

(2023) 01 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 207 Of 2016

Paras Ram

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 02-01-2023

Acts Referred:

Citation : (2023) 01 SHI CK 0009

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Rajesh Verma, Anup Rattan, Vinod Thakur, Rajat Chauhan, Tek Chand Sharma

Judgement

Tarlok Singh Chauhan, J

1. The parties herein shall be referred to as the writ petitioner and writ respondent(s).
2. Aggrieved by the decision of the writ petition, writ respondent No.5, whose appointment has been ordered to be set aside, has filed the instant appeal.
3. The School Management Committee of Government Senior Secondary School Gadagussain (in short, 'SMC') advertised one post of PGT (English) as per "policy to engage Teacher(s) through the School Management Committee purely on period basis in Elementary/Higher Education Department of Himachal Pradesh in Tribal/Difficult areas." Writ petitioner being eligible candidate applied for the post of PGT (English) on SMC basis for GSSS Gadagussain alongwith other fourteen candidates.
4. The interview was conducted on 26.06.2014 by respondent Nos.2 and 3, wherein eight candidates including writ petitioner and writ respondent No.5 appeared. On the basis of aforesaid interview held on 26.06.2014, SMC declared result on 18.07.2014, wherein, writ respondent No.5 was declared to be selected.
5. After selection of writ respondent No.5, writ petitioner procured copy of

appointment letter issued in favour of writ respondent No.5. The result sheet of the interview was also procured by writ petitioner under Right to Information Act. It is, then, writ petitioner came to know that writ respondent No.5 was awarded 10 marks for his being permanent resident of Patwar Circle Gadagussain and on such basis, he had been given 35.17 marks, in total, against her, who had secured 33.99 marks.

According to writ petitioner, writ respondent No.5 was not the permanent resident of Patwar Circle Gadagussain and this being the case, the marks illegally granted to writ respondent No.5 are required to be deducted and therefore, it would be writ petitioner, who ultimately would be selected.

6. Writ respondent No.5 had filed his reply, wherein, he refuted the claim of the writ petitioner by stating that he is permanent resident of Village Thachadhar, Gram Panchayat Thachadhar, P.O. Gadagussain, Sub-Tehsil Balichowki, District Mandi, H.P., which falls within the Patwar Circle, Gadagussain, as per certificate, Annexure R-5/A and, thus, he was rightly awarded 10 marks on the basis of his being resident of Patwar Circle Gadagussain.

7. Respondent Nos. 1 to 4 had failed to file a reply and only submitted a communication to the Court, which had been sent by the Principal Government Senior Secondary School Gadagussain, District Mandi, H.P., enclosing therein the written statement/para-wise reply of respondent No.3, which was taken on record.

8. Alongwith communication, copy of letter sent by the Naib Tehsildar, Sub-Teshil Balichowki and certificate issued by Gram Panchayat, Thachadhar, Development Block Seraj, Mandi, H.P., was also enclosed, which suggested that the matter regarding awarding of 10 marks on the basis of local Patwar Circle was taken up with the revenue authorities for clarification and it is thereafter that it was clarified that the appellant was not the bona fide resident of Patwar Circle Gadagussain.

9. Para 7 of the communication reads as under:-

"7. With reference to the office letter No.EDN-H(19)B(1)-14/2012-SMC-CC dated 30.04.2015 pertaining to para No.7 of CWP No. 6472 of 2014, the matter regarding awarding of 10 marks on the basis of local Patwar Circle was taken up with the revenue authorities i.e. Tehsildar/Naib Tehsildar of the Area concerned for clarification. The Naib Tehsildar Balichowki District Mandi, (HP) and Secretary, Gram Panchayat concerned (i.e. GP Thachadhar) clarified that Sh. Paras Ram was not boanfide resident of Patwar Circle Gadagusain Tehsil Balichowki District Mandi, (HP) on the date interview (i.e. 26.06.2014) for the post of PGT English. Hence 10 marks cannot be awarded to him. The copy of letter No.NT/Balichowki/2014-830 dated 23/-5/2015 of the Naib Tehsildar Balichowki District Mandi, (HP) and certificate issued by the Secretary of Gram Panchayat Thachadhar, are enclosed herewith for ready reference please."

10. The learned Writ Court on the basis of the material available on record, more particularly, the aforesaid communication, came to the categorical conclusion that writ respondent No.5 had wrongly been awarded 10 marks on account of being permanent resident of Patwar Circle Gadagussain, as he was admittedly not the resident of the said Patwar Circle at the relevant time. Aggrieved by the judgment passed by the learned Writ Court, writ respondent No.5 has filed the instant appeal.

11. It has been averred that the residence has nothing to do with the teaching skills of the teachers and, therefore, the official-respondents could not have insisted upon the condition of the permanent resident of the concerned Panchayat Circle. Moreover, there is no complaint against the working of writ respondent No.5 and, therefore, he had every right to continue.

12. To say the least, the instant appeal is nothing, but an abuse of the process of the Court because writ respondent No.5 had got an interim order in his favour protecting his employment and has prolonged the same as a calculated venture involving no risk. Condition of being a resident was one of the essential conditions, on the basis of which appointments were duly made and having participated in the selection process, writ respondent No.5 could not now turn around and question this condition. We can't say that since there is no complaint against the teaching of writ respondent No.5, he would, therefore, have a right to continue in service because the same has no relevance, as the appointment has necessarily to be made in accordance with the terms and conditions governing the same.

13. As observed above, writ respondent No.5 has filed this appeal as a calculated venture, involving no risk because despite his appointment being only for a period of one year, he has enjoyed the same for over a period of eight years. Earlier it was under the protection of the writ Court vide interim order dated 03.09.2014, whereby appointment had been made subject to the final outcome of the writ petition and even after the disposal of the writ petition, vide order dated 12.12.2016, passed by a Division Bench in the instant appeal, whereby the operation of the impugned judgment passed by the writ Court had been stayed.

14. As observed above, the appointment in question was only for a period of one year as per the procedure for appointment of a teacher by the SMC to Educational Institutional of Tribal/Difficult Areas, as is evident from clause 10 thereof, which reads as under:-

"In the next academic session, a fresh selection process will be conducted. In no case, the SMC provided teacher earlier be allowed to be continue after completion of academic sessions nor after the joining of regular/contract teacher appointed by the Government."

15. The writ respondent No.5 has prolonged the litigation, so as to deprive the legitimate right of writ petitioner and has enjoyed the fruits of illegalities. It is because of such false plea that the judicial system in the country is choked as

such litigants consume Court's time for a wrong cause. After all, the writ respondent was only required to engage a lawyer. Thereafter he managed not only to protect his employment for more than eight years as against one year but also to withdraw the salary from the State Exchequer. The judicial system has been abused and virtually brought to its knees by writ respondent No.5. It has to be remembered that Court proceedings are set proceedings and should not be polluted by unscrupulous litigants. Encouraging such kind of petitions, would only embolden the unscrupulous litigants to abuse the process of Court. Why we observe so is because the learned counsel for the writ respondent No.5 insisted on arguing that even though, his appointment could have been set aside, but, there could not have been any order made by the Writ Court for appointing the writ petitioner.

16. In view of the aforesaid discussion, we not only do not find any merit in this case, but find the same to be a gross abuse of the process of the Court. Since writ respondent No.5 has illegally been benefited by prolonged litigation, he has made himself liable to pay cost of the proceedings, which are assessed at Rs.50,000/-, out of which Rs.25,000/- be paid to writ petitioner, while the remaining be paid to writ respondent No.2. The services of writ respondent No.5 are directed to be terminated forthwith and in his place, the official-respondents are directed to offer appointment to writ petitioner for a period of one year, as per "policy to engage Teacher(s) through the School Management Committee purely on period basis in Elementary/Higher Education Department of Himachal Pradesh in Tribal/Difficult areas." Pending miscellaneous application(s), if any, shall also stand disposed of.