

(2015) 06 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWP No. 6161 of 2014

Mohinder Kumar	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 04-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, 141

Citation : (2015) 06 SHI CK 0009

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Ranjana Parmar, for the Appellant; Ashok Sharma, Assistant Solicitor General of India, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—By medium of this writ petition, the petitioner has questioned the order passed by the Central Administrative Tribunal whereby the petition filed (O.A. No. 1387-HP-2013) was dismissed.

2. The facts as set out in the petition are that the petitioner was appointed by respondent No. 3 on 20.08.2002 as Lower Division Clerk on contract basis. The respondent-department on 11.12.2012 invited applications for the purpose of appointment of three posts of Lower Division Clerk for which the petitioner also applied. However, his case was rejected on the ground of his being overage. When the contract of the petitioner was not being renewed, he filed writ petition bearing CWP No. 6124 of 2012 which ultimately was withdrawn by him on 18.09.2013 with liberty to approach a competent authority. The petitioner thereafter approached the Central Administrative Tribunal, but the Tribunal too dismissed the petition.

3. The petitioner has not cared to place on record the copy of the petition (original application) whereby it could be inferred as to what exactly were the reliefs and the grounds taken in such application. But, insofar as the present

petition is concerned, the petitioner has sought regularization of his services and for quashing the order passed by the Tribunal and has further prayed for directions for reinstatement since his services have been terminated in compliance to the impugned order of the Tribunal.

4. In response to petition, respondents No. 3 and 4 have filed their reply wherein it has been averred that the petitioner cannot claim regularization as per the regularization policy framed by the State of Himachal Pradesh since the employees of the Institution are governed by the Recruitment and Promotion Rules of the Central Government. It is further averred that since the petitioner was overage, his case could not be considered for regularization. As per the advertisement, the maximum age limit was 28 years as on 01.07.2011 and the petitioner admittedly was more than 28 years on the cut-off date.

We have heard the learned counsel for the parties and have also gone through the records of the case.

5. Ms. Ranjana Parmar, learned counsel for the petitioner has vehemently argued that once the age relaxation is prescribed in the Manual on Establishment and Administration for Central Government Offices (in short "Manual") wherein the age relaxation has been granted to all those casual labourers for absorption in the regular establishment in Group-D. The learned Tribunal ought to have considered this and rendered a finding thereupon.

6. We cannot agree with such submissions. In absence of the original application filed before the Tribunal, we are not in a position to ascertain as to whether this ground was infact taken before the Tribunal. Nonetheless, even in case the present petition is perused, then nowhere in the entire petition has the petitioner made a whisper regarding the applicability of these rules so as to afford a fair chance to the respondents to rebut the same.

7. Further, the contention of the petitioner that the question of relaxation of age was not dealt with by the Tribunal is not supported by the record because the Tribunal in para-10 of its judgment has categorically held as follows:--

".....In so far as relaxation in age is concerned, the relevant selections have not even been called in question by the applicants nor any relief has been claimed in that regard...."

8. No exception can be taken to this finding of the Tribunal because it cannot be disputed that the selected candidates are necessary parties as they would be only ones, who would be directly affected by the outcome of this litigation. It is also equally settled that no adverse order can be passed against a person, who is not made party to the litigation.

9. In Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, AIR 1985 SC 167 : (1985) LabIC 1196 : (1984) 2 SCALE 87 : (1984) 4 SCC 251 : (1985) 1 SCR 216 and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, (2008) 12 JT 587 : (2009) 1 SCC 768 : (2009) 2 SCC(L&S) 119 : (2009)

2 SLJ 196 : (2009) 3 SLR 1 , it has been held that if a person challenges the selection process, successful candidate or atleast some of them are necessary parties.

10. In Public Service Commission, Uttaranchal Vs. Mamta Bisht and Others, AIR 2010 SC 2613 : (2010) 126 FLR 413 : (2010) 6 JT 221 : (2010) 6 SCALE 121 : (2010) 12 SCC 204 : (2011) 1 SCC(L&S) 208 : (2010) 4 SLR 65 : (2010) AIRSCW 3722 : (2010) 4 Supreme 504 while dealing with the concept of necessary parties and effect of non impleadment of such party in the matter when the selection process is assailed, the Hon"ble Supreme Court observed thus:--

"9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, AIR 1963 SC 786 : (1963) 1 SCR 676 Supp , wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), AIR 1965 SC 1153 : (1965) 2 SCR 547 : (1965) 2 STC 547 , Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, AIR 1974 SC 2105 : (1974) 2 SCC 706 : (1975) 2 SCR 71 and Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, AIR 1987 SC 88 : (1986) JT 808 : (1986) 2 SCALE 757 : (1987) 1 SCC 5 : (1987) 1 SCR 200 : (1987) 1 UJ 28 .).

10. In Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, AIR 1985 SC 167 : (1985) LabIC 1196 : (1984) 2 SCALE 87 : (1984) 4 SCC 251 : (1985) 1 SCR 216 and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, (2008) 12 JT 587 : (2009) 1 SCC 768 : (2009) 2 SCC(L&S) 119 : (2009) 2 SLJ 196 : (2009) 3 SLR 1 , it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

11. In absence of the selected candidates, it is immaterial as to whether the petitioner is below 40 years or is duly qualified under the Manual.

12. Even otherwise, in absence of the original application filed before the Tribunal, we have no other option, save and except, to draw an adverse inference against the petitioner. After-all, the petitioner was well aware that this Court

while adjudicating this petition is only exercising the powers of judicial review and, therefore, it was incumbent upon him to have placed on record the entire material on the basis of which the Tribunal rendered its decision.

13. Having said so, we find no merit in this petition and the same is accordingly dismissed alongwith pending application, if any, leaving the parties to bear their own costs.