
(2011) 03 SHI CK 0037
In the High Court Of Himachal Pradesh
Case No : C W.P (T) No. 10086 of 2008

Pratibha Sharma

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Citation : (2011) 2 ShimLC 242

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The petitioner has prayed for a direction to the respondents to treat the period from 11.10.2002 to 11.05.2003 as duty period of the petitioner with a further direction to the respondents to release the salary of the petitioner from 11.10.2002 to 11.05.2003 along with interest at the rate of 18% per annum.

2. The further facts as pleaded by the petitioner are that on 25.09.2002 the petitioner was transferred from G.S.S.S., Kuthar to G.M.S., Sudher (Kangra). The G.M.S., Sudher was upgraded and made functional vide notification dated 08.10.2002. The petitioner was relieved from G.S.S.S., Kuthar on 11.10.2002 with a direction to join at G.M.S., Sudher. The petitioner accordingly went to join at G.M.S., Sudher, but the school was closed due to restricted holiday and the petitioner gave her joining report on 14.10.2002 to Chowkidar of G.H.S., Gharoh under whose complex G.M.S., Sudher, falls. The petitioner also sent a copy of joining report dated 14.10.2002 by post to Headmistress, G.H.S., Gharoh.

3. The petitioner again went to G.H.S., Gharoh on 16.10.2002 and submitted her joining report to respondent No. 4, who refused to take the joining report of the petitioner. In these circumstances, the petitioner sent a telegram to respondents 2, 3 on 16.10.2002. The respondent No. 4 at the time of verbal refusal told the petitioner that her joining could not be accepted as one Karan Singh has been

posted as TGT (NM) in G.M.S., Sudher. The petitioner also sent a telegram to the respondents 2 and 3 on 17.10.2002 requesting them to allow the petitioner to join at G.M.S., Sudher or to allow her a nearby station as the petitioner was rendered without posting. The petitioner also submitted a representation to respondents 3 and 2 on 22.11.2002 and 25.11.2002 respectively for giving her posting near Dharamsala in view of ailment of her husband and small baby.

4. On 16.12.2002, the respondent No. 2 issued a conditional posting order of petitioner and she was adjusted at G.H.S., Ghaniara against a vacancy due to promotion of Ravinder Kumar. It transpired that the said Ravinder Kumar was not promoted and therefore the petitioner could not join at G.H.S., Ghaniara for want of vacant post of TGT (NM). The petitioner was rendered without posting, she represented and she was adjusted at G.M.S., Kand against a vacancy, by the respondent No. 3 on 01.01.2003. The petitioner went to join at G.M.S., Kand and submitted her joining report to G.H.S., Kotwali Bazaar, Dharamsala on 06.01.2003, but the petitioner was informed that no post of TGT (NM) existed in G.M.S., Kand. The petitioner was again rendered without posting and, therefore, she submitted representation to the respondent No. 1 for adjustment near to Dharamsala. The petitioner was finally adjusted at G.S.S.S., Khaniara by respondent No. 2 on 09.05.2003 and the petitioner joined at G.S.S.S., Khaniara on 12.05.2003.

5. The petitioner was denied work and salary due to inaction of the respondents from 11.10.2002 to 11.05.2003. The petitioner submitted representation to respondent No. 3 on 21.07.2003 and then to respondent No. 2 on 28.08.2003 and again to respondent No. 2 on 01.12.2003, without any positive result. The petitioner has not been paid salary for 11.10.2002 to 11.05.2003 without any fault of the petitioner. Hence, the petitioner has filed the petition for the above relief.

6. The petition has been contested by the respondents by filing reply, wherein, it has been stated that transfer/posting of the petitioner at G.M.S., Sudher was subject to the condition that her transfer/posting would be effective when Government Middle School, Sudher would become functional, which was made functional on 08.10.2002. The petitioner was under obligation to join at the place of posting physically. In case G.M.S., Sudher was closed due to restricted holiday, it was for the petitioner to join her duties on next working day. The joining of the petitioner and reporting to Chowkidar complex school, is neither logical nor proper. The petitioner has wrongly Alleged that the respondent No. 4 refused to take her joining on 16.10.2002. In fact, the petitioner never went to respondent No. 4 to give her joining. The petitioner did not join at the place of postings deliberately for reasons best known to her. The petitioner, in fact, was trying her best for adjustment at Dharamsala or nearby. When the petitioner failed to avail the opportunity, with the joining of another incumbent in G.M.S., Sudher under complex G.H.S., Gharoh, fresh orders of posting of petitioner were given. The order dated 16.10.2002 did not materialize as Ravinder Kumar was not

promoted. Therefore, the joining of the petitioner was not possible there in absence of clear-cut vacancy. The petitioner herself, is responsible for creating such a situation.

7. The respondents, however, have submitted that the petitioner herself was instrumental to get posting order amended for Government Middle School, Kand, but there was no vacancy and order of transfer/posting could not be given effect. The right to salary accrues only when one is on duty or on authorized leave not otherwise. The principle of No Work & No Pay cannot be ignored. The petitioner cannot be treated on duty for the period 11.10.2002 to 11.05.2003. The respondents have taken the stand that in case the petitioner applies for leave of kind due and admissible for the disputed period, then, ongoing process to settle the same will be taken. It has also been stated that the period from 11.10.2002 to 11.05.2003 cannot be treated as compulsory waiting period. The respondents have prayed for dismissal of the petition. The rejoinder has been filed by the petitioner in which she has reiterated her stand.

8. I have heard learned Counsel for the parties. The facts in detail have already been noticed above regarding various transfers of petitioner from one school to another. It has not been denied by the respondents that the petitioner was transferred to G.M.S., Sudher and she was relieved from G.S.S.S., Kuthur for joining at G.M.S., Sudher. It is a common stand of the parties that the petitioner was to join at G.M.S., Sudher only after the upgradation of G.M.S., Sudher and its becoming functional. According to the petitioner, she went on 14.10.2002 for joining at G.M.S., Sudher, but the school was closed due to restricted holiday. The petitioner gave her joining report on 16.10.2002 at G.H.S., Gharoh which was a complex school for G.M.S., Sudher. The joining of the petitioner was not taken on 16.10.2002 at G.H.S., Gharoh. The learned Counsel for the petitioner has submitted that at that time one Karan Singh was posted at G.M.S., Sudher as per Annexure R-2.

9. The petitioner submitted many representations in this regard but to no effect. On 16.12.2002, the petitioner was posted at G.H.S., Ghaniara and when she went on 19.12.2002 to join at G.H.S., Ghaniara, she was told that there is no post at G.H.S., Ghaniara where she could join. On 01.01.2003 another posting was given to the petitioner at G.M.S., Kand, but she was again told on 06.01.2003 when she went there for joining that no post is vacant at G.M.S., Kand. The petitioner on 09.05.2003 was given posting in G.S.S.S., Khaniara where she joined on 12.05.2003.

10. The narration of the facts given above are clear that the petitioner was tossed from one place to another place but for the reasons best known to the respondents she was not allowed to join at the places of her postings, she was ultimately allowed to join at G.S.S.S., Khaniara on 12.05.2003. There is substance in the submission of the learned Counsel for the petitioner that the petitioner made all endeavor to join at the places of her postings from 11.10.2002 to 11.05.2003, but she was not allowed to join, except at the last

place G.S.S.S., Khaniara, on 12.05.2003. The respondents have not taken any disciplinary action against the petitioner and also did not treat her absent from duty from 11.10.2002 to 11.05.2003. This indicates that even respondents were satisfied that during 11.10.2002 to 11.05.2003, the petitioner was not absent from duty. The principle of "No Work No Pay" is not applicable in the instant case in as much as the petitioner was ready and willing to perform her duty at various places of postings, but she was not allowed to join at the places of her postings. In fact, it is a case of compulsory waiting-period for petitioner for joining when she was transferred from one place to another.

11. No other point was urged.

12. In view of above, the petition is allowed. The respondents are directed to treat the petitioner on duty from 11.10.2002 to 11.05.2003 by treating this period as compulsory waiting period and pay the salary to the petitioner of this period within a period of two months from the date of supply of copy of this judgment by the petitioner to the competent authority, failing which the respondents shall also pay interest at the rate of 9% per annum to the petitioner on the arrears of salary for the aforesaid period.