
(2014) 05 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9621/2008

Lal Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 05 SHI CK 0007

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Ranjana Parmar, Advocate for the Appellant; Shrawan Dogra, A.G., Mr. Parmod Thakur, Mr. M.A. Khan, Addl. A.Gs, Mr. Neeraj Sharma and Mr. Vivek Attri, Dy. A.G, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as Driver on contract basis vide order dated 8.10.1998. Contract of the petitioner was renewed from time to time. On the basis of representations made by the petitioner, decision was taken to fill up the post of Driver on regular basis. Petitioner was interviewed alongwith other candidates for the post of Driver in the pay scale of Rs. 3330-6200. However, fact of the matter is that despite the process initiated for filling up the post of Driver on regular basis, petitioner has been appointed as Cleaner-cum-Driver vide office order dated 16.4.2001.

2. Case of the petitioner, in a nutshell, is that though he was interviewed for the post of Driver on regular basis, however, he was appointed as Cleaner-cum-Driver. His further case is that though he has been appointed as Cleaner-cum-Driver, but he has been discharging the duties of a Driver with effect from 10.4.2001 and, thus, is entitled to the salary of the post of a Driver.

3. According to the reply filed by the respondents, petitioner was appointed under the scheme sponsored by the Irrigation and Public Health Department for

imparting training to Pump Operators. The averment made in the petition that petitioner had been discharging the duties of a Driver with effect from 8.10.1998 has not been denied. According to the reply, the petitioner has accepted the offer of post of Cleaner-cum-Driver and joined his duties. In other words, contention of the respondent-State is that once the petitioner has accepted the offer of Cleaner-cum-Driver, he is estopped from filing the petition.

4. Respondent-State was directed to file supplementary affidavit on 10.12.2013. Supplementary affidavit has been filed on the affidavit of Director, Technical Education, Vocational and Industrial Training on 6.3.2014. It is stated in the supplementary affidavit that the perusal of old record depicts that the recruitment process was initiated for the post of Driver in the pay scale of Rs. 3330-6200+ Rs. 300/- special allowance. However, the selection committee short listed two candidates and recommended them to the post of Cleaner-cum-Bus Conductor on contractual basis. The recommendations of the Committee are annexed as Annexure R-3. It is clear from Annexure R-3 that the interview was in fact conducted for the post of Driver on regular basis in the pay scale of Rs. 3330-6200 + Rs. 300/- special allowance. It is not understandable why the Selection Committee has recommended the name of petitioner and one Sh. Anil Kumar to be appointed as Cleaner-cum-Bus Conductor instead of Driver on regular basis.

5. Petitioner has placed tangible evidence on record to establish that he had been discharging the duties of a Driver with effect from 8.10.1998, as is evident from Annexures A-6 to A-18 and A-21 to A-65. He has been specifically directed to discharge the duties of a Driver as per these Annexures.

6. Action of the respondents to appoint the petitioner as Cleaner-cum-Driver instead of a Driver is arbitrary and unreasonable, thus, violative of Articles 14 and 16 of the Constitution of India. The process has been initiated for filling up the post of a Driver on regular basis in regular pay scale. The Selection Committee on its own could not recommend the name of the petitioner for the post of Cleaner-cum-Bus Conductor since the process was initiated for filling up the post of Driver on regular basis. The fact remained that petitioner despite order dated 16.4.2001 had been discharging the duties of a Driver till date. There is a specific admission in para 2 of the supplementary affidavit that petitioner is performing the job of a Driver consequent upon his selection since 2001. Petitioner was required to be appointed as Driver on regular basis and also to be paid the salary of a regular Driver since 16.4.2001.

7. Merely that the petitioner has been appointed under the scheme cannot deprive him to be appointed as a Driver on regular basis. Moreover, this plea cannot be accepted since the respondents themselves had initiated the process of filling up the post of a Driver on regular basis.

8. The plea raised by the respondent-State that once the petitioner has accepted the offer and has joined the duties of a Cleaner-cum-Driver, he is precluded from

filing petition, merits rejection. There cannot be estoppel against the fundamental/constitutional/legal rights.

9. The Apex Court in *Nar Singh Pal Vs. Union of India and Others*, have held that there cannot be any waiver or estoppel against the fundamental rights. Their Lordships have held as under:

13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. Thus, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the "temporary" status after having put in ten years" of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs. 6,350/- was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.

10. In latest judgment their Lordships of the Hon"ble Supreme Court in *State of H.P. and Others Vs. Gehar Singh*, have held as under:

19. Notwithstanding the fact that the services of the respondents have been regularised with effect from 1st January, 2003 and they have joined their posts from that date without protest, they cannot, in our view, be denied the benefits as directed to be given to them by the Tribunal and affirmed by the High Court which had already accrued to them under the Scheme which was approved in *Mool Raj Upadhyaya's* case.

11. Accordingly, in view of the analysis and discussion made hereinabove, the petition is allowed. Annexure A-20 is quashed and set aside. Petitioner shall be deemed to be appointed as a Driver on regular basis with effect from 16.4.2001 in the regular pay scale of Rs. 3330-6200 + Rs. 300/- special allowance with all the consequential benefits, including arrears of salary. The arrears of salary be paid to the petitioner within a period of eight weeks from today with interest @ 7% per annum. Pending application(s), if any, also stands disposed of.