

(2010) 03 SHI CK 0130
In the High Court Of Himachal Pradesh

Radha Krishan and Roshan Lal

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2010) 03 SHI CK 0130

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

Bench : Division Bench

Judgement

1. Since common questions of law and facts are involved in these writ petitions, both the writ petitions are being disposed of by a common order.

2. The issue raised in both these writ petitions pertains to the appointment of Drivers on contract basis under the respondent- Corporation. The Corporation started initiating the process of recruitment in the year 2006 for engaging 241 Drivers. The process of selection having been completed and when the procedure of appointment was in the midway, it is seen that the model code of conduct in view of the elections came into force on 10.10.2007. Out of the 241 persons thus empanelled, it appears that the training was imparted to 141 candidates and out of which only 62 were appointed. It is to be noted that even that appointment of 62 persons was pursuant to the orders passed by this Court. The petitioners before us in these writ petitions are similarly situated as those who obtained the appointment pursuant to the orders of this Court. The judgment of this Court is in CWP No. 2976 of 2008 dated 5.1.2010. That judgment has become final. This Court found that:

What emerges from the case law cited hereinabove is that a candidate has no indefeasible right to appointment. However, the decision not to fill up the post or offer appointment has to be taken strictly as per provisions of Articles 14 and 16 of the Constitution of India. The decision must be based on cogent and convincing reason. There should be rationality and due application of mind while taking decision to fill up or not to fill up the post. The decision should be taken in

a bona fide and reasonable manner. The respondent-corporation is a State within the meaning of Article 12 of the Constitution of India. It cannot be oblivious to its constitutional obligations. The respondent-corporation after completing the process has sent the name of the petitioner for approval for the post of Driver to be appointed on contract basis to the State Government. It is the State who has declined to approve the name of the petitioner only on a flimsy ground that earlier lesser vacancies were advertised and now more vacancies were available. The question of preparation of panel and its expiry was not in issue before the State Government as projected now by the respondents. Employment could not be denied to the petitioner as Driver on any flimsy ground that initially salary as per Annexure P-2 was Rs. 5000/- and vide Annexure P-4 it was Rs. 5500/- also. The petitioner after passing interview, driving test and training has legitimate expectation to be appointed as Driver on contract basis. It was always open to the respondents to fill up 241 posts of Driver and thereafter to fill up the additional posts as per the norms prescribed in Annexure P-4.

3. In the meanwhile after the election, it appears that the Corporation decided to drop the proceedings of selection already commenced. However, in view of the dire need of engaging the Drivers and that too 550, changing the pay scale from Rs. 5000/- to Rs. 5500/-, the Corporation issued a fresh notification dated 10.12.2008 for engaging 550 Drivers on contract basis. In that process, the Corporation prepared a panel of 619 candidates. Out of the 619 candidates thus empanelled, the Corporation appointed certain persons. So much so, the total persons engaged from the empanelled list of 241 initially and 619 subsequently are only 526. However, it is seen that the Corporation could not meet the requirement of reservation and hence now they have initiated steps for empanelment of Drivers on contract basis in respect of 158 posts in the reserved category.

4. The petitioners have placed reliance on the judgment of this Court in CWP No. 2976 of 2008 (Dev Raj v. Himachal Road Transport Corporation and Anr.), referred to above.

5. Having heard the learned Counsel for the petitioner(s), learned Standing counsel for the corporation and the learned Senior Addl. Advocate General, we find that there is some force in the contentions raised by the petitioner(s) herein. No doubt, the candidates appearing in the select list do not have any right to claim appointment, but the Corporation having decided to empanel the Drivers on contract basis, the process having commenced, training having been imparted, requirement still subsisting and the Corporation having appointed 62 out of the 241 persons already selected and the Corporation having still gone for fresh recruitment of 550 Drivers on contract basis and that too on a higher scale of pay, the candidates included in the empanelled list pursuant to the selection process already commenced in the month of September, 2006 have a right to get equal treatment and they are entitled for the appointment by way of a similar treatment as has been given to 62 persons of the select list. But, we find that a

number of persons have been appointed on the basis of the subsequent selection process and they are not parties in the writ petitions. However, without affecting their rights, it appears that a solution is possible safeguarding the interest of all parties concerned. In the subsequent selection process commenced on 10.12.2008, the vacancies notified are only 550. We have scanned through the said notification. Nowhere, the Corporation has stated that they would prepare a panel. They have only stated that they require the service of 550 Drivers on contract basis. In other words, notified vacancies are only 550. Once the Corporation exhausts that list of 550, the candidates included in the first list prepared, based on the notification issued in the year 2006, should be engaged according to the availability of vacancies and in accordance with the list already prepared. The selection process in respect of 158 posts in the reserved category may go on; however, in case there are candidates in respect of those reserved vacancies available in the first list prepared by the Corporation, they shall be engaged forthwith and the empanelment in respect of the reserved category by clearing the backlog shall only be in respect of the remaining vacancies. We make it clear that before exhausting the process as above, the Corporation shall not commence any fresh selection process.

6. The writ petitions are accordingly disposed of, so also the pending applications, if any.