

(1990) 08 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : C.W. P. No. 420 and 430 of 1990

Lalit Kumar and Shyam Sunder

APPELLANT

Vs

Regional Engineering College and Others

RESPONDENT

Date of Decision : 28-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3
Constitution of India, 1950 — Article 226

Citation : (1990) 2 ILR HP 513

Hon'ble Judges : P.C.B. Menon, C.J.; Davinder Gupta, J

Bench : Division Bench

Advocate : Rajiv Sharma, for DRS, for the Appellant; Chhabil Dass, for Respondents Nos. 1 to 3, M.L. Sharma, Central Government Standing Counsel for Respondent No. 4 in CWP No. 420 of 1990 and N.S. Thakur, Central Government Standing Counsel for Respondent No. 4 in CWP No. 430 of 1990, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The questions involved in these two writ petitions are almost identical and both can conveniently be disposed of by a common judgment. In both the writ petitions the Petitioners have sought a direction against Respondents No. 1 to 3 for sponsoring their names for admission to M. Tech Programme 1990-91 in their concerned subjects under quality improvement programme (briefly the QIP) of the Department of Education, Ministry of Human Resources and Development, at ICT, New Delhi, on the ground that Respondents No. 1 to 3 by their act and conduct had held out a promise to them that whenever they would get an opportunity to improve their qualification within five years of their joining the college, they would be sponsored for the course in question and as the Petitioners had in pursuance of the said promise applied and since their applications had been duly forwarded by Respondent No. 2. the Respondents are now stopped from withholding the sponsorship and they are further stopped from imposing a condition on the Petitioners of putting at least

three years service before their names are sponsored for the course.

2. Petitioner Lalit Kumar in Civil writ Petition No. 420 of 1990, was offered a temporary post of Lecturer in Computer Science and Engineering in the Regional Engineering College, Hamirpur, on the terms and conditions mentioned in the appointment letter dated December 16, 1988 (Annexure P-I). The Petitioner joined his duties in the College on January 2, 1989. One of the conditions, namely condition No. 12(a), mentioned in the appointment letter was to the following effect:

He should obtain Master's Degree in appropriate branch of Engg./Technology within a period of Five years failing which his services shall be terminated.

3. Applications for admission to Master Degree Programmed under QIP were invited by the All India Council for Technical education and the last date for submission of the applications was November 15, 1989. On November 7, 1989 Petitioner Lalit Kumar, submitted his application to Respondent No. 2 for onward transmission to the concerned Institute. The application was forwarded by Respondent No. 2 to the Principal Co-ordinator (QIP), Indian Institute of Technology, Kharagpur, on November 7, 1989 along with a covering letter (Annexure RA) and a copy of the same was endorsed to the Petitioner with the following remarks:

It is made clear to him that in the event of his selection, the question of his relieving will be dependent on the various administrative/academic circumstances prevailing at that time since this is a new institution and facing many teething troubles. Mere forwarding of the application should not be treated as final approval of this Institution.

4. On May 4, 1990, Petitioner received intimation (Annexure P-2) from the Coordinator QIP to the effect that he had been offered M. Tech. Fellowship under the programme in his subject and that registration for the course would take place on July 28, 1990. The Petitioner was further intimated through the said communication that the fellowship was subject to his joining the programme by the scheduled date and also on fulfillment of the following conditions:

1. You will have to produce a sponsorship certificate from your employer stating that you have been sponsored under Quality Improvement Programme, treating you on deputation for one and a half year with full salary and allowances to be paid to you by your employer.

2. You will have to produce a certificate to the effect that you have executed a bond with your parent institution for the requisite period after the completion of your training.

3. You will have to produce a relieving certificate and a certificate of recognition of your College by AICTE in the standard formats already sent, from Head of your Institute, failing which you will not be granted permission to join the programmed.

4. You will also have to complete such other formalities as may be required at this Institute on your joining. You are to submit your joining report to the QIP office through your Head of Department at IIT Delhi.

5. According to the Petitioner on May 11, 1990, a request was made by him to Respondent No. 2, vide Annexure P-3, to issue him the sponsorship certificate and other certificate mentioned therein but he did not receive the same till June 7, 1990 and he again requested for the issuance of the same on June 8, 1990. On June 18, 1990, Respondent No. 2 informed the Petitioner, vide letter Annexure P-4, that it was not possible for Respondent No. 1 to sponsor him for higher studies under the programme. The contents of the letter are as under:

With reference your letter No. REC/HMR/CSE/054LK/90-506 dated 8-6-90, this is to inform you that as per decision of Standing Executive Committee REC Society, Hamirpur dated 22-5-90; no teacher will be sponsored for M. Tech. under QIP unless he has rendered satisfactory services for at least 3 years as regular teacher. Since you have not yet completed 3 years regular service, it is not possible to sponsor you for higher studies under QIP.

On July 7, 1990, Respondent No. 2 in continuation of the earlier communication informed the Petitioner vide letter Annexure P-5 that the decision with regard to his sponsorship is subject to the approval of Board of Governors of Regional Engineering College Society. According to the Petitioner, he submitted a representation to Respondent No. 2 with request that he may be informed about the decision of his sponsorship well in advance.

6. Petitioner Shayam Sunder in Civil Writ Petition No. 430 of 1990, was also offered a temporary post of Lecturer in Electronics and Communication Engineering in REC Hamirpur vide letter dated November 8, 1988 on the terms and conditions mentioned in the appointment letter, which are similar to that of Petitioner Lalit Kumar. This Petitioner also applied for admission to M. Tech programme in his subject like Petitioner Lalit Kumar and his application was also processed in the same manner in which that of Petitioner Lalit Kumar was processed. Similar communications were received by him. But in his case, the principal of REC, Hamirpur, addressed a letter on July 18, 1990, to Prof. S.K. Gulhati, QIP Coordinator IIT, Delhi, that it would not be possible to relieve him for M. Tech admission this year, due to exigencies of Academic work and scarcity of staff in the Department. Copy of this letter was also endorsed to the Petitioner Shyam Sunder.

7. Both the Petitioners on July 25, 1990, filed the respective writ petitions in this Court seeking a direction against Respondent No. 1 to sponsor them for admission to M. Tech. programme and to issue necessary certificate required for admission so as to enable them to get admission on July 28, 1990 in the course in question Applications for grant of interim relief were also moved simultaneously by them.

8. Civil Writ Petition No. 420 of 1990. Came up for preliminary hearing before

this Court on July 26, 1990. The Court after hearing the learned Counsel for the Petitioner and keeping in view the urgency of the matter, on the basis of the averments made in the petition and the stay application, passed the following order:

There will be an interim-direction to the second Respondent, the Principal, Regional Engineering College, Hamirpur to issue the certificates referred to in Annexure P-3 provisionally to enable the Petitioner to join the Q.I.P Course in the I.I.T. Delhi, on condition that he files a bond to serve the Institute for the requisite period after the completion of the training.

9. Civil Writ Petition No. 430 of 1990, was listed for preliminary hearing on July 27, 1990, before a Bench consisting of V.K. Mehrotra and Kamlesh Sharma JJ and the following order was passed in the said writ petition:

Subject to any orders that may be passed subsequently, the second Respondent (Principal Regional Engineer College, Hamirpur) is directed to issue certificates referred to in Annexure P-2 to this writ petition, provisionally, to enable the Petitioner to join the Quality Improvement Programme Course in the I.I.T. Delhi on condition that the Petitioner files a bond to serve the Institute for the requisite period after the completion of the Training.

10. On July 30, 1990 Respondents No. 1 to 3, in response to a notice issued by this Court put an appearance by filing an application for vacation of the ex-parte ad-interim stay order. In the application, it was pointed out that the Petitioners had not only misstated the facts but also deliberately suppressed the same. Specific instance given was of letter dated November 7, 1989, whereby Respondent No. 2 had forwarded the applications of the Petitioners and which contained endorsement No. 5 referred to above. The contention of the Respondents was that due to the suppression of material facts, Petitioners have been successful in obtaining the exporter ad-interim order in the mandatory form, which amounts almost allowing the writ petitions and prayed for not only of vacation of the same but also dismissal of the writ petitions. Another suppression of fact which has been pointed is that the Petitioners in their writ petitions have stated that there were no rules framed by the Board of Governors, prior to their making of the applications, with regard to sponsorship but according to the Respondents, the Board of Governors vide its resolution dated August 30, 1989, had, in fact, approved the following nonns/rules with regard to sponsorship/deputation of lecturers and Assistant Professors for M. Tech and Ph. D.:

(i) That the particular teacher can be spared without causing any dislocation to the studies of students.

(ii) That he has rendered satisfactory service for at least a period of five years in REC, Hamirpur and that his overall performance have been up to the mark for doing Ph.D.

(iii) That acquisition of M. Tech/Ph.D. qualification in a particular branch will be in the interest of the Institution.

(iv) That the teachers will have to execute a bond to serve REC, Hamirpur for a period of ten years on return from higher studies or in default will have to pay back to the Institution Rs. 2.00 lacs (Rupees two lacs) in case of Lecturers and Rs. 3.00 lacs in case of Assistant, Professors.

11. It is also the case of the Respondents that no case has been made out for the application of promissory estoppels in view of the contents of letter of Respondent No. 2. According to them, there is no right vested in the Petitioners to insist upon the Respondents to send; hem on deputation within one year of their appointment and especially when there is scarcity of teaching staff in the College and the Respondents will have to pay full pay and allowances to the Petitioners during the period of QIP course.

12. We have heard the learned Counsel for the parties. The only requirement of condition No. 12 (a) of the appointment letter is that the Petitioners have to obtain Master's Degree within a period of five years. There is no assurance whatsoever held out to them that their names would be sponsored as and when they will apply under the QIP. Respondent No. 2 at the time of forwarding the applications made it clear by putting endorsement No. 5 mentioned above that in the event of their selection question of their being relieved will depend upon various administrative/academic circumstances prevailing at that time and that mere forwarding of the applications should not be treated as final approval of the Institution. The main stress of the arguments of the Petitioners is that there was a specific condition in the appointment letter to obtain Master's Degree within a period of five years and it was because of this reason that they applied for admission to the course and once they had been selected on the basis of the applications forwarded by Respondent No. 2, a right has accrued to them and the Respondents now cannot withhold the sponsorship. The argument of the Petitioners has no force. Condition No. 12 (a) read as a whole does not amount to holding out of any promise and an acceptance of such a condition by Petitioners cannot be said to have changed their position to their detriment. The applications were forwarded by Respondent No. 2 and at that stage attention of the Petitioners was drawn to endorsement No. 5 mentioned above. The Petitioners in the writ petitions made an averment to the effect that their applications were duly recommended and forwarded by Respondent No. 2. Neither copy of the forwarding letter was appended with the writ petition nor was the endorsement made thereon reproduced in any form. It was given to understand that the recommendation of Respondent No. 2 was without any condition. When the Petitioners filed their reply to the application for vacation of the stay order, they denied the receipt of copy of the letter containing the endorsement. It is just a bare denial against the positive assertion of Respondent No. 2, who has sworn an affidavit of having sent a copy of the said letter containing the endorsement. During the course of the hearing of the writ

petitions, original peon-book of the college was produced for our perusal and we found that the copies of the letters had been duly delivered in the respective departments of the Petitioners and the concerned clerk has also sworn an affidavit to the effect that copies of the letters were personally delivered by him to the Petitioners. We have no reason to disbelieve the affidavits filed by the Respondents. The affidavits filed by the Petitioners are not proper. The verification of the affidavits filed in supports of the writ petition as well as in rejoinder is not in consonance with the provisions of Order XIX, Rule 3 CPC and the rules framed in that behalf by this Court. The Petitioners have simply verified the contents of the concerned paragraphs to be true and correct to the best of their personal knowledge and belief, which is not a proper verification. Every affidavit should clearly express how much of the statement is true to the deponent's knowledge and how much of the statement is in his belief and the grounds of belief must be stated with sufficient particularity. (See Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, .

13. The Petitioners were fully aware of endorsement No. 5 when the writ petitions were filed by them. Had the Petitioners brought the endorsement contained in the letter to the notice of the Court, the Court would not have granted the interim relief in the form in which it was granted.

14. Aforementioned alone is not the fact which has been suppressed by the Petitioners. There is one another, namely, the norms approved by the Board of Governors for sponsoring the candidates for M. Tech and Ph.D. courses, as stated hereinbefore. Suppression of these materials facts, which have a direct bearing upon the claim of the Petitioners, itself is sufficient to disentitle them to get any relief from this Court in exercise of its extraordinary jurisdiction.

15. On the strength of the interim orders passed by this Court, the Respondents had to issue necessary certificates enabling the Petitioners to join the courses but even in equity the Petitioners will not be entitled to any relief or indulgence from the Court. From the affidavit of Respondent No. 2, it is clear that in July 1990, there was only two Lecturers in the Department of Computer Science and Engineering against the total sanctioned strength of four Lecturers, two Assistant Professors and one Professor. The session of the College is going on. The entire group of students in the college will have to suffer. In view of these assertions there is no equity in favour of the Petitioners, who have simply been offered temporary appointments and had put in only about one year service at the time of making the applications.

16. At the time of hearing of the writ petitions, Petitioners also offered that they were prepared to forgo the claim with respect to pay and allowances to be paid to them during the period of course provided they are allowed to continue the course. This request of the Petitioners was also resisted by the Respondents. Moreover, this request also cannot be acceded to because the concerned Institutions are not before this Court and even if such a request is acceded to, the students in the REC Hamirpur, who have already joined their courses, who

are to be taught by the Petitioners, will be without any teacher and their students will suffer.

17. In view of the above, the writ Petitioners fail and are dismissed. The interim orders dated July 26 and July 27, 1990, are vacated. The certificates issued to the Petitioners in pursuance to these interim orders will be treated as cancelled. No. costs.

August 28, 1990

Sd/- Sd/- (Devinder Gupta) (P.C. Balakrishna Memon), C.J.

28-8-1990: Present: As above. Immediately after pronouncement of the judgment, counsel for the respective Petitioner in both the writ petitions has made an oral application for leave to appeal to the Supreme Court. We do not see any substantial question of law of general importance that needs to be decided by the Supreme Court. The leave prayed for is rejected.

Sd/- P.C. Balakrishna Menon, C.J.

August 28, 1990

Sd/- (Devinder Gupta), J.