a Govt./Registered Medical Practitioner. Women candidate, pregnant beyond 12 weeks will be considered temporarily unfit till the confinement is over. The women candidates will be re-examined for the fitness by an authorized Medical Officer/Practitioner.

(vi) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular staff members.

(vii) After selection of a candidate for appointment, he shall have to sign an agreement as laid down by the department attached as Annexure-"I" to these rules as amended from time to time.

2. Thereafter, vide Agenda item 356.10 in the 356th meeting of Whole Time Members of the respondent-Board held on 3.4.2008, the following decision was taken:

"The Board resolved that a total of 200 critical posts as per the following details may be filled up as Trainees for a contractual period of two years:

It was further resolved that CE (Op.) North may be made incharge of this Departmental Recruitment Committee. The details of selection and other criteria may be worked out by Member (O) for this recruitment which has been decided to be sub-divisional specific appointment. It was further resolved that these Trainees will be given contractual amount of Rs. 4500/- per month in normal arrears and Rs. 5500/- in tribal/hard areas."

3. It is, thus, evident that 200 posts were to be filled up. Appointment notices were published in various leading newspapers vide Annexures A-4, A-5 and A-6, i.e. The Tribune, Amar Ujala and Divya Himachal dated 26.6.2008. Respondent-Board has issued interview notices vide Annexure P-1 dated 1.12.2008 whereby the petitioners and similarly situate persons were informed that the posts were to be filled up on contract basis for a period of two years as per marks obtained by the candidates in matriculation and I.T.I. examinations. The petitioners and similarly situate persons were issued interview letter vide Annexure P-2 whereby they were asked to appear before the Departmental Selection Committee alongwith original and photocopies of the certificates in the office of Chief Engineer (OP), HPSEB, Dharamshala at 10.00 A.M. on 9.9.2008. In the interview letters, it is mentioned that the posts were to be filled up for a period of two years on batch-wise basis. In sequel to Annexures P-2 and P-3, respectively, petitioners and similarly situate persons were interviewed as per marks obtained in matriculation and I.T.I. examinations. However, fact of the matter is that the petitioners and similarly situate persons were offered appointment of Electrician, Linemen and S.S.A. as contractual trainees on fixed monthly amount of Rs. 4,500/- only in normal areas and Rs. 5,500/- in tribal/hard areas in Himachal Pradesh. Petitioners joined their duties.

4. Mr. Sanjeev Bhushan, learned counsel for the petitioners, has vehemently argued that the appointment of the petitioners as contractual trainees for a contractual period of two years was in violation of the Recruitment and Promotion Regulations framed by the Board. He has also contended that in Annexures P-1 and P-2 there is no mention of "expression" trainee. He has further contended that it was only in the year 2008 that the appointments were made as contractual trainees for a period of two years and thereafter the posts have been filled up on contractual basis by the respondent-Board.

5. Mr. Rajpal Singh, learned counsel for the respondent, has strenuously argued that in fact the decision was taken by the Whole Time Members of the respondent-Board in the meeting held on 3.4.2008 to fill up the posts as trainees for a contractual period of two years. Even in the appointment letters there is also a reference of trainee. He has also contended that the petitioners have accepted the offer and have joined the duties and now they are stopped from challenging the same. He has lastly contended that the petitioners and similarly situate persons would be regularized after completion of eight years" regular

service.

6. We have heard the learned counsel for the parties and have gone through the pleadings carefully.

7. What emerges from the facts enumerated hereinabove is that though the decision was taken to fill up the posts as trainees for a contractual period of two years, but as per Annexures P-1 and P-2, the posts were to be filled up on contract basis for a period of two years.

8. Mr. Rajpal Singh has failed to point out any provision in the Recruitment and Promotion Regulations whereby the petitioners could be appointed as trainees. There is only provision of regular appointment and on contract basis as per insertion carried out in the Recruitment and Promotion Regulations on 7.12.2007. The petitioners have completed their training period as contract employee, as is evident from Annexure A-10 dated 29.3.2011. It has been specifically averred in para 6 (c) of the petition that in all the subsequent appointments which were made either by way of direct recruitment or by batch-wise basis, same were either made on regular basis or on contract basis. The respondent-Board in para 6 (c) of the reply has admitted that 16 posts of Electrician/Electrician (PH) (E) and 40 posts of Linemen have been filled up by the respondent-Board direct on contract basis during June, 2011 and September, 2012, respectively through H.P. Subordinate Services Selection Board Hamirpur. Thus, the petitioners have been discriminated against by the respondent-Board. The employer is the same. The petitioners had appeared before the interview board, being in possession of minimum essential qualification. They have been appointed on temporary basis on contract basis for a period of two years as trainees and the persons, who have been recruited through H.P. Subordinate Services Selection Board, Hamirpur have been appointed on contract basis for a period of two years. The petitioners will have to wait for eight years to get regularization and the persons, who have been appointed through H.P. Subordinate Services Selection Board, Hamirpur would be regularized after a period of six years. The petitioners have been discharging the duties, which are being discharged by the persons appointed by way of direct recruitment. Few of the petitioners are also manning the Sub-Stations independently. The petitioners cannot be discriminated only on the basis of source of recruitment.

9. Mr. Rajpal Singh has vehemently argued that the petitioners on completion of their successful training were issued certificate as per Annexure A-11. The nomenclature of trainee has been adopted by the respondent-Board to deprive the petitioners to get the salary equivalent to persons appointed on contract basis. It is merely a misnomer. It also amounts to unfair labour practice. The entire exercise undertaken by the respondent-Board to appoint the petitioners as trainees on contract basis is arbitrary and thus violative of Articles 14 and 16 of the Constitution of India. The respondent-Board is a State within the meaning of Article 12 of the Constitution of India and should have alive to its responsibilities strictly in letter and spirit of the Constitution of India.

10. Mr. Rajpal Singh has also argued that the petitioners have joined their duties after their selection as trainees. There cannot be any estoppel against the fundamental and constitutional rights. The petitioners have been appointed strictly as per Recruitment and Promotion Regulations and not as trainees on contractual basis for a period of two years. Petitioners' suitability has been adjudged by the Departmental Selection Committee either by way of direct recruitment or on batch-wise basis. We have seen that the minimum marks required were obtained by the petitioners as per Annexure P-1. The minimum marks required by general category for the post(s) of Lineman, S.S.A., Electrician and Electrician (P/H) were 70.55, 71.85, 73.15 and 71, respectively and for the category of general I.R.D.P were 68.40, 70.40, 73.10 and 66.60, respectively. Even the marks required by Scheduled Caste category were 69.50, 70.35, 73.30 and 70.80, respectively in matriculation and I.T.I. examinations.

11. Accordingly, in view of the analysis and discussion made hereinabove, the writ petition is allowed. The petitioners would be deemed to have been appointed on contract basis from the date of their initial appointments as Linemen, S.S.A., Electrician and Electrician (P/H). They shall also be entitled to initial pay scale of the post(s) alongwith Dearness Allowance for a period of two years. The seniority of the petitioners shall be counted from the date of their initial date of appointment for regularization. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.