

(2009) 12 SHI CK 0031
In the High Court Of Himachal Pradesh

Om Dutt

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 29-12-2009

Acts Referred:

Forest Act, 1927 — Section 64

Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 — Section 8

Citation : (2010) 1 ShimLC 365

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Judgement

Kuldeep Singh, J.—The petitioner has filed this petition for quashing Annexure A-1 dated 19.12.1998 vide which the services of the petitioner were taken over only as Forest Guard and not as Forest Ranger which post he was holding in the Kutlehar Forests prior to the taking over the services of the petitioner by Government of Himachal Pradesh and even thereafter till his retirement vide office order No. 124 dated 31.10.1998. The petitioner has also raised grievance for not paying him admissible salary as Forest Ranger. He has also raised grievance against respondents to pay him arrears of salary alongwith interest at the rate of 18% per annum and counting of his entire service in Kutlehar Forests for the purposes of pay fixation, seniority and retiral benefits.

2. The further case of the petitioner is that the Kutlehar Forests were in State of Punjab and Government of Punjab had appointed Raja Mohinder Pal as the Superintendent of Kutlehar Forests. The Governor of Punjab vide notification dated 11.11.1960 was pleased to appoint the Superintendent Kutlehar Forest, all Deputy Rangers, Foresters, Forest Guards, Nursery Chowkidars and Rakhas as employed by Raja of Kutlehar Jagir, Tehsil Hamirpur, District Kangra to be Forest Officers for carrying out the purposes of Section 64 of the Indian Forest Act, 1927.

3. The petitioner was appointed as Forest Guard by the Superintendent of Kutlehar Forests on 16.4.1964. The petitioner was working as Forest Ranger in

Kutlehar Forests which were taken over by the Government of Himachal Pradesh in accordance with the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 (for short "Act"). The petitioner submitted his joining in the office of Divisional Forest Officer, Una Forest Division, which was accepted and he was allowed to work as Forest Ranger till he retired on 30.11.1998. However, respondent No. 4 on 19.12.1998 had issued an order taking over services of petitioner as Forest Guard and not as Forest Ranger w.e.f. 7.2.1996. This order has resulted in reducing the petitioner in lower rank and has put him to a huge financial loss. The petitioner in fact was entitled to be absorbed as Forest Ranger in the pay scale of Rs. 5800 - 9200 w.e.f. the appointed day i.e. 11.3.1995 under the Act. The alternative case of the petitioner is that even if the petitioner had been absorbed as Forest Guard, in that event also, he is entitled to the arrears of salary in the scale of Rs. 3120 - 5160 w.e.f. 11.3.1995. The respondents have given him arrears of salary admissible to the post of Forest Guard w.e.f. 7.2.1996.

4. The further case of the petitioner is that Section 8 of the Act provides that an employee appointed in connection with the management of Kutlehar Forest Estate shall on the appointed day become an employee of the Government. On 10.3.1995 vide Annexure A-4 the Financial Commissioner-cum-Secretary (Forests), Government of Himachal Pradesh, authorized the Divisional Forest Officer, Una to enter upon the land and premises vested in the State Government u/s 4 of the Act and to take over the possession of lands / buildings/ trees and all other documents / properties relating to Kutlehar Forests from the Superintendent of Kutlehar Forests. The Governor of Himachal Pradesh vide notification dated 10.3.1995 Annexure A-5 was pleased to declare 11.3.1995 as "appointed day" under the Act.

5. The Governor of Himachal Pradesh vide notification dated 10.3.1995 Annexure A-7 was pleased to appoint the Divisional Commissioner, Kangra Division, Dharamshala to decide the question, as and when it arises, as to whether any person was a whole time employee in or in connection with the management of the Kutlehar Forests immediately before the appointed day and has become an employee of the Government under Sub-section (1) of Section 8 of the Act.

6. It appears Ex-Superintendent of Kutlehar Forests did not formally deliver all lands / buildings/ trees / other documents/ properties and fixed assets relating to Kutlehar Forests within the prescribed time, therefore, Authorised Officer-cum-Divisional Forest Officer, Una issued public notice, Annexure A-8 which was published in local newspapers, inter-alia, notifying that Kutlehar Forests stand taken over on 7.2.1996 in absentia. The Ex-Superintendent was once again directed to hand over the properties mentioned in the notice forthwith, failing which action under Sections 14 and 15 of the Act, would be taken. The Divisional Forest Officer, Una vide communication dated 6.2.1996 Annexure A-9 informed Mahinder Pall, Superintendent Kutlehar Forests that in continuation of letter dated 11.3.1995 and in pursuance of High Court judgment dated 9.8.1995 in

CWP No. 127 of 1995, the management of Kutlehar Forests was assumed with effect from 6.2.1996 under the Act. Mahinder Pall was requested to hand over management of Kutlehar Forests on 7.2.1996.

7. The petitioner and some other employees of Kutlehar Forests were not aware what was happening between the Government and Ex-Superintendent. The petitioner and other employees of Kutlehar Forests after going through the notice decided to submit their formal joining reports in the office of the Divisional Forest Officer, Una Forest Division, Una. In fact petitioner having been employed in connection with the management of Kutlehar Forests before the appointed day on 11.3.1995 became an employee of the Government and no joining report was required to be submitted, but petitioner submitted his joining report on 9.2.1996 in the office of respondent No. 4 in order to complete the formalities. The Divisional Forest Officer, Una forwarded the joining reports to the Conservator of Forests vide letter dated 9.2.1996 Annexure A-10. In Office order No. 162 Annexure A-11, the D.F.O. has reiterated that some staff of erstwhile Kutlehar Forests have joined the division on 9.2.1996.

8. The petitioner was appointed as Forest Guard on 16.4.1964. He successfully completed Forest Guards' Training in 1966 and Foresters' Training in 1966-67. He had also undergone training prescribed for the Haryana Forest School in the year 1967-68 vide Annexure A-12. In the seniority list of staff working in Kutlehar Forests, circulated by Ex-Superintendent on 2.3.1977, the petitioner found his place at serial No. 3 in the cadre of Deputy Rangers. This seniority list shows his initial date of appointment 16.4.1964 and date of promotion to the post of Deputy Ranger 16.3.1973. The petitioner was promoted as Deputy Ranger vide office order No. 172 dated 19.2.1973 issued by the Superintendent, Kutlehar Forests, Annexure A-14. In the seniority list of the field staff dated 13.10.1978 Annexure A-15, the petitioner has been shown at serial No. 3 in the cadre of Deputy Rangers. The Superintendent, Kutlehar Forests, made petitioner Range Incharge vide office order No. 12 dated 4.5.1975 Annexure A-16. The petitioner was assigned the duties of prosecutor in November, 1982 vide Annexure A-17 dated 2.11.1982. In Annexure A-18 dated 17.10.1983 the Superintendent, Kutlehar Forests, informed various courts that the petitioner, Forest Ranger, has been appointed as Forest Prosecutor for conducting the forest cases. The respondent No. 4 vide order No. 124 dated 31.10.1998 Annexure A-20 directed the retirement of petitioner from service on 30.11.1998 as Forest Ranger.

9. The petitioner after his retirement from service as Forest Ranger received Annexure A-1, copy of order No. 200 dated 19.12.1998, according to which the services of the petitioner were taken by the Government as Forest Guard w.e.f. 7.2.1996. The order dated 19.12.1998 was issued by respondent No. 4 in compliance to the recommendations made by the committee constituted by the Government to settle the terms and conditions of the staff of erstwhile Kutlehar Forests which held its meeting on 25.8.1998 vide Annexure A-22. The petitioner

had earlier filed O.A. No. 1889 of 1996 challenging the Act and praying therein that his services may be taken over as Forest Ranger. The services of the petitioner were taken over as Forest Guard during the pendency of the petition and not as Forest Ranger and due to these developments, the petitioner had withdrawn the said Original Application on 25.6.1999 with liberty to file a fresh. The petitioner in these circumstances has filed the present petition. The petition was filed in the erstwhile Tribunal and after abolition of Tribunal was transferred to this Court.

10. The respondents No. 1 to 4 have filed reply to the petition and have taken preliminary objections that despite the Act, the Ex- Superintendent, Kutlehar Forests continued to manage the Kutlehar Forests . He challenged the Act in the High Court by way of CWP No. 707 of 1992 but the High Court upheld the validity of the Act. The CWP No. 127 of 1995 was dismissed by the High Court on 9.8.1995. The respondent No. 4 vide telegram dated 6.2.1996 requested Ex7 Superintendent, Kutlehar Forests to hand over the fixed assets , documents etc. on 7.2.1996. The Ex-Superintendent, Kutlehar Forests did not hand over the fixed assets, documents etc. as requested, therefore, the management of Kutlehar Forests was taken over in absentia on 7.2.1996.

11. The respondent No. 4 was appointed Authorised Officer vide notification dated 10.3.1995. Some employees of Kutlehar Forests submitted their joining to respondent No. 4 on 9.2.1996 which included the joining report Annexure RA-8 of the petitioner. The respondent No. 4 vide letter dated 23.2.1996 requested Ex-Superintendent, Kutlehar Forests to send the service particulars of the ex-employees, but he did not respond. The petitioner had mentioned his designation as Forest Ranger in his joining report dated 9.2.1996 and also in the affidavit submitted to respondent No. 4. The services of the petitioner and other similarly situated employees of Kutlehar Forests were regularized w.e.f. 7.2.1996 in accordance with the decision / guidelines issued by the committee comprising of F.C.-cum- Secretary (Finance), Commissioner-cum-Secretary (Personnel) and Commissioner-cum-Secretary (Forests) to the Government of H.P. The petitioner on the basis of his date of birth 1.12.1940 was retired on 30.11.1998. It took some time to complete the departmental formalities regarding giving placement in the department in different categories of posts in accordance with the guidelines of the committee and finally placement orders were issued on 19.12.1998 to this effect. The petitioner was placed in the post of Forest Guard as per the criteria as suggested by the committee in its guidelines. The petitioner had also received the arrears of the payment of the post of Forest Guard w.e.f. 9.2.1996 to 30.11.1996 (sic 30.11.1998). On merits, it has been submitted that the claim of the petitioner to take over his (petitioner) services w.e.f. 11.3.1995 as Forest Ranger is not justified. The petitioner joined the department on 9.2.1996. The management of Kutlehar Forests was taken over on 7.2.1996. The respondents have denied the claim of the petitioner.

12. The petitioner has filed rejoinder in which he denied the case set-up by the

respondents and reiterated his stand which was taken by him in the petition.

13. I have heard the learned Counsel for the parties. The grievance of the petitioner is that he was working on the post of Forest Ranger in the erstwhile Kutlehar Forests when the Act came into force and on the appointed date on 11.3.1995 of the Act the petitioner had become Forest Ranger under the respondents. He is entitled to salary as Forest Ranger and counting of his services as Forest Ranger rendered by him under the erstwhile management of Kutlehar Forests for purposes of pay fixation, seniority and retiral benefits. The respondents had retired the petitioner as Forest Ranger on 30.11.1998 but lateron vide impugned Annexure A-1 dated 19.12.1998 had given placement in the Forest Department as Forest Guard w.e.f. 7.2.1996. The defence of the respondents, in brief, is that management of the Kutlehar Forests was taken over on 7.2.1996. The petitioner was retired on 30.11.1998 and till then the formalities were not completed for the placement of petitioner in the department and on completion of formalities, the petitioner was informed vide office order No. 200 dated 19.12.1998 Annexure A-1 regarding his placement as Forest Guard w.e.f. 7.2.1996. There is nothing wrong in such placement, the petitioner has already received arrears of pensionary benefits as Forest Guard. The petitioner is entitled to service benefit with the Department as Forest Guard and not as Forest Ranger.

14. The Clause (a) of Section 2 of the Act defines appointed day on which the Act shall come into force. The Governor of Himachal Pradesh vide notification dated 10.3.1995, Annexure A-5 was pleased to appoint the 11th day of March, 1995 the date on which the Act shall come into force. Thus, appointed day under the Act is 11.3.1995. Section 8 of the Act provides that every whole time employee who was on or before the 16th day of March, 1992, appointed or employed in connection with the management of the Kutlehar Forest Estate and has been continued to be so appointed or employed on the appointed day in connection with the said management, the right of management of which has been acquired under this Act, shall on the appointed day, become an employee of the government and shall hold his office by the same tenure, at the same remuneration and upon same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the management of the Kutlehar Forest has not been transferred to and vested in the Government and shall continue to do so unless and until his employment under the Government is duly terminated or until his remuneration or terms and conditions of service are duly altered by the Government. It has further been provided in Section 8 that conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) of Section 8 shall not be varied to his disadvantage. If any question arises as to whether any person was a whole time employee in or in connection with the management of the Kutlehar Forest immediately before the appointed day, the question shall be referred, within a period of one year from the appointed day, to an officer of the Government, who

shall not be lower in rank of the Divisional Commissioner and that officer shall, after giving a reasonable opportunity of being heard to the person concerned in the matter, decide it in such manner as he thinks fit and such decision shall be final.

15. There is no dispute between the parties that petitioner was an employee of Kutlehar Forests before appointed day under the Act. This is further fortified from the fact that respondents after accepting the employment of petitioner with the erstwhile management of Kutlehar Forests accepted him in the employment of H.P. Government w.e.f. 7.2.1996 by specifying him as Forest Guard. The petitioner is claiming his placement in the H.P. Government as Forest Ranger w.e.f. the appointed day i.e. 11.3.1995. The further question is whether petitioner was in the service of erstwhile Kutlehar Forests management as Forest Ranger or Forest Guard and whether the dispute raised by respondents regarding the placement of petitioner with respondents has been resolved in accordance with Section 8 of the Act.

16. The initial date of appointment of the petitioner is 16.4.1964 as per seniority list dated 2.3.1977 Annexure A-13. The appointment of the petitioner as Forest Guard in the management of erstwhile Kutlehar Forests has not been denied by the respondents inasmuch as the respondents have ultimately placed petitioner as Forest Guard in the H.P. Government w.e.f. 7.2.1996, even though, this placement has been disputed by the petitioner. In Annexure A-13 dated 2.3.1977 and in Annexure A-14 dated 19.2.1973, the petitioner has been shown as Deputy Ranger. In the final seniority list dated 13.10.1978 Annexure A-15, the petitioner has been shown as Deputy Ranger. In office order No. 12 dated 4.5.1975 Annexure A-16, the petitioner has been shown as Range Incharge, in Annexure A-18 dated 17.10.1983 the petitioner has been shown as Forest Ranger. In office order No. 2 dated 20.7.1990 Annexure A-19, the petitioner has been shown as Forest Range Officer. In office order No. 124 dated 31.10.1998 Annexure A-20, the petitioner has been shown Forest Ranger. The petitioner in the joining report dated 9.2.1996, addressed to Divisional Forest Officer, Una has shown him as Forest Ranger in Annexure RA-8. Thus, there is no manner of doubt that petitioner on the appointed day under the management of erstwhile Kutlehar Forests was Forest Ranger.

17. The Section 8 of the Act, provides that every whole time employee on or before 16.3.1992 of the Kutlehar Forest Estate, shall on the appointed day, become an employee of the Government and shall hold his office with same tenure, remuneration, terms and conditions, rights and privileges. Thus by virtue of Section 8 of the Act on 11.3.1995 the petitioner had become an employee of the Government with same rights and privileges which he was having with the management of erstwhile Kutlehar Forests. It is not the case of the respondents that petitioner was not an employee of erstwhile management of Kutlehar Forests on or before 16.3.1992 provided in Section 8 of the Act. Therefore, on the appointed day on 11.3.1995, the petitioner had automatically become an

employee of the H.P. Government as Forest Ranger. There is no merit in the stand of the respondents that since the management of the Kutlehar Forests was taken over by the respondents on 7.6.1996 and petitioner gave his joining report on 9.6.1996, therefore, the petitioner would become an employee of the Government w.e.f. 7.6.1996. The formal taking of the management by the respondents of erstwhile Kutlehar Forests on 7.6.1996 has nothing to do with the statutory provision provided in Section 8 of the Act, according to which on the appointed day, the employees of the management of erstwhile Kutlehar Forests as provided in Section 8 would become the employees of the State Government.

18. The petitioner was clear that he was to be taken as Forest Ranger by the Government under the Act. The respondents on their own raised some dispute and even such dispute as per Section 8 is required to be settled by referring the matter to Divisional Commissioner. There is nothing on record that respondents referred the dispute of placement of petitioner to the Divisional Commissioner as provided u/s 8.

19. The respondents in their reply have stated that services of the petitioner along with other similarly situated employees of the Kutlehar Forests were regularized w.e.f. 7.2.1996 in accordance with the decision / guidelines dated 18.9.1998 Annexure RA-II. In Fact, minutes of the meeting dated 25.8.1998 which was convened to decide the service conditions and other relating matters of staff of erstwhile Kutlehar Forests were sent by the Joint Secretary (Forest) to the Government of Himachal Pradesh to Principal Conservator of Forests, H.P. and another vide Annexure RA-II. In the meeting dated 25.8.1998, the committee had observed that 24 employees reported directly to the Forest Department, 24 reported through the Superintendent Kutlehar Forests (out of these, 46 are still working with the department as one has retired and one has died). The cases of 15 persons have been referred to Divisional Commissioner, Dharamshala u/s 8 (2) of the Act. Another 8 persons had approached the Divisional Commissioner, Dharamshala directly u/s 8. The seven cases have been decided in favour of the employees. The services of these seven persons should be taken over immediately by the Forests Department as there is no ground or provision for appeal against the order of the Divisional Commissioner, Dharamshala. The committee with regard to other employees had observed that guiding principles should be laid down as to how the cases of the employees are to be dealt with and thereafter the Principal Chief Conservator of Forests, who is the cadre controlling authority for staff up to the rank of Forest Ranger can decide each case on the basis of facts and merits.

20. The committee nowhere separately considered the case of petitioner. There is nothing on record that Principal Chief Conservator of Forest, individually considered the case of petitioner in terms of the guidelines laid down by the committee. This is in addition to the fact that Section 8 provides settlement of dispute by Divisional Commissioner and not on the basis of guidelines referred in the minutes of the meeting dated 25.8.1998. It is not the case of the

respondents that Annexure A-1 dated 19.12.1998 was issued after hearing petitioner. The placement of petitioner as Forest Guard vide Annexure A-1 dated 19.12.1998 suffers from violation of principle of natural justice. Thus, the placement of petitioner as Forest Guard vide Annexure A-1 is not in accordance with Section 8 of the Act and is not sustainable. The petitioner had become the employee of H.P. Government on the appointed day i.e. 11.3.1995 as Forest Ranger when the Act came into force. The State in principle had accepted to pay Government pay scale to petitioner as Forest Guard when he came in Government service, which is clear from Annexure A-1. In other words, the Government pay scale was payable to the employees of erstwhile Kutlehar Forests, who came in Government service on 11.3.1995 under the Act. Thus, petitioner is entitled to pay scale of Forest Ranger when he came in the Government service as Forest Ranger on 11.3.1995 under the Act.

21. In view of the above, the petition is allowed. The Annexure A-1 dated 19.12.1998 vide which respondent No. 4 had given placement of Forest Guard to petitioner w.e.f. 7.2.1996 is quashed. It is held that petitioner was Forest Ranger of H.P. Government on appointed day i.e. 11.3.1995 under the Act and continued as such till 30.11.1998 when he was retired. The petitioner was entitled to salary as was payable to Forest Ranger in the H.P. Government on 11.3.1995 and thereafter. The petitioner is also entitled to counting of his entire service rendered by him under the erstwhile Kutlehar Forest management till his retirement on 30.11.1998 for purposes of pay fixation, seniority and retiral benefits in accordance with Section 8 of the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992. The respondents are directed to calculate the arrears payable to petitioner in accordance with the judgment and pay the same to the petitioner within a period of six months from today after adjusting payments which have already been made to the petitioner on account of his retirement on 30.11.1998, failing which the petitioner shall also be entitled to interest at the rate of 9% on such arrears till payment. The petition is disposed of on above terms.