
(2015) 05 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : CWP Nos. 160, 161, 162, 164, 166, 167, 168, 169, 170, 171 and 172 of 2011

Raj Bala Gaur and Others

APPELLANT

Vs

H.P. University and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(1), 33(2)(b)

Citation : (2015) 05 SHI CK 0020

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Anil God, for the Appellant; J.L. Bhardwaj, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in all these petitions, the same were taken up together and are being disposed of by a common judgment. However, in order to maintain clarity, facts of CWP No. 160/2011 have been taken into consideration.

2. Petitioner was appointed on ad hoc/tenure basis on a consolidated salary of Rs. 1500/- per month in H.P.U. Model School on 31.5.1997. A meeting comprising of Prof. Suresh Kapoor, Dean of Studies, Dr. S.K. Garg, Dean, CDC and Prof. J.B. Nadda, Registrar was conveyed on 1.8.2002 in the Chambers of Registrar was held on 1.8.2002 at 3.00 P.M. The Committee made the following recommendations:

1. The post of Head Master be got created in the regular pay scale of Rs. 7000-22-8100-275-10, 300-340-10980 and against which Mr. Umesh Modgil who fulfils the requisite qualification maybe considered for his regularization after he completes 4 years service as such with prospective effect.

2. The posts of the following teachers may be got created in the regular pay

scale of Rs. 4550-150-5000-160-5800-200-7000-220-7280 and against which the mentioned below teachers who have completed 4 years or more service as such may be considered for their regularization with prospective effect.

Their regularization and inter-se seniority will be regulated in accordance with the date of their initial appointment. After their regularization the head master and teaching staff of the school may be allowed.

3. The posts of the non-teaching staff i.e. Aya and peon of the school may be got created in the regular scale of Rs. 2520-100-3220-110-3660-120-4140 (with initial start of Rs. 2620/-) and against which the following may be considered for their regularization on completion of 8 years service as per instructions of the state Govt.

The financial liabilities of the above mentioned staff would be borne on the staff-strength of the University for first five years and thereafter the such liabilities shall be met out of the resources of the school as there is a proposal to construct a new building for the school for which the revenue/income of the school has been kept reserved for its utilization. In order to met the expenditure on account of salary etc. of the teachers/staff, it was recommended that 10% hike in fee may be made every year.

The service conditions of the staff of the school will be governed as per Act, Statutes and Ordinances of the University vis-?-vis rules, regulations and instructions as amended from time to time and as applicable to the teaching staff of the State Govt. The school will observe the vacation schedule at par with the State govt. The teaching staff including head master shall form their own separate cadre with a separate entity. The appointing authority of the teaching staff including the head master shall be the vice-chancellor of this University and their service record shall be maintained by the establishment branch."

3. In sequel to the recommendations made by the high power committee, the Vice Chancellor of the respondent-university was pleased to create the posts of Headmaster and teachers in the regular pay scale of Rs. 7000-10980 and Rs. 4500-7200, respectively, subject to the approval from the Executive Council vide notification dated 5.9.2002.

4. Petitioners and similarly situate persons were appointed to the posts of school teachers and Head Master in H.P.U. Model School in the running pay scale mentioned against their post on 9.9.2002. Petitioners joined their duties vide office order dated 30.9.2002. Though the petitioners were put in the regular pay scale but the increments were not released to them. They made several representations, which led to issuance of letter dated 4.11.2008 whereby the petitioners were granted annual increment with effect from 1.9.2003 but on notional basis.

5. Petitioners made several representations seeking G.P.F. account number. The Executive Council vide resolution No. 9 in its meeting held on 27.9.2008

approved the creation of one post of Head Master and 13 posts of Teachers in the pay scale given in the notifications dated 5.9.2002 and 13.9.2002. The notification to this effect was issued on 6.2.2009.

6. Mr. Anil God, learned counsel for the petitioner, has vehemently argued that his clients are entitled to regular increments from their initial date of appointment. The petitioners are required to be issued G.P.F. account number instead of C.P.F. account number. He then contended that the appointments of his clients have already been made on regular basis after the creation of posts by the Vice Chancellor.

7. Mr. J.L. Bhardwaj has placed strong reliance upon notification dated 6.2.2009.

8. I have heard the learned counsel for the parties and have gone through the pleadings carefully.

9. Petitioner in CWP No. 160/2011 was appointed on ad hoc/tenure basis on 31.5.1997. A conscious decision has been taken vide Annexure R-1/A to regularize the petitioners and similarly situate persons in the running pay scale of Rs. 4550-7220. An observation has also been made in Annexure RA-1/C that the petitioners possessed more than the required educational qualification, as laid down by the Government for the posts of JBTs/TGTs. Thereafter, the Vice Chancellor created the posts as per Annexure P-2 dated 5.9.2002 in the regular pay scale. Petitioners were appointed against these posts in the running pay scale vide office order dated 9.9.2002. They joined their duties on 30.9.2002. Since the petitioners have been appointed/regularized after completing all the coal formalities, that too, after approval by the Executive Counsel, they should have been granted annual increments from their initial date of appointment, i.e. 9.9.2002. Petitioners have been granted annual increments only vide Annexure P-6 dated 4.11.2008, that too, on notional basis after the decision dated 27.9.2008. It is true that the posts were earlier created on ad hoc/tenure basis but thereafter the petitioners were regularized in the regular pay scale after the posts were created by the Vice Chancellor, subject to the approval from the Executive Council. The approval from the Executive Council was only ministerial act since all the codal formalities for the creation of posts have been complied with. The posts have been created by the Vice Chancellor on the basis of the recommendations made by the high power committee vide Annexure P-2. The petitioners have been regularized with effect from 9.9.2002 and the approval of the posts by the Executive Council vide notification dated 27.9.2008 would relate back to the date of creation of posts by the Vice-Chancellor on 5.9.2002. The petitioners possessed the essential qualification. Their suitability has been adjudged by a duly constituted Selection Commission.

10. The posts are created by the Executive Council as per Statute 10(iii). In the instant case, the posts have been created by the Vice Chancellor, subject to approval of the Executive Council. The Vice Chancellor can take immediate action as per section 12(c)(7) of the Himachal Pradesh University Act, 1970, but the

same is required to be approved by the Executive Council. The Vice Chancellor has created the posts on 5.9.2002, subject to approval by the Executive Council. The Executive Council has approved the same on 27.9.2008.

11. Full Bench of Allahabad High Court in *Shakir Husain Vs. Chandoo Lal and Others* has defined the difference between approval and permission as under:

"Ordinarily the difference between the approval and permission is that in the first the act holds good until disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous act."

12. This judgment was relied upon by the Division Bench of Allahabad in *Mohammad Ali Vs. The State of Uttar Pradesh and Others*, AIR 1958 All 681 . The Division Bench has held that an appointment which is to be made with the permission of a higher authority or the Government cannot be made unless the permission is first obtained, but an appointment which can be made subject to the approval of a higher authority or the Government may be made and will be rendered invalid only when it is disapproved by the higher authority. The Division has held as under:

"[1] This special appeal is directed against an order dated 22-11-1957 passed by a learned Single Judge of this Court by which Civil Miscellaneous Writ Petition No. 3023 of 1957 had been rejected. The appellant was employed by the Municipal Board of Maunath Bhanjari in the district of Azamgarh as an overseer. Under the provisions of Section 68(2) of the U.P. Municipalities Act the appointment and the salary and other conditions attached thereto are required to be subjected to the approval of the State Government. The matter in the present case appears never to have been sent up to the State Government for approval. It came to the notice of the District Magistrate of Azamgarh that the appellant was performing duties as an overseer without the approval of the State Government. Consequently he brought it to the notice of the State Government.

The State Government after carefully considering the matter refused to approve of the appointment and sent a direction to the District Magistrate with a copy to the President of the Municipal Board, Maunath Bhanjan, that the retention of the appellant was wholly unjustified and that his services may be terminated at once. In compliance with the instructions of the Government the President of the Board passed an order on 19-11-1957 terminating the services of the appellant with immediate effect; and that order was communicated to the appellant by the officiating Secretary of the Board on 20-11-1957. In the writ petition two prayers had been made. The first prayer was that a writ in the nature of certiorari be issued quashing the decision of the President of the Board and that of the State Government.

The second prayer was that a writ in the nature of mandamus be issued directing the State Government to accord recognition and approval to the appointment of the appellant as overseer. So far as the second prayer is concerned Mr. M. H.

Beg, appearing on behalf of the appellant, has conceded that such a writ in the nature of mandamus cannot be issued to the State Government. We are therefore concerned with the first prayer enunciated above. For the disposal of the matter we have got to look to Section 68 of the U.P. Municipalities Act. That section says that a Board may, and, if so required by the State Government shall by a special resolution appoint the principal officers of its technical departments such as.....a qualified overseer or sub-Overseer.....Sub-clause (2) of that section says that each such appointment and the salary and other conditions attached thereto shall be subject to the approval of the State Government.

The view taken by the learned Single Judge was that since the approval of the State Government was not obtained by the Board at the time of appointing the appellant and when the matter came to their knowledge they refused to approve the appointment, there was in fact no valid appointment of the appellant and the result was that the appointment was automatically terminated by the refusal of the State Government to give its approval. The learned Single Judge was further of the opinion that what was done by the President and by the Secretary under the orders of the President was not to dismiss or punish the appellant so as to bring into picture the operation of Section 69 of the U.P. Municipalities Act, but to inform the appellant that in view of the refusal by the State Government to approve of his appointment the appointment had lapsed. In our opinion the view taken by the learned Single Judge was correct.

When a person is employed under a power which is to be exercised subject to the approval of a higher authority or the Government, the appointment holds good so long as the higher authority or the Government has not disapproved of it. There is a distinction between an appointment with the permission of a higher authority or the Government, and an appointment subject to the approval of the higher authority or the Government. An appointment which is to be made with the permission of a higher authority or the Government cannot be made unless the permission is first obtained, but an appointment which can be made subject to the approval of a higher authority or the Government may be made and will be rendered invalid only when it is disapproved by the higher authority. This distinction was pointed out by a Full Bench of this Court in *Shakir Husain Vs. Chandoo Lal and Others*. Sir Shah Sulaiman, Acting Chief Justice, as he then was, observed:

"Ordinarily the difference between the approval and permission is that in the first the act holds good until disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous act."

13. Their Lordships of the Hon"ble Supreme Court in *U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another*, AIR 1996 SC 114 : AIR 1995 SC 114 : (1995) 3 SCALE 604 : (1995) 3 SCC 456 Supp : (1995) 3 SCR 729 : (1995) 2 UJ 274 have held that the difference between approval and permission is that in the first case the action holds good

until it is disapproved, while in the other case it does not become effective until permission is obtained. Their Lordships have further held that permission subsequently granted may validate the previous Act. Their Lordships have held as under:

"[5] This Court in *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, AIR 1986 SC 1370 : (1986) 59 CompCas 548 : (1986) 1 CompLJ 91 : (1986) 8 ECC 189 : (1985) 2 SCALE 1289 : (1986) 1 SCC 264 : (1985) 3 SCR 909 Supp , considering the distinction between "special permission" and "general permission", "previous approval" or "prior approval" in paragraph 63 held that "we are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find on such compelling circumstances justifying reading any such implication into S. 29(1) of the Act". Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous act. As to the word "approval" in S. 33(2)(b) of the Industrial Disputes Act, it was stated in *The Lord Krishna Textile Mills Vs. Its Workmen*, AIR 1961 SC 860 : (1961) 2 FLR 112 : (1961) 1 LLJ 211 : (1961) 3 SCR 204 that the management need not obtain the previous consent before taking any action. The requirement that the management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in S. 33(1). It is seen that approval envisaged under exception (iii) of S. 59(1)(a), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is given by the Government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval get validated and the publications made under the Act thereby become valid."

14. The respondent-University has not permitted the petitioners to opt for G.P.F. account number and were forced for giving option for C.P.F. account number and their case has been rejected on 24.4.2010 vide Annexure P-8. Since the petitioners have been regularized before the cut-off date, i.e. 15.5.2003, the respondent-university was bound to permit them to opt for G.P.F. account number instead of coercing the petitioners to opt for C.P.F. account number. The respondent-University has discriminated against the petitioners since similarly situate persons, who were working on ad hoc basis in the school, their services were regularized alongwith petitioners have been given regular increments and they have been allotted G.P.F. account number. Equals cannot be treated unequals. Action of the respondent-University not to grant effective increments to the petitioners from 9.9.2002 is unreasonable and arbitrary. Their appointments have been made against the regular pay scale and they should have been granted annual increments from the date of their regularization. Since the appointment of the petitioners is before the cut-off date, i.e. 15.5.2003, they are entitled to opt for G.P.F. account number. Since the petitioners have been

appointed after completing all the codal formalities, their services are required to be counted from the initial date of appointment followed by regularization for all intents and purposes, including pension.

15. Accordingly, in view of the analysis and discussion made hereinabove, all the writ petitions are allowed. Annexures P-6 and P-8 dated 4.11.2008 and 24.4.2010, respectively, are quashed and set aside. Respondent-University is directed to release the petitioners annul increments from the initial date of appointment with interest @ 9% per annum. The respondent-University is also directed to permit the petitioners to opt for G.P.F. account number by treating their appointments on regular basis with effect from 9.9.2002. The respondent-University is further directed to pay and release the revised pay scales to the petitioners from the due date. It is made clear that the services rendered by the petitioners on ad hoc basis followed by regularization shall also be counted for all intents and purposes, including pension. Needful be done within a period of four weeks from today. Pending application, if any also stands disposed of.