

(2010) 04 SHI CK 0127
In the High Court Of Himachal Pradesh
Case No : CWP No. 76 of 2006

Parkash Chand

APPELLANT

Vs

Hon"ble High Court of H.P. and Others

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 04 SHI CK 0127

Hon'ble Judges : Kurian Joseph, C.J;R.B. Misra, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The Writ Petition has been filed with the following prayers:

(i) Call for the entire records relating to the appointment and promotion of Petitioner and Respondent No. 4 including all records pertaining to requisitioning of vacancies and consideration of the representations of the Petitioner including the records in appeal preferred by the Petitioner, the reply thereto and all documents on the record of the appeal.

(ii) Quash order of reversion Annexure PE and further quashing the consequential seniority granted to Respondent No. 4 (Annexure PF).

(iii) Directing that the Petitioner be considered for reservation to the post of Senior Assistant on the basis of reservation of posts for Scheduled Castes and Scheduled Tribes.

(iv) Granting the Petitioner all consequential benefits, which would ensue from quashing the orders of reversion of Petitioner and grant of seniority to Respondent No. 4.

(v) Quashing the Demobilized Armed Forces Personnel (reservation of vacancies in Himachal Pradesh State Non-technical services) Rules, 1972 as amended from time to time in so far as they allow reservation to ex-servicemen who have not been recruited during the period of emergency, the benefit of reservation and other advantages as provided for the rules as being illegal, ultra-virus &

unconstitutional.

2. Though the Petitioner has taken several contentions with regard to the channel of appointment of the 4th Respondent and on his claim for benefits against quota reserved for ex-servicemen, we do not think that those aspects need be gone into since the matter will have to be considered by the High Court on the administrative side in the light of the decision of Division Bench of this Court dated 29.12.2008 in CWP No. 488 of 2001 wherein it has been held as follows:

In view of the above discussion we are clearly of the view that in case Rule 5(i) of the Rules has to be upheld, the entire benefit of the same should be made available only to those ex-servicemen who joined the armed forces during the period of emergency. As far as other ex-servicemen are concerned they may avail the benefit of reservation and fixation of pay but cannot count the past service rendered in the armed forces for the purposes of counting their seniority in the civil service which they have joined under the reserved category of ex-servicemen. It is also made clear that in all cases the benefit of past service can only be available from the date when the ex-servicemen acquired the minimum educational qualification. No benefit can be given for the army service rendered prior to the date of attaining such education qualification.

In view of the above discussion, the writ petition is allowed. The Provision of Rule 5(1) of the Rules are read down and they are held to be unconstitutional in so far as they give benefit of counting the past army service towards seniority in civil employment in case of ex-servicemen who have not joined the Armed forces during the period of emergency. It is also held that the benefit of such service cannot be given from a date prior to the date when the ex-serviceman attains the minimum educational eligibility criteria prescribed in the rules. Consequently, the seniority list Annexure P-3 is held to be illegal and is accordingly quashed and the Respondents are directed to re-frame the same in accordance with the directions issued hereinabove. There shall be no order as to costs.

3. In view of the decision as above, prayer No. 5 is to be answered in favor of the Petitioner. Consequently, the High Court will consider the matter afresh. Therefore, we set-aside the decision taken by the High Court in the Administrative side on the appeal filed by the Petitioner leading to the communication Annexure P-Q dated 28th April, 1999. There will be direction to consider the appeal afresh and pass appropriate orders thereon in accordance with law. In case, the Petitioner or the 4th Respondents wants to make supplementary representation(s), it will be open for them to do so. The decision as above, shall be taken within a period of four months from the date of receipt of the copy of the judgment and supplementary representation(s), if any.

4. With these observations, the writ petition stands disposed of, so also the pending application(s), if any.