

(2014) 11 SHI CK 0037
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1127 of 2013

Kulwant Singh

APPELLANT

Vs

Himachal Road Transport Corporation

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2014) 11 SHI CK 0037

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : V.D. Khidta, Advocate for the Appellant; Varun Thakur, Advocate for the Respondent

Judgement

Sureshwar Thakur, J.—The father of the petitioner was prematurely retired on medical grounds. At the time of his premature retirement, he was working as a Driver under the respondent-Corporation. The petitioner applied for his being appointed against the post of Clerk (Class III) on compassionate basis. The appointment of the applicant under the respondents in the capacity aforesaid was approved on 2.4.2005 but his name was kept in the waiting panel of Class-III post by the respondent-Corporation as is divulged by Annexure, P-3. However, despite the petitioner having been approved by the screening committee for being appointed on a compassionate basis against the post of Class III, the respondent-Corporation omitted to issue an appointment letter to the petitioner. The petitioner was driven to move this Court by filing a C.W.P. for a direction to the respondent to hand over him an appointment letter. On 1.12.2011, this Court rendered a judgment in favour of the petitioner and directed the respondent-Corporation to consider the case of the petitioner for appointment in the capacity aforesaid in consonance with approval already granted by the respondent-Corporation. The respondent-corporation agitated the decision rendered by a Single Bench of this Court by way of preferring an LPA before a Division Bench of this Court, which LPA as preferred by the respondent-corporation entailed dismissal. The respondent-Corporation then proceeded to

institute a Special Leave Petition before the Hon''ble Apex Court, which SLP too came to be dismissed. The petitioner has come to be appointed on compassionate basis against the post of Clerk, as enunciated by his appointment letter comprised in Annexure P-7.

2. The petitioner is aggrieved by the fact of the appointment letter handed over to him articulating the fact of his being appointed on a contractual basis. The counsel contends that when the approval of the petitioner for his being appointed on compassionate basis was accorded in the year 2005 as manifested by Annexure P-3 and further when Annexure P-8 comprising the communication issued by the Managing Director of the Respondent-Corporation portray that the persons recited in the Annexure aforesaid would on completion of one year of contractual service under the respondent and on fulfillment of the requisite conditions envisaged in the contractual policy, be regularized. Concomitantly then given the origin of the communication in the year 1993 and when at the stage of approval of appointment of the petitioner on compassionate basis by the screening committee in the year 2005, no material having been adduced to demonstrate, that the pronouncements in the Annexure aforesaid of the employees working under the respondent-Corporation while coming to be appointed on contractual basis would on rendering service on a contractual basis initially for a period of one year and thereafter on fulfillment of the requisite eligibility were to be regularized, had hence come to be unsettled or displaced. In sequel, the counsel canvases that the pronouncements therein ipso facto *pari materia* too also apply to the petitioner, especially for mitigating discrimination *vis-?-vis* similarly situated persons who too like the petitioner have been appointed on compassionate basis, besides to promote and facilitate equality *inter se* the petitioner and the persons enumerated therein.

3. On the other hand, the learned counsel for the respondent submits that the R & P Rules applicable to the respondent-corporation as brought into force in the year 2006 envisage and contemplate that all appointments in whatever capacity made by the respondent-corporation shall only be on a contractual basis, therefore, the counsel contends that the petitioner when governed by R & P Rules, cannot claim a status which is outside the ambit of R & P Rules.

4. This Court has considered the rival contentions addressed before this Court by the learned counsel for the parties on either side.

5. It is apparent that the petitioner, despite his name having been approved for appointment on a compassionate basis by the screening committee constituted by the respondent-corporation in the year 2005, was not issued an appointment letter by the respondent-corporation, hence was driven to institute a C.W.P. against the respondent. The litigation unsuccessfully ended against the respondent-corporation. The respondent-corporation during the pendency of the contempt Petition preferred at the instance of the petitioner before this Court had in the year 2012 appointed him as a Clerk on a contractual basis. The respondent-Corporation having been ultimately unsuccessful in the litigation

inter-se it and the petitioner, per se bespeaks the fact of the invalidity or untenability of the stand as espoused by them in various Courts, besides when a right to appointment accrued in favour of the petitioner in the year 2005 on his name then having been approved for appointment on compassionate basis, denial of appointment to him was untenable. In other words the petitioner had a fructified right to be appointed by the respondent-corporation on his name having come to be approved by the screening committee in the year 2005. As a corollary thereto when the respondent-corporation as portrayed by Annexure P-12 had in the year 1999 explicitly proclaimed therein of appointees on compassionate basis initially appointed on a contractual basis and who while successfully completing one year of contractual service on acquiring eligibility were to be regularized which proclamations therein have not been displayed by cogent material to be not inexistence nor applicable at the time of the petitioner's name having been approved by the screening committee for appointment on compassionate basis, i.e. in the year 2005, at which stage a fructified and a ripened right accrued to the petitioner to claim appointment against the post for which his name stood approved by the screening committee. Consequently then the stand as espoused by the respondent-Corporation in the Annexure aforesaid is to be held to be available to the petitioner. Moreso, when qua the other contractual appointees on a compassionate basis a proclamation therein is of the appointees on successful completion of one year of contractual services enjoying a right subject to eligibility claim appointment on a regular basis. Therefore, when the operation of the Annexure aforesaid to the case of the petitioner would obviate discrimination inter se the petitioner and the persons enumerated therein while being similarly situated in as much as, theirs and the petitioner all being appointees on compassionate basis. Consequently, to beget equality and parity, it would be expedient and just that the benefit afforded to the appointees in Annexure aforesaid be also considered to be afforded to the petitioner. The aforesaid directions would also obviate stalling of or abortion of the fructified and ripened right of the petitioner for appointment in consonance with Annexure aforesaid, in the year 2005, as had accrued to him then on his name having been approved by the screening committee. Even though, the counsel for the respondent contends that the R & P Rules do not envisage that the appointees on compassionate basis be regularized in service in the manner as envisaged in Annexure P-12, nonetheless the ambit and amplitude of the R & P Rules do not cover appointments on compassionate basis. Rather, the appointments on compassionate basis are governed by the Annexure aforesaid which has not been proven to have overridden or overruled by any apposite amendment made in the R & P Rules, rather Annexure aforesaid is to be held to be holding the field qua the conditions of the service governing the appointees on compassionate basis. Besides when the Annexure aforesaid is to be concomitantly construed to be in consonance with the policy of the respondents governing appointments on compassionate basis and when the applicability of Annexure to the case of the petitioner is anvil led on the touchstone of obviating inequality, their applicability would promote justice. Consequently, the conclusion

qua applicability of Annexure P-10 qua the case of the petitioner is also arrived at on the strength of the accrual of a right of appointment available to the petitioner in the year 2005 at which stage for reason aforesaid the operation of the Annexure aforesaid qua the petitioner has been concluded to hold sway and command. As a natural corollary its effect, cannot be whittled down or diluted as then it would beget inequality inter se similarly situated persons.

6. Consequently, upshot of the above discussion is that in case the petitioner has joined services with the respondent-corporation then his case be considered to be dealt with in consonance with Annexure P-12 within a period of six weeks. Petition stands disposed of, as also pending applications, if any.