
(2022) 09 SHI CK 0041

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition Original Application No. 3737 Of 2019

Parvesh Sharma

APPELLANT

Vs

Himachal Pradesh University And Others

RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:

Citation : (2022) 09 SHI CK 0041

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : P.P. Chauhan, Surender Verma

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, the petitioner has prayed for following substantive reliefs:

- a) Quash the impugned orders A-1 and impugned order whereby the respondents have regularised the service of the respondent No.5 (the copy being not available with the present applicant) and also quash the impugned inaction of the respondent department whereby the respondents are not regularizing the service of the applicant being arbitrary, malafide and illegal.
- b) Direct the respondent to regularize the service of the applicant against the post of Field Investigator/Field Assistant, w.e.f. the date on completion of 10 years of service or from the date his juniors respondents No. 4 and 5 have been regularised with all the consequential benefits and interest on the arrears @ 18% p.a. from the due date till the date of realization.
- c) Direct the respondents to re-engage the applicant against the same post at the same place in the same capacity with all the consequential benefits and granting him seniority ante-date.

2. The petitioner approached the erstwhile State Administrative Tribunal in the year 2003. With the abolition of the Tribunal, the matter was transferred to this Court and has been registered as CWPOA No.3737 of 2019.

CASE OF PETITIONER:

3.1 The case set up by petitioner is that he was initially engaged on daily wage basis for compilation/ duplication of Primary Data under the Market Survey Scheme from 21.11.1984 to 15.06.1985 in Agro Economic Research Centre of Himachal Pradesh University (for short, 'Agro Centre'). Thereafter, the petitioner was engaged by Agro Centre in different projects from time to time as per details as under:

(i)

19.10.1989 to 17.04.1992

As Temporary Tabulator on the recommendations of Selection Committee, on consolidated salary of Rs.1200/- with further increase of salary from time to time in Wood Balance Study (USAID).

(ii)

20.04.1992 to 30.04.1996

As Tabulator in Integrated Water Shed Development Hills Project on the consolidated monthly salary of Rs.1800/-.

(iii)

02.05.1996 to 02.11.1996

As Tabulator in Plant Protection Project

(iv)

04.11.1996 to 28.02.2002

As Tabulator in Market Survey Scheme

(v)

01.03.2002 to 28.02. 2003

As Research Investigator on consolidated salary of Rs.6000/- per month.

(vi)

01.03.2003 to 20.06.2003

Fictional Break given in the service of the applicant with a view to deprive him of benefit of being regularised despite the fact that the work existed and the funds were released/ available.

(vii)

20.06.2003 to 17.06.2004

Field Assistant in Market Survey Scheme

On the basis of aforesaid engagements, petitioner claims to have served Agro Centre for about 15 years.

3.2 Petitioner preferred the instant petition with grievance firstly that despite longevity of his engagement with Agro Centre, his services were not regularised and, secondly, he being senior to respondents No. 4 and 5 was entitled to be regularised as Field Assistant before them.

3.3 Petitioner also alleged that regularisation of respondents 4 and 5 was result of nepotism as they were closely related to respondents 6 and 7, who were senior officials.

RESPONSE BY OFFICIAL RESPONDENTS:

4.1 In their reply, respondents No. 1 to 3 contested the claim of petitioner on the ground that the petitioner had worked under different ad-hoc projects and lastly on completion of one such projects (Market Survey Scheme/project) on 31.03.2004, the services of petitioner were dispensed with vide notice dated 20.02.2004. His engagement always was co-terminus with the project.

4.2 As regards, the claim of petitioner vis-à-vis respondents No. 4 and 5, it was submitted that they were engaged under Cost Cultivation Scheme (for short, 'CCS') which according to respondents No.1 to 3 was altogether a different project. As per official respondents, both the schemes i.e. Agro Centre and CCS were being implemented by the H. P. University by virtue of different memoranda of understanding and having different administrative setup. In such circumstances, petitioner was stated to be not entitled to claim any right vis-à-vis respondents No. 4 and 5.

4.3 It was further submitted that the petitioner had worked in different temporary/time bound projects under Agro Centre as Temporary Tabulator/Field Assistant. His engagement always was co-terminus with the projects. As per respondents No. 1 to 3, CCS is the permanent scheme, therefore, respondents No. 4 and 5 were regularised under the said scheme on the basis of their experience in the said scheme. The allegation of nepotism was specifically denied. It was submitted that respondents No. 4 and 5 were appointed by the Vice Chancellor of the University and not by respondents No. 6 and 7.

RESPONSE OF PRIVATE RESPONDENTS:

5.1 Only respondent No.4 filed reply to the petition.

Remaining private respondents did not file any response.

5.2 In reply filed by respondent No.4, it was submitted that the employers of the petitioner and respondent No.4 were different identities. Whereas, the petitioner was employed by Agro Centre, respondent No.4 was employed by CCS. Both

programmes were distinct and different for all intents and purposes as the two schemes had been established by entering into two different memoranda of understanding by the Ministry of Food and Agriculture, Government of India with the Himachal Pradesh University on two different dates. The purpose and nature of two establishments was also stated to be different and distinct besides their staffing pattern having no parity with each other whatsoever.

REJOINDER OF PETITIONER:

6 In rejoinder to reply of respondents No. 1 to 3, petitioner alleged that respondent No.4 had worked as temporary Field Assistant for two small durations of 89 days each in project titled as "Wood Balance Study" conducted by the Agro Centre. It is thereafter that he was given ad-hoc appointment in CCS. The petitioner further challenged the appointment of respondents 4 and 5 as Field Assistant in the CCS on the ground that they did not belong to Himachal Pradesh and only persons belonging to state of Himachal Pradesh were eligible for appointments in CCS.

COUNTER AFFIDAVIT OF OFFICIAL RESPONDENTS:

7. Respondents No. 1 to 3 filed counter-affidavit. It was submitted that respondent No.4 had five years' experience as Field Assistant in CCS and more than nine years of total work experience as Field Assistant in different projects of Agro Centre. It was clarified that respondent No.4 was initially appointed as Field Assistant in "Integrated Watershed Development Project". Thereafter on 01.10.1993 his services were utilized in place of Sh. R.L. Verma, Field Assistant, who was deputed on ad-hoc/time bound project assigned by Land Use Board, Shimla in CCS. This appointment continued till 31.07.1998. Thus, respondent No.4 worked as Field Assistant in CCS for about five years and gained such experience. Keeping in view the work performance and experience of respondent No.4, he was considered for the post of Field Assistant which has fallen vacant due to promotion. Respondents No.1 to 3 further contended that the petitioner did not have the requisite experience as he had not worked as Field Assistant to collect data/information in the field of CCS. To similar effect are the averments made in respect of respondent No.5. It was clarified that respondent No.5 had worked under CCS scheme for 14 years and thereafter his services were regularized.

8. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

9. It is not in dispute that petitioner was engaged in Agro Centre, from time to time, against specific projects only. Lastly, his services were dispensed with w.e.f. 31.3.2004.

10. There is no fundamental right to employment much less permanent employment. Public employment is governed by statutory rules. One can be said to be aggrieved only if he is discriminated or is sufferer of arbitrariness or can

show infraction of rules in the matter of public employment.

11. Petitioner has not been able to cross above said barrier. Save and except reference to the case of Mool Raj Upadhyaya vs. State of H.P, there is nothing in the petition to suggest as to on what basis the petitioner claimed right to be permanently employed by respondents No.1 to 3. Mool Raj Upadhyaya vs. State of H.P. was in the context of the rights of the workmen, who were employed on daily wage/ muster roll basis and had completed 10 years of continuous service with minimum of 240 days in a calendar year. Admittedly the petitioner was not a daily wage/muster roll workman, therefore, he cannot derive any benefit from above referred case.

12. The case of respondents No. 1 to 3 specifically is that the employment of petitioner was purely temporary and co-terminus with the projects and on completion of the project his services were not required further and were accordingly disengaged. Petitioner has not been able to rebut such factual aspect of the matter.

13. The challenge of petitioner to regularisation/ permanent appointment of respondents No.4 and 5 in CCS is also bound to fail for the reason that the petitioner has failed to make out any ground to claim any right vis-à-vis said respondents. There were lot of dissimilarities in the engagement of petitioner and respondents Nos 4 and 5. Whereas, petitioner was engaged by Agro Centre, respondents No. 4 and 5 were engaged not only by Agro Centre but CCS also. Respondent No.4 had worked from 01.10.1993 to 31.07.1998 as Field Assistant in CCS. Respondent No.5 had worked under CCS for about 14 years. It was for this reason that respondents No. 4 and 5 were considered for permanent appointments in CCS by respondents No. 1 to 3.

14. Petitioner has further failed to deny or rebut the fact that the Agro Centre and CCS were different schemes having different objectives. Whereas the projects under Agro Centre were temporary in nature, the CCS scheme was permanent. Since the petitioner had not worked in CCS and had no work experience in said project as Field Assistant, he could not claim any right vis-à-vis the appointments given to respondents No. 4 and 5.

15. Further, the petitioner has not laid any foundation in the petition for challenging the selection process adopted by official respondents for appointment of respondents No. 4 and 5. In absence of such challenge, the petitioner cannot claim the appointments of respondents No. 4 and 5 to be illegal. Though, a feeble attempt was made by the petitioner in his rejoinder to challenge the selection process but again the grounds of challenge have remained unsubstantiated.

16. Petitioner has failed to substantiate his allegation of nepotism, against private respondents, by placing on record any tangible material. The appointments of respondents No. 4 and 5 were made by the Vice Chancellor of the University and nothing has been produced on record to show that the Vice

Chancellor had any personal interest in respondents No. 4 and 5. On the other hand Respondents No. 1 to 3 have justified the appointments of respondents No. 4 and 5 on the basis of their experience and requirements of job. The explanation rendered by official respondents is reasonable.

17. Another circumstance which cannot be ignored is that the petition was filed in the year 2003. Nineteen years have already elapsed. Petitioner was 38 years of age in 2003, meaning thereby that he would have almost reached the age of superannuation. Nothing has been shown to the Court that petitioner remained unemployed after 2003. Similar is the situation with respondents No. 4 and 5. During the course of hearing the Court was informed that respondent No.4 is about to retire this year and similar is the situation with respondent No.5. In this view of the matter also, no relief can be granted to the petitioner at this stage. No monetary reliefs can be allowed to the petitioner for the reasons firstly that he has failed to establish any right in his favour and secondly, he cannot get the monetary relief for the period when he has not worked.

18. In view of the above discussion, there is no merit in the petition and the same is accordingly dismissed. Pending application(s), if any, also stands disposed of.