
(2020) 11 SHI CK 0232

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1735 Of 2020, CWPOA No. 6538 Of 2020

Rajesh Kumar And Others

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 27-11-2020

Acts Referred:

Demobilised Armed Forces Personnel (Reservation Of Vacancies In The Himachal State Non-Technical Services) Rules, 1972 — Rule 3, 5(1)

Citation : (2020) 11 SHI CK 0232

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : K.S. Banyal, Vijender Katoch, Dilip Sharma, Munish Sharma, Hemant Vaid, Ashwani Sharma, Tara Singh Chauhan, Dilip Sharma, Munish Sharma

Final Decision : Dismissed/Allowed

Judgement

Â Sureshwar Thakur, J

1. Since, common question of facts, and, law are involved in both the afore writ petitions, hence, they are amenable for a common verdict becoming

rendered thereon(s).

2. The writ petitioner, in CWP No. 1735 of 2020, after serving in the armed forces, became recruited, as, an Assistant Engineer (Electrical), against

those vacancy(ies) reserved for ex-servicemen. His afore recruitment occurred on 12.06.1998, and, he joined in the afore capacity, under, the

respondent board, on 22.06.1998. The relevant Rules, holding contemplations, for, reservations being meted, to the afore category, upon, occurrence,

of, vacancies, against the afore post, are nomenclatured, as, Reservation of Vacancies in H.P. Technical Service, Rules, 1985 (in short â??Rules of

1985â??. During the currency, of, the petitioner serving under the respondent

board, the latter through an office order, made on 23.05.2001, and, as become(s) borne in Annexure P-2, hence promoted the writ petitioner. However, the afore office order carries, an, explicit recital, that, the making of the apposite order of promotion, vis-a-vis, the writ petitioner, and, also assignment of seniority to him, being subject, to the final decision to be made on OA No.3686 of 2000, titled as Er. Vinod Kumar Bisht and others vs. HPSEB and others. Thereafter, through an order made on 12.12.2019, and, as, borne in Annexure A-2, the respondent-board proceeded to demote the writ petitioner. The reason for the respondent board, hence, making the afore order of demotion, of the writ petitioner, is, encapsulated in the condition imposed in the order of promotion, as, made qua the petitioner, rather becoming fructified, inasmuch, as, upon, a decision being made by this Court, upon, CWP No. 488 of 2001, titled as V.K. Behal and others vs. State of H.P. & others. Furthermore, since therein, this Court had struck down the constitutional validity, of, Rule 5(1), of, the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972, rule whereof becomes extracted hereinafter:-

“Service rendered in the armed forces including the period spent on training prior to Commission in the case of Commissioner Officers, shall count, in full, towards seniority and fixation of pay under the State Government in the post of which he is first appointed against the vacancy reserved under Rule 3.”

(i) and with the verdict (supra) carrying an explicit expression, qua apposite therein(s) conferments, of, benefit(s) of computation(s), of, the, periods, of, rendition(s), of, service in the armed forces, towards seniority in apposite civil employment(s), upon, and, after superannuation(s), from, the armed forces, hence suffering from a stain, of, constitutional invalidity, excepting those armed forces personnel concerned, rather rendering service during emergency. The afore made verdict by this Court, has assumed finality, given SLP (Civil) No.8710 of 2009, titled as R. K. Barwal and others versus State of H.P. & others, as arose from a verdict rendered by this Court in CWP No. 488 of 2001, titled as V.K. Behal and others versus State of H.P. & others, becoming dismissed. Consequently, with the writ petitioner, receiving the benefit(s) of assignment(s) of seniority, and, also thereafter his

receiving, the, consequent therewith benefit, of, a conditional order, of promotion, pointedly, upon, anvil of the afore Rule 5(1) of the Demobilized

Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Non-Technical/Technical Services) Rules, 1972, (i) and,

reiteratedly with the afore Rule becoming struck down, (ii) thereupon, the ensuing legal effect thereof, is obviously, that the conditional order of

promotion as made, vis-a-vis, the writ petitioner, upon, an order adversarial to the writ petitioner, being made upon, the, thereat sub judice CWP,

necessarily suffering annulment, and, hence, prima facie the order of demotion, as made, upon, the writ petitioner does carry legal efficacy.

3. Be that as it may, since the rule carried in the afore lis does bear, an, almost aplomb similarity in phraseology, hence, with the apposite Rule

whereunders, the writ petitioner became assigned seniority, in the seniority list, and, also thereafter become conferred with a conditional order, of

promotion, (i) inasmuch, as, the governing Rule, vis-a-vis, the service of the writ petitioner, carrying the nomenclature, of, (Reservation of Vacancies

in the Himachal Pradesh State Technical Services) Rules, 1985, whereas, the apposite res-controversia, as, comprised in the afore lis, appertaining, to,

the validity, of, the apposite rule, wherein rather the word "non-technical" occurs. (ii) However, the afore minimal dis-similarity inter se the afore,

and, the extant rule, becomes subsumed, in, the hereat rule, excepting the afore minimal dissimilarity, in nomenclature, rather carrying alike

inclination(s), vis-a-vis, ex-servicemen/armed personnel, who thereafter become inducted in civil employment, (iii) inasmuch, as, the period of

rendition(s) of service by them, in the armed forces, being reckonable rather for the purpose(s) of assignment(s) of seniority to them, besides for

meteing promotion(s) to them, (iii) whereupon, the afore conclusive decision, made, upon, the vires, of, the afore rules, does hold clout even qua the

hereat lis, (iv) yet even the afore Rule, through carrying, a, language paramateria with the phraseology, of the apposite Rule, hence, struck down by

this Court in V.K. Behal's case (supra), also became meted a conclusive adjudication, through a verdict made, upon, CWP No.132 of 2010, titled as

Baljeet Singh & another vs. HPSEB & others. Even, in the verdict rendered, upon, Baljeet Singh's case (supra), this Court, on 30.12.2010, had made

an allusion, that, a paramateria lis, awaiting adjudication, by the Hon'ble Apex Court, and, also thereafter, upon, consent of the counsel appearing for

the contesting litigants, had proceeded to dispose of the afore writ petition, with a direction, upon, the respondents to take further appropriate action, however, subject to the out come of the SLP, as, emanated from a decision made by this Court, upon, V.K. Behal's case (supra). Necessarily, hence, despite no decision on merits or upon the vires of the afore rule being made by this Court, yet with the counsels appearing for the contesting litigants, agreeing to abide by the decision to be taken by the Hon'ble Apex Court, upon, the SLP, as arose therebefore, against a decision made by this Court, in V.K. Behal's case, hence, the conclusive, and, binding verdict, as, made by the Hon'ble Apex Court, upon, the SLP directed against the afore judgment, by the aggrieved, does become the governing rule, or the ratio decidendi hence, for also determining the lis at hand.

4. Be that as it may, the learned counsel appearing for the writ petitioner, has made a vigorous address, before this Court, that since the writ petitioner herein, was not joined as a party either in V.K. Behal's case, and, in Baljeet Singh's case, though he was, both a just and necessary party, and, thereupon, the afore verdicts not working as obstacles against him, in his yet proceeding to make an onslaught, upon, the conclusive, and, binding verdicts pronounced by the Apex Court in V.K. Behal's case (supra) (a) wherein, the apposite rule facilitating the assignments of seniority, to, those ex-servicemen, and, also allowing them to claim seniority, on anvil, of, a contemplation in the apposite rule, inasmuch, as, of, their previous service in the armed forces, being reckonable for the afore purpose(s), has been conclusively struck down, excepting, vis-a-vis, those armed forces' personnel concerned, who served during emergency. Strikingly, the writ petitioner does not come within the afore exception.

5. The afore contention, as raised before this Court, by the learned counsel for the writ petitioner, attempts to work against the principle of conclusivity assignable to the authoritative verdicts, hence, declaring the law on the lis concerned, and, as become rendered by the Hon'ble Apex Court, (a) and, also strives to belittle the ensuing therefrom effects, of, thereupon hence any aggrieved becoming estopped, to thereafter cast any challenge(s) thereons. Moreover, the afore striving, is, also an ill assay of the learned counsel, for the writ petitioner, to add to litigations, when otherwise they became finally settled, through, a conclusive, and, binding verdict, becoming made, by the Hon'ble Apex Court. Nonetheless, the vigour of the afore

espousal, is, to be tested.

6. The salient principle for testing the vigour of the afore espousal, is, rested upon, (i) whether the afore verdict assumes the traits of a judgment in rem or a judgment in personam. The salient canon, of a verdict of court of law being classifiable, to be a judgment in personam, is, whether a litigation inter se the litigants concerned, involves their personal rights or whether their inter se litigation, is without any challenge being thrown to the constitutional vires or constitutional validity hence of any rules or norm(s), as becomes carried in the relevant statutory rules or in the statute concerned. However, in case, the vires of any apposite rules becomes challenged, and, the apposite challenge becomes accepted by a conclusive, and, a binding verdict rendered thereons, by courts of law, (ii) thereupon, the lis involving the afore res controversia becomes a lis in rem, and, also any verdict rendered thereupons, become a verdict or a judgment in rem, (iii) and, the apt legal sequels thereof, are that the verdict hence becoming binding, upon, all the apposite affected persons, (iv) and, thereupon, there being no necessity of causing any impleadment(s), of, the entire class appertaining to the apposite affected persons, nor hence any non joining of all the affected persons, and, or of the aggrieved concerned, from a judgment in rem, rendering undermined, the, binding, and, conclusive effect(s) thereof. Contrarily, if the afore, is not the genre, of, the res-controversia, in any litigation, involving purely personal rights, thereupon, the latter becomes a litigation in personam, and, the verdict rendered thereons, become a judgment in personam. However, in case, the person or persons affected by the controversy embroiled in an in personam litigation, rather are omitted to be joined therein, despite theirs being a necessary or a proper party, thereupon, the aggrieved may hold a valid grouse for making an onslaught, vis-a-vis, the validity of any verdict made upon, the afore class of litigation. Significantly, the ground, of, a valid onslaught being cast, upon, a judgment in personam, is, comprised, in, its being procured by fraud, collusion, or mis-representation or upon, despite knowledge, vis-a-vis, the necessity, of, impleadment of other aggrieved therefrom, theirs being deliberately omitted to be impleaded therein(s).

7. Significantly, hereat, as, aforestated, the, constitutional validity of the apposite rule, became set aside or annulled. Moreover, the order of promotion,

does carry, an explicit expression, vis-a-vis, it being a conditional order of promotion, inasmuch, as, its continuity or longevity hence being subject to the outcome of a decision, made, upon, V.K. Behal's case. Further thereonwards, since the order made in Baljeet Singh's case (supra), also make a specific allusion qua assignment(s) of seniority, and, consequent therewith benefit, of promotion(s), to be meted to ex-servicemen, on anvil, of Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Technical Services) Rules, 1985, rather being tentative, and, also being subject, to, the decision in V. K. Behal's case, (i) especially, given the identity of phraseology hence carried in the Rules appertaining to the lis in V.K. Behal's case, and, to the lis in Baljeet Singh's case, thereupon, the writ petitioner is to be concluded to be holding, a, complete enlightenment, and, awareness of the pendency, of, V.K. Behal's case, and, of Baljeet Singh's case. Importantly also when the affected persons in both the afore litigations rather belonged to his genre, and, with occurrences, of, an acid contest, on his behalf or in a representative capacity qua the interest(s), of, all the affected litigants, from the decision of courts of law, rather making palpable emergences, (ii) thereupon, yet his failing to seek his impleadment in V.K. Behal's case or in SLP concerned, as, arose before the Hon'ble Apex Court, against a verdict made by this Court in CWP No. 488 of 2001, titled as V.K. Behal and others vs. State of H.P. and others, (iii) does carry an inevitable sequel qua at this belated stage, the writ petitioner, merely for his being not impleaded in the afore case, hence, holding no valid ground, to, benumb the principle, of, binding, and, conclusive effects amenable, to, be hence, bestowed, upon, declarations of law, as made by the Hon'ble Apex Court in SLP(Civil) No. 8710 of 2009, titled as R.K. Barwal and others vs. State of H.P. & others, (iv) wherethrough Rule 5(1), become annulled, and, consequently, the writ petitioner, becomes estopped, on the afore ground to challenge or re-agitate the afore completely settled issue. The sufficiency of representation of his interest in the afore litigation, also completely suppresses, his challenge, as, made thereagainst, through his filing the extant writ petition, more so, when he was made aware, through an explicit expression, carried in his conditional promotional order, that the latter would be subject, to, the making of a final decision, upon, V.K. Behal's case.

8. Moreover, the declaration of law(s), as, made by the Hon'ble Apex Court, in, a judgment in rem, and, when the apposite interests in litigation(s), are, protected and watched, by litigants, who don a mantle alike the apposite writ petitioner(s), cannot be either attempted to be slighted, in the manner, as attempted, to be done, by the writ petitioner.

9. A pointed expression of law, occurs, in, a judgement rendered by the Hon'ble Apex Court, in a case titled as Government of Andhra Pradesh vs. G.

Jaya Prasad Rao, reported in (2007)¹¹ SCC 528, (i) wherein it has become firmly postulated, that where the vires of any rule, is under challenge,

thereupon, it is not necessary to implead all the persons, likely to be affected, by the success or failure of the apposite challenge, as, it is not possible to

identify the entire class or genre, of the apposite affected persons, from the success or failure of the afore challenge. The validity of a rule when

becomes the subject matter of the lis, thereupon, upon its being declared to be valid or invalid, the natural legal consequences, rather automatically

ensue, upon, all affected, hence, rendering unnecessary, the joinder, in the array of the lis concerned, rather of all the affected persons. In addition, the

effect of annulment of the apposite rules through a conclusive, and, binding verdict becoming pronounced, upon, the SLP, as, arose, before the Hon'ble

Apex Court, against the verdict made by the Hon'ble Division Bench of this Court, in V.K. Behal's case (supra), is qua, the afore declaration of law,

carrying the completest perennial binding effect, and, the further consequence, of, the therein declaration of law, is qua, its assuming validity from the

inception, of, the recouring, for, the rule being declared invalid. The afore expostulation finds vindication, from a verdict of the Hon'ble Apex Court,

rendered in a case titled as Suresh Chandra Verma (Dr.) vs. Chancellor, Nagpur University, reported in (1990)⁴ SCC 55. The consequential effects

thereof are that neither non impleadment of the petitioner nor any purported consequential infringement, being made, of the rules of natural justice,

more specifically of the rule of audi alteram partem, not causing any obstruction nor stopping the clout, of the declaration of law, appertaining to

annulment, of, the apposite rule, whereunders the writ petitioner, was granted, a, conditional order of promotion, with an explicit expression, of, the rule

whereunder, he became promoted, being subject matter of challenge in V.K. Behal's case, and, his promotion being subject to the final out come

thereof.

10. In summa, the conclusive declaration of law, on the apposite subject matter, is binding upon this Court, and, is also binding upon the contesting respondents concerned, and, adherence as meted thereto cannot be invalidated nor can be irrevered, as, thereupon, the Majesty, of, declaration(s) of law, as, made by the Hon'ble Apex Court, would become untenably undermined.

11. For the fore going reason, the writ petition bearing CWP No. 1735 of 2020 is dismissed, whereas, CWPOA No. 6538 of 2020 is allowed. All pending applications also stand disposed of.