

(2011) 04 SHI CK 0098
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 9716 of 2008

Pankeshwar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)

Citation : (2011) 04 SHI CK 0098

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner was interviewed for the post of Laboratory Attendant on 20.02.2000. He was offered appointment letter on 8th March, 2000. He joined his duties in Government Senior Secondary School Barial on 13.03.2000. However, the services of the Petitioner were terminated on 7th January, 2002. Petitioner and similarly situate persons assailed their termination orders by filing Original Applications No. 85, 86, 87, 99, 128, 129, 130 and 141 of 2002 before the learned erstwhile Himachal Pradesh Administrative Tribunal. The learned Tribunal allowed these original applications and termination orders of the Petitioner and similarly situate persons were quashed and set aside vide judgment dated 1st March, 2002. However, the learned Tribunal has granted liberty to the Respondent-department to hold an enquiry in the matter and take appropriate action in accordance with law. Respondent-State assailed the judgment dated 1st March, 2002, rendered in the above-cited Original Applications by way of C.W.Ps. No. 1035, 1036, 1037, 1066, 1076, 1077, 521 and 678 of 2002. The Division Bench of this Court up-held the judgment of the Tribunal dated 1st March, 2002, however, issued the following directions vide judgment dated 13th May, 2003:

1. The Petitioner-State shall issue show cause notices individually to all the Respondents, detailing therein the reasons, factors, grounds and circumstances

etc. which the Petitioner-State thinks are such which warrant the termination of the services of the individual Respondents. The Respondents individually through the medium of show cause notices would be called upon to submit their replies within a specified period, which shall not be less than two weeks.

2. In the show cause notices, the Respondents should also be asked as to whether they would like to be heard in person.

3. If the Respondents or any one of them opt to be heard in person, the Petitioner-State shall after hearing the Respondents or such Respondents, who opt for personal hearing and after considering the replies submitted by them to the show cause notices, on proper application of mind, pass appropriate final orders, which shall be both reasoned as well as speaking. In the final order, the Petitioner-State shall clearly spell out the reasons or grounds (if any) upon which it considers the termination of services of the Respondents, or any one of them (if so decided).

4. The termination orders if issued in accordance with the aforesaid procedure would be liable to be implemented in accordance with law.

2. In sequel to the judgment rendered by this Court, the Respondent-State issued show cause notices to the Petitioner and similarly situate persons on 25.08.2003. Petitioner filed reply to the same vide Annexure-PF. Respondent-State, after taking into consideration the reply filed by the Petitioner, terminated him on 29th September, 2003, by invoking Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. He was held entitled to claim pay and allowances at the same rates which was drawn by him immediately before the termination of his services.

3. Ms. Archana Dutt, learned Counsel for the Petitioner has vehemently argued that a regular enquiry was required to be instituted by the Respondent-State before terminating the services of Petitioner. She further contended that there was no illegality in the selection process whereby her client has been selected and appointed to the post of Laboratory Attendant on 8th March, 2000.

4. Mr. Vikas Rathore, learned Deputy General has strenuously argued that the appointment of the Petitioner was not in accordance with law. He then contended that the Petitioner has been heard as per the directions issued by this Court vide judgment dated 13th May, 2003, by issuing show cause notice on 25th August, 2003.

5. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

6. It is not in dispute that the Petitioner was interviewed for the post of Laboratory Attendant on 20.02.2000. He was offered appointment letter on 8th March, 2000. However, the services of the Petitioner were terminated on 7th January, 2002, by invoking the provisions of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Petitioner and similarly situate

persons have assailed the order dated 7th January, 2002 before the learned erstwhile Himachal Pradesh State Administrative Tribunal by filing Original Applications, mentioned hereinabove. The same were disposed of on 1st March, 2002, by quashing the order dated 7th January, 2002, however, liberty was reserved to the Respondent-State to hold a regular enquiry. Respondent-State assailed the judgment dated 1st March, 2002 before this Court by way of C.W.Ps., mentioned above. The Division Bench of this Court up-held the judgment of the Tribunal dated 1st March, 2002, however, issued some directions, as noticed above, vide judgment dated 13th May, 2003. Petitioner was issued show-cause notice on 25.08.2003, to which he filed reply vide Annexure-PF.

7. It has been established on record that the Petitioner and other seven similarly situate persons were not even issued call letters for the interview and there were no signatures of the examiners/evaluators on the answer-sheets of these candidates. It is, thus, apparent that the entire record has been tampered with to give un-due advantage to the Petitioner and similarly situate eight persons. Moreover, since the name of Petitioner has not been sponsored by the Employment Exchange, he could not be interviewed and offered appointment letter dated 8th March, 2000.

8. Ms. Archana Dutt, learned Counsel for the Petitioner has strenuously argued that as per the law, the name of the Petitioner was not required to be sponsored by the employment exchange and his case could be considered independently.

9. There is no dispute that for making public employment, the employer can also make the vacancies known to the candidates by way of publication in the newspapers, Radio and T.V. etc. However, it is reiterated that in this case, the record was fabricated and the name of Petitioner was not sponsored by the concerned Employment Exchange. In view of this, the case of the Petitioner could not be considered for appointment. Petitioner has been afforded reasonable opportunity of being heard before the imposition of penalty, on the basis of directions issued by this Court on 13th May, 2003. Respondent-department has taken into consideration the reply filed by the Petitioner before the issuance of impugned order dated 29th September, 2003.

10. According to the notice issued to the Petitioner, the list from Employment Exchange Jawali sent to the D.E.O., Dharamsala, District Kangra has been tempered by adding the name of Petitioner, son of Shri Surjit Singh, the then Office Superintendent of the office of D.E.O., Kangra at Dharamsala. The name of the Petitioner was not at all sponsored by the concerned Employment Exchange, but, it has been added by tampering with the record to give him un-due benefit. This tampering could only be done by the Petitioner or by some body at his behest. It is not in dispute that the father of the Petitioner was working as office Superintendent in the office of D.E.O., Kangra at that time. Moreover, there were no signatures of Examiner/Evaluator on the answer-sheets of the Petitioner.

11. In view of this, the case of Petitioner could not be considered for appointment. Petitioner has been afforded reasonable opportunity of being heard before the imposition of penalty, on the basis of directions issued by this Court on 13th May, 2003. Respondent-department has taken into consideration the reply filed by the Petitioner before the issuance of impugned order dated 29th September, 2003.

12. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this petition and the same is dismissed. The interim order dated 09.10.2003 shall stand vacated forthwith. No costs.