
(1994) 11 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1037 of 1993

Ramesh Chander

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 23-11-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1), 19

Citation : (1995) 1 ShimLC 470

Hon'ble Judges : S.N. Phukan, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : M. S. Chandel, for the Appellant; Om Parkash, A.A.G. for Respondent No. 1, D.K. Khanna, for Respondent No 2 and S.S. Kanwar, for Respondent No. 3., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—This writ petition has been filed by Shri Ramesh Chander against the State of Himachal Pradesh through the Secretary Education to the Government of Himachal Pradesh as Respondent No. 1, H.P. Public Service Commission Respondent No. 2 and subsequently one Narendra Nath was added as Respondent No. 3. The Petitioner has prayed that the selection and recommendations made by Respondent No. 2 for appointment of Lecturer in Commerce from the category of dependents wards of Ex-servicemen may be quashed. The Petitioner has also made other prayers which are not necessary at this stage to quote.

2. Briefly stated the facts are as follows: The writ Petitioner who has obtained M. Phil degree in Commerce working was as a Lecturer in Government Senior Secondary School, Lathiani on temporary basis under the centrally sponsored scheme. On 19-1-1992 Respondent No. 2 issued an advertisement calling for applications for eight posts of Lecturers in Commerce College. Out of eight posts four posts remained for general category and one each for Scheduled Caste, Scheduled Tribe, Backward Classes and Ex-Servicemen/their Wards. The

Petitioner applied for the post, appeared in the written examination on 11-7-1992 and duly qualified. Thereafter he was called for interview and he appeared on 25-9-1992, but he was not selected. Thereafter on enquiry he came to know that he was considered for the appointment in the general category and not under the category of Ex-Servicemen/their wards. It may be stated that the Petitioner claims to be ward of Ex-Serviceman. As the Petitioner was denied appointment as a Ward of Ex-Serviceman, he approached the Public Service Commission and submitted a representation. However, his application was rejected and in his place Respondent No. 3 was appointed in his category. Therefore, the present petition has been filed.

3. Only Respondents No. 2 and 3 have filed reply affidavits.

4. In the reply affidavit filed on behalf of Respondent No. 2, a preliminary point has been taken that the present petition is barred under provisions of the Administrative Tribunal Act, 1985. It may be stated that it is admitted that the advertisement was made for eight posts of Lecturers in Commerce College on 9-1-1992. One post was reserved for each of the categories including ex-servicemen/their wards, failing which for dependent wards of ex-servicemen, as stated by the Petitioner. It has also been stated that in the absence of suitable candidates from ex-servicemen or their wards, the post will come under the general category. It is stated that 105 candidates applied for the posts and there was a written test. Out of that five persons claimed as dependent wards of ex-servicemen. But the Commission found that not a single person was eligible for appointment under the above category. It has also been stated that the Petitioner is working in a tenure post and, therefore he was not considered as dependent ward of ex-serviceman and the Petitioner was accordingly informed. According to Respondent No. 2, thereafter the Petitioner desired to be considered against the general category post and the Petitioner duly qualified for the same and he came within the general category candidates to be called for interview. He was accordingly interviewed on 25-9-1992 but he was not selected on the basis of merit. Out of five dependent wards of ex-servicemen it was found on the date of interview on 22-9-1992 that two of them were working in the H.P. State Co-operative Bank and the remaining three were working on tenure/volunteer/stop gap basis as Lecturers. Therefore they were informed accordingly that they were not dependents of ex-servicemen and therefore, no interview was held. However, the above five candidates made a representation to the Commission and the Commission took up the matter with the State Government. The Government by letter dated 7-10-1992 vide Annexure R-2/B to the counter clarified the matter and we put below relevant portion of the clarification mentioned in the said letter. Point No. (ii) for clarification sought for by the Public Service Commission and reply run as follows:

Whether the sons/daughters of ex- Yes, because the person servicemen who are not employed employed on volunteer themselves against reserved posts, contract/tenure/daily employed on ad hoc basis or wages cannot be automa

volunteer basis or contract basis -tically employed on or tenure basis or daily wages can regular basis. be considered for the reserved posts carried forward for the fifth year.

It was also stated in para 2 of the said letter that the decision conveyed in the said letter would be applicable from the date of issue of the letter and the selections already made or the matter otherwise decided will not be reopened. The said letter is at Annexure R-2/B.

5. Respondent No. 2 in the reply has stated that as the representation of the five candidates belonging to the above category of ex-servicemen or their dependents was still pending, the commission called four persons for interview which was held on 26-5-1993 as one candidate was found ineligible as he was regularly working in the Himachal Pradesh State Co-operative Bank. After the interview on the basis of merit, Narender Nath, Respondent No. 3 was selected and he has also been appointed by the State Government. Regarding the writ Petitioner, the Respondent No. 2 has stated that he was duly interviewed in the general category and was not selected. As according to the Government instructions the above instructions/clarification would be valid from the date of the issue of the letter, the case of the writ Petitioner could not be considered as his case was closed and, therefore, the Petitioner could not be considered for appointment in the above category of children of ex-servicemen.

6. In reply affidavit of Respondent No. 3 it has been stated that the writ Petitioner came to be a candidate under the general category and accordingly he was interviewed under the said category. It has been urged that now he cannot turn round and claim the post as a ward of ex-serviceman. From the affidavit it is found that subsequently the writ Petitioner has been appointed on permanently regular basis as Lecturer in Commerce School in the Government Senior Secondary School, Kullu. Therefore, the Petitioner now cannot claim the benefit as he is permanently employed. Regarding Respondent No. 3 it has been stated that he was not allowed to join the post though he was selected.

7. As per directions of this Court the Director of Education, Himachal Pradesh, has filed an affidavit wherein it has been stated that on the recommendation of the Public Service Commission, Respondent No. 3 Narender Nath was duly appointed and the order was issued on 7-8-1993, but it was withdrawn telegraphically in view of the order of this Court.

We have heard Mr. M.S. Chandel, learned Counsel for the Petitioner and Shri D.K. Khanna, learned Counsel for Respondent No. 2 and Shri S.S. Kanwar for Respondent No. 3. We have also heard Pt. Om Prakash, Addl. Advocate General for the State.

8. Now let us take up the preliminary objection as to whether the present dispute is within the jurisdiction of this Court or it should go back to the State Administrative Tribunal constituted under the Administrative Tribunals Act, 1985. In support of the contention that this Court has the jurisdiction learned Counsel

for the Petitioner has placed before us two decisions. One is a decision of the Full Bench of this High Court in *Padma Sharma and Ors. v. State of H.P. and Ors.* 1990 (1) Shim LC 1, and the other decision of the Madras High Court in *The Chairman Railway Recruitment Board, Madras v. S. Ruban Peter and Ors.* 1990 Lab IC 1759. In *S. Suban Peter (supra)* a large number of applications were received by the Railway Recruitment Board, Madras for appointment to non-technical popular categories pursuant to advertisement notice No. 1/87. There was a written examination followed by an oral test. Before the oral test a news appeared in the newspaper alleging that there has been leakage of question paper. In the interview the Board found that the persons obtaining highest marks could not even get one digit mark. It was also found that the questions which were answered by the candidates when put to them in the oral examination, they gave wrong answers. The apprehension of leakage of the question paper was confirmed and therefore, the Board issued a notice calling the candidates for a second written test. Being aggrieved, the High Court was approached. Before the High Court a similar question arose, namely, whether that dispute would come within the jurisdiction of the High Court or it should go back to the Central Administrative Tribunal constituted under the above Act. The High Court took into consideration the historical background under which the Act was passed and the Central Administrative Tribunal established. The High Court also noticed the constitutional provisions and also the decisions of the apex court in *S.P. Sampath Kumar v. Union of India* AIR 1987 SC 386. After taking into consideration the provisions of Section 14(1)(a) of the Administrative Tribunals Act, 1985 and also Section 19 of the said Act. Division Bench of the High Court held that the expression "recruitment and matters concerning recruitment" occurring in Section 14(1)(a) of the Act would imply that "in service" candidates can raise dispute before the Tribunal even in respect of matters relating to recruitment but no person who is not "in service" can approach the Tribunal for redressal of any grievance. It was also held that the public interest requires administration to maintain smoothly and efficiently, but the jurisdiction of the Tribunal cannot be extended to adjudicate upon disputes in public interest, since the jurisdiction, authority and powers conferred upon the Tribunal are only to be exercised as contemplated by virtue of the Act.

9. While deciding the above question, the Madras High Court also took note of the Full Bench of this Court in *Padma Sharma (supra)* and quoted with approval relevant paragraph of the judgment. We are in respectful agreement with the law laid down by the Madras High Court and we hold that a person who is in service can only approach the Tribunal for redressal of any grievance and that a person who is not in service cannot approach the Tribunal as the Tribunal has no such jurisdiction if we read Sections 14 and 19 along with Form "I" of this Act.

10. In view of what has been stated above, we hold that the present dispute clearly comes within the writ jurisdiction of this Court inasmuch as the Petitioner and Respondent No. 3 are not in service.

11. Coming to the facts of the case that in view of the clarification given by the Government by letter dated 7-6-1993 vide Annexure R-2/B to the reply affidavit of Respondent No. 2, the case of the Petitioner has to be considered by the Public Service Commission as he was holding only a tenure post. According to the learned Counsel for the Public Service Commission his case was not considered as it was closed earlier and in the letter of the Government it was specifically stated that selections already made or matters otherwise decided would not be reopened.

12. After receipt of the above letter the cases of five candidates were duly considered by the Public Service Commission but not the case of the Petitioner. As in respect of the above five persons we may state here that their cases were closed earlier but on making a representation by the above persons the matter was referred back to the Government. Therefore, though the Petitioner's case was closed earlier his case ought to have been considered by the Public Service Commission as per the clarification of the Government given in the above letter dated 7-6-1993. We, therefore, hold that "the Public Service Commission, Respondent No. 2, erred in law in not considering the case of the present Petitioner in the light of the above letter of the Government.

13. It is a settled law that this Court can also take notice of the subsequent events. Respondent No. 3 has categorically stated in the counter that at present the Petitioner is holding a regular post whereas Respondent No. 3 is still holding a temporary post. Therefore, even if we set it aside and order the Commission to reconsider the case of the Petitioner along with others, the Petitioner will not be entitled to get any relief in view of the above changed circumstances, namely, the Petitioner is permanently employed as a Lecturer in Commerce in a school cadre whereas the Respondent No. 3 is still working on stop-gap basis in Government Senior Secondary School.

14. Learned Counsel for the Petitioner has urged that the present post in question is in a College whereas the writ Petitioner is only holding a permanent post in a school cadre. Therefore, the Petitioner is entitled to be considered for the post of a Lecturer in a College. We are of the opinion that the concession given for the above category is for initial appointment and not for improving the service prospects in his career. Therefore, we hold that the case of the Petitioner cannot be reconsidered only for the purpose of service prospects as he is already a permanent employee.

15. For the reasons stated above, we do not find any merit in the present writ petition and it is accordingly dismissed. Costs on parties.