

(2014) 06 SHI CK 0154
In the High Court Of Himachal Pradesh
Case No : LPA No. 358 of 2010

P.C. Rana

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) 06 SHI CK 0154

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Sureshwar Thakur, J

Bench : Division Bench

Advocate : Ramakant Sharma, Advocate for the Appellant; Shrawan Dogra, Advocate General, Mr. Anoop Rattan, Mr. M.A. Khan and Mr. Romesh Verma, Addl. A.Gs, Advocate for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. This Letters Patent Appeal is directed against the judgment and order, dated 9th November, 2010, passed by a learned Single Judge of this Court in CWP(T) No. 8439 of 2008, (OA No. 928 of 2002), titled P.C. Rana versus State of H.P. and Anr., whereby the writ petition filed by the writ petitioner, (appellant herein), came to be dismissed, (for short, "the impugned judgment").
2. Facts of the case, in brief, are that the appellant/writ petitioner was aggrieved by his absorption in the respondent-Department as Clerk, made a representation and sought absorption/appointment as Superintendent Grade-II, which was denied by the respondents, constraining the appellant/writ petitioner to file Original Application (OA No. 928 of 2002) before the H.P. State Administrative Tribunal, which Original Application, on abolition of the Tribunal, was transferred to this Court and was diarized as CWP(T) No. 8439 of 2008, was dismissed vide the impugned judgment, which is non-speaking and cryptic one.
3. Respondents resisted the Original Application by filing reply.

4. We have heard the learned counsel for the parties and have gone through the record of the writ petition.

5. During the course of hearing, our attention was drawn to the gradation list, Annexure A-3, which discloses that the petitioner was having experience of 16 years in the Army, and of 6 years and 8 months, as on 7th March, 2011, in the College taken over by the respondents. In the said gradation list Annexure A-3, the appellant figures at Sl. No. 1.

6. Our attention was also drawn to the Circular, issued by the Commissioner-cum-Secretary (Edu) on 25th August, 1994, Annexure R-1, which contains the "terms and conditions for taking over privately managed schools in the Pradesh (affiliated) including teaching & non-teaching staff". It is apt to reproduce Condition No. 9 hereinbelow:

(9) All members (including principal) of the staff will be treated as fresh entrants and they will be placed at the bottom of the seniority list, maintained in respect of Government employees in their respective cadre on the date of taking over, provided, in the case of ministerial staff:-

(i) a person with 25 years experience may be absorbed as Superintendent Grade-II

(ii) a person with 17 years of service as Clerk may be absorbed as Senior Assistant.

(iii) a person with 10 years experience as Clerk may be absorbed as junior assistant.

(iv) and having 5 years experience may be absorbed as senior clerk and less than 5 years, as clerk.

7. It was submitted by the learned counsel for the petitioner that the petitioner claimed absorption/appointment as Superintendent Grade-II by taking into account the services rendered by him in the Army and in the College collectively, which is not permissible under law. However, In terms of Condition No. 9 (supra), a person having five years experience was to be absorbed as Senior Clerk. Thus, it is clear that the petitioner was entitled to be absorbed/appointed as Senior Clerk, keeping in view his experience of 6 years and 8 months, gained by him while working in the College, and not as Superintendent Grade-II, as prayed for in the Writ Petition. However, the writ petitioner was absorbed as Clerk in the respondent-Department, which has caused injury to him. Thus, the respondents have committed illegality in not absorbing the petitioner as Senior Clerk.

8. In view of the above discussion, the appeal is allowed, the impugned judgment is set aside and the respondents are directed to consider the case of the writ petitioner/appellant for absorbing him against the post of Senior Clerk within a period of four weeks from today and grant him all consequential benefits, as per the Rules applicable at the relevant point of time.

9. The appeal as well as the writ petition are allowed in the above terms and stand disposed of accordingly.