
(2011) 04 SHI CK 0200
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11575 of 2008

Kuldeep Singh

APPELLANT

Vs

State of H.P and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0200

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 7 (a) and (b):

(a) That the order to return the service book to the office of Block Primary Education Officer, Dehra may be passed immediately and further directed to make entry of granting 816-24-32 years of special increment in the service book and the pay accordingly be re-fixed and arrear be paid along with interest @ 18% per annum from its due date.

(b) That the explanation of the dealing hand working in the office of Deputy Director of Primary Education Kangra at Dharamshala may be called for the illegal retention of service book for years together intentionally and deliberately with malafide intention to harass the applicant and pressuring him to withdraw the previous O.A (D) No. 273/03 filed against the Education Department.

2. In reply, the Respondents have taken the following stand vide para 3:

That in reply to this para it is submitted that as per the information received from the Respondent No. 3 Dy. Director Pry. Education Kangra at Dharamshala the applicant joined the Education Department on 23.9.1988 on adhoc basis for 89 days. Thereafter he was appointed on regular basis on 15.3.1991 as a result his seniority was fixed at Sr. No. 1763/A on 22.8.1972 against the post reserved from Ex Service man. This seniority was granted to him according to the

appointment offered to him on regular basis w.e.f. 15.3.1991. Thereafter the applicant was further absorbed in the department against the post of JBT reserved for the ex serviceman from the date of his joining as a regular hand by the Respondent No. 3 vide his order No. EDN-KGR- P-E-3(10911)-1/96 dated 29.1.1997. Since the adhoc services rendered by the applicant as JBT teacher was without break thus he was considered for the grant of seniority w.e.f. 1.4.1970 by the Respondent No. 3 vide his office corrigendum No. EDN-KGR(P-E-4) seniority 2003-04, dated 22.3.2005. However, the applicant is not at all entitled for the grant of benefit of special increment for 8, 16, 24 and 32 years by taking into consideration his military services in view of the provisions as laid down in (Rule 11 of the Recruitment and Promotion rule for the Demobilized Armed forces personal reservation of vacancies in H.P. state non technical service) Rule 1972. According to this rule the benefit of approved military services for the seniority is allowed to as Ex Serviceman against the post to which he is initially appointed and in the matter of confirmation, further promotion/grant of higher pay scale to Ex Serviceman is required to be put in actual service in the post to which he is initially appointed. Since the applicant was appointed on regular basis in the department as JBT teacher on 15.3.1991, therefore, as per rule submitted above is entitled for the benefit of special increment of 8, 18, 24 and 32 from the date when he joined his service in the department on regular basis.

3. Admittedly, the Petitioner being an ex Indian Army Personnel had joined the employment of the Respondent-department as JBT teacher, on adhoc basis, on 23.9.1988. Thereafter, he was regularized as such on 15.3.1991, without any break. It is also admitted that he was given the benefit of approved military service for the purpose of seniority and pay fixation. However, for the purpose of grant of proficiency increments after 8-16-24-32 years, the Respondent-department has neither counted the approved military service rendered by the Petitioner nor the adhoc service rendered by him in the department as JBT teacher. According to the Petitioner, the eligibility for grant of such increments is to be reckoned in terms of instructions 15.15.2 of Chapter 15 and 18.5.2 of Chapter 18 of the Handbook on Personnel Matters, Vol-I (Second Edition), Government of Himachal Pradesh, Department of Personnel appearing at page 495 and 740, respectively, which are as extracted below:

15.15.2. Such ex-servicemen who are appointed against reserved posts under the Demobilised Armed Forces Personnel (Reservation of vacancies in Technical and Non-Technical) Rules and who are allowed benefit of military service in the matter of fixation of seniority and pay become eligible for first promotion after three years of service according to existing Rules. After the revision of pay scales from 1.1.1986, the question as to after how much actual service such ex-servicemen should be allowed the first higher pay scale in the cadres of clerks, steno-typists and stenographers has been considered by the Govt. It has been decided in consultation with the Finance Department that the minimum actual service for the grant of first higher pay scale to such ex-servicemen who have

been allowed benefit of ex-military service for seniority and fixation of pay on their appointment to the posts of clerks, steno-typists and stenographers shall be three years provided this minimum service together with military service for which benefit has been allowed for seniority comes to five years.

18.5.2 Counting of qualifying military service for proficiency increment, promotion etc.

The benefit of approved military service for seniority is allowed to an ex-serviceman against the post to which he is initially appointed and in the matter of confirmation/further promotion/grant of higher pay scales, an ex-servicemen is required to put in actual service in the post to which he is initially appointed. The provisions below Rule 11 of Recruitment and Promotion Rules standardized by the Govt. provide that if a junior person becomes eligible for promotion by virtue of his length of service in the feeder post all persons senior to him shall be deemed to be eligible for consideration and placed above the junior person provided all incumbents to be considered possess minimum qualifying service of at least three years or that prescribed in the Recruitment and Promotion Rules, whichever is less and when a person becomes ineligible because of requirement of three years service, the persons junior to him shall also be deemed to be ineligible for promotion. The last ineligibility clause is not to operate in cases where the senior incumbent happens to be an ex-serviceman. Keeping these provisions in view the Govt. have decided that ex-servicemen who get benefit of their approved military service for seniority will be allowed promotion/next higher scales as under:

i) On completion of three years service in civil post they are to be considered eligible for promotion to higher post, if their juniors are eligible and are promoted subject to suitability and availability of posts;

ii) On appointment to the posts of Clerks, Steno-typist and Stenographers, the minimum actual service for grant of first higher pay scale will be three years provided the approved military service counted for seniority taken together with the actual service commutes to at least five years.

4. In view of the above, the petition is disposed of with a direction to the Respondents/competent authority to consider the case of the Petitioner for grant of proficiency increments in accordance with the instructions referred to hereinabove and take a final decision in the matter within three months from the date of production of copy of this judgment by the Petitioner. Needless to say that consequential benefits, including retrial benefits, if any, shall also be payable to him within the same time, failing which interest at the rate of 9% per annum, shall also be payable.

5. The petition is disposed of in the above terms, so also pending application(s), if any.