
(2010) 05 SHI CK 0139
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 5200 of 2008

Rajni Sharma

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Citation : (2010) 2 ShimLC 155

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that the petitioner was appointed as Lecturer in the subject of Political Science on 10.8.1990 on stop gap arrangement by a duly constituted Selection Committee. Petitioner's name was sponsored by the Employment Exchange. She obtained M. Phil degree in the month of April, 1991 vide Annexure A-2. Respondent-State vide office order dated 19.7.1998 has regularized the services of the petitioner as Lecturer (School Cadre) in the pay scale of Rs. 1800-3200. She was to be posted at Government Senior Secondary School, Chakloo (Chamba). She approached the learned Himachal Pradesh Administrative Tribunal by way of present petition. The learned Himachal Pradesh Administrative Tribunal passed the following interim order on 24.8.1998:

Pending admission. The learned Additional Advocate General waives service of notice on behalf of the respondents. Reply within four weeks. List thereafter.

In the meanwhile the applicant is allowed to work on the post and with the salary which he was working before the issuance of impugned order Annexure A-3 dated July 19, 1998. The case of the applicant is that he was appointed on ad hoc basis as a Lecturer of College and fulfilled all the qualifications whereas now he has been vide impugned order regularized as Lecturer School Cadre.

2. Petitioner is working as Lecturer (College Cadre) on the basis of interim order

dated 24.8.1998 passed by the learned Himachal Pradesh Administrative Tribunal.

3. Mr. D.P. Gupta, Advocate has strenuously argued that his client was required to be regularized as Lecturer (College Cadre) and not Lecturer (School Cadre) vide office order dated 19.7.1998. He then contended that his client was fully eligible and qualified as per the Recruitment and Promotion Rules in vogue at the time of her appointment, i.e. 10.8.1990. He lastly contended that his client has obtained degree of M. Phil in the month of April, 1991.

4. Mr. R.K. Sharma, learned Senior Additional Advocate General has vehemently argued that the petitioner was not qualified as per new Recruitment and Promotion Rules published on 22.12.1994 and in these circumstances, petitioner could only be regularized as Lecturer (School Cadre) and not Lecturer (College Cadre).

5. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

6. It will be apt at this stage to reproduce the relevant extract of the Rules called "the Himachal Pradesh Education Services (Class-1) Gazetted (College Cadre), Recruitment and Promotion (Third Amendment) Rules, 1986. Amendment of column 7 of the same reads thus:

Essential

(a) A good academic record with at least 50% marks of above in Master's Degree in the relevant subject from an Indian University or an equivalent degree from a foreign University, and

(b) An M. Phil, degree or a recognized degree beyond Master's level:

Provided that if a candidate possessing the qualifications as at (b) above is not available or not considered suitable, the Government may, on the recommendations of the Commission, appoint a person possessing a good academic record on the condition that he will have to obtain an M. Phil Degree or a recognized degree beyond the Master's level within five years of his appointment failing which he will not be able to earn future increments till he obtains that degree.

7. A bare perusal of these rules reveals that a candidate, with a good academic record with at least 50% marks or above in Master's degree in the relevant subject and M. Phil degree or a recognized degree beyond Master's level, was eligible to be appointed to the post of Lecturer (College Cadre). It is evident from the language employed in proviso appended to these Rules that if a candidate possessing the qualifications as per (b) was not available or not considered suitable, the State Government on the recommendations of the Commission could appoint a person possessing a good academic record on the condition that he will obtain M. Phil degree or recognized degree beyond the Master's level within five years of his appointment, failing which he was not entitled to earn

future increments till he obtained the degree.

8. In the instant case, the petitioner was appointed after her suitability was adjudged by the Selection Committee pursuant to interview on 10.8.1990. She has secured 52% marks in post graduation. She has obtained M. Phil degree in the month of April, 1991. The minimum marks required in post graduation with good academic record, as noticed above, was 50%. Admittedly, she had not done M. Phil at the time of her appointment. However, as per proviso appended, as mentioned hereinabove, petitioner could be appointed with a condition to obtain M. Phil Degree within a period of five years, failing which she could not earn future increments till she obtained the degree. It is thus evident that a candidate could obtain degree of M. Phil within a period of five years, failing which only his/her increments were to be stopped till he/she obtained the degree in M. Phil. In other words, possessing of M. Phil degree was not a sine qua non in case of the petitioner, who was possessing good academic record and her case stood recommended by the duly constituted Selection Committee. It will also be pertinent to note at this stage that the petitioner has obtained M. Phil, degree within a period of eight months after her appointment. The petitioner has been offered the post of Lecturer (School Cadre) only on the ground that she did not possess minimum educational qualifications prescribed under the Recruitment and Promotion Rules in force at the time of her appointment. The petitioner was appointed on 10.8.1990 and was possessing the minimum educational qualification as prescribed by the amendment carried in the year 1986 in the essential qualifications prescribed for the post of Lecturer (College Cadre).

9. Mr. R.K. Sharma has also argued that the petitioner did not fulfill the minimum educational qualification prescribed in the Recruitment and Promotion Rules at the time of regularization notified on 22.12.1994. There is fallacy in the arguments advanced by Mr. R.K. Sharma. The minimum educational qualification was required to be seen at the time when the incumbents were appointed on ad hoc/tenure/stop gap basis. The petitioner had completed three years of service on or before 31.3.1994 and her case was required to be considered for regularization against the post of Lecturer (College Cadre) and not Lecturer (School Cadre).

10. The petitioner started teaching as Lecturer (College Cadre) in the subject of Political Science with effect from 10.8.1990. She was regularized as Lecturer (School Cadre) on 19.7.1998 instead of Lecturer (College Cadre). Learned Himachal Pradesh Administrative Tribunal granted interim order on 24.8.1998 and as per version of Mr. D.P. Gupta his client is still working in the same capacity. It is thus evident that the petitioner had been working uninterruptedly as Lecturer (College Cadre) in the subject of Political Science with effect from 10.8.1990 till date. She has worked for 20 years as Lecturer (College Cadre).

11. Their Lordships of the Hon'ble Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, have held that practical experience would always aid the person to effectively discharge the duties and is a sure

guide to assess the suitability. Their Lordships have further held that the initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service and once the appointments are made as daily rated workers and they are allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification. Their Lordships have held as under:

6. The main controversy centres round the question whether some, petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial-entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short periods created by the respondent. In the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years, service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rupees 10,000/- in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs.

12. The same principle is reiterated by their Lordships of the Hon'ble Supreme Court in B.N. Saxena Vs. New Delhi Municipal Committee and others, Their Lordships have held that a Senior Draftsman not possessing any diploma but having six years experience, qualified under the second alternative of the revised

rules. Their Lordships have further held that the experience gained is itself a qualification. Their Lordships have held as under:

7. The second limb of the rule was evidently, to benefit all those persons who have gained sufficient experience as Senior and Junior Draftsmen without possessing any qualification. Experience gained for a considerable length of time is itself a qualification (See the observation in *State of U.P. and Others Vs. J.P. Chaurasia and Others*, It would be unreasonable to hold that in addition to this considerable experience, one must also have the diploma qualification prescribed under the first part. It could not have been the intention of the rule making authority that persons who were designated as Senior Draftsmen without any Diploma qualification should acquire such diploma qualification for further promotion. Such a view would not be consistent and coherent with the revised rule and its object. We have no doubt that the second limb of the revised rule is independent of the first. The High Court seems to have erred in this aspect of the matter.

13. In *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, their Lordships of the Hon"ble Supreme Court have held that the daily rated workers who had been working on the posts for a long number of years without complaint is a ground by itself for the relaxation of the eligibility condition. Their Lordships have held as under:

"28. We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence Clause 1 (a) need modification to this effect.

30. Thus in view of their long experience on the fact of this case and for the concerned posts the prescribed qualification, if any, should not come in the way of their regularisation. Clause 1(b) provides for the regularisation of daily wagers in a phased manner to the extent of available sanctioned post.

14. Accordingly, in view of the observations made hereinabove and the definitive law laid down by their Lordships of the Hon"ble Supreme Court, the petition is allowed. Annexure A-3 dated 19.7.1998, qua the petitioner, is quashed and set aside. Respondents are directed to consider the case of the petitioner for regularization as Lecturer (College Cadre) from the due date with all the consequential benefits. Needful be done within a period of ten weeks from today. No costs.