

(2012) 09 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : CWP No. 846 of 2011-A

Ravi Palsra

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Citation : (2012) 09 SHI CK 0020

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : Lokender Paul Thakur, for the Appellant; Rajinder Dogra, Additional Advocate General, for the Respondent

Judgement

Justice Sanjay Karol, J.—On 31st November, 2002, petitioner Shri Ravi Kumar Palsra was appointed as a Lecturer in Commerce by M.S.C. Memorial Degree College, Thural. His appointment was duly approved by the Himachal Pradesh University. It is not in dispute that the appointment was under the Self Financing Scheme. It is also not in dispute that at the time of engagement of petitioner, said Institution was not receiving the grant-in-aid in terms of the Policy so framed by the State. This Institution was subsequently taken over by the State. This fact is also not in dispute. However, petitioner's services were not taken over, despite the fact that since the time of his engagement, he uninterruptedly continued to discharge his duties to the satisfaction of the management. Petitioner requested the respondents to take over his services which request was turned down vide impugned order dated 7.7.2010 (Annexure P-10). The rejection primarily is on the ground that teaching and non-teaching staff employed on self finance basis, by the erstwhile management of the Institute, including the petitioner, was not taken over by the Government for the reason that casual appointments were made by the Institution without following the due procedure; the employees were not covered under 95% grant-in-aid Policy framed by the Government; and the employees were engaged in excess of norms of strength of College and were paid fixed salary/consolidated amount. This order

has been assailed by the petitioner. Notice in the petition was issued and Mr. Rajinder Dogra, learned Advocate General has entered appearance on behalf of all the respondents. Though, reply was filed only on behalf of respondents No. 1 and 2. However, the same is adopted on behalf of respondent No. 3.

2. In my considered view, the stand taken by the respondents is totally untenable in law. The grounds of rejection are not personal to the petitioner. Petitioner's engagement by the erstwhile management of the Institution was only after compliance of due procedure. This fact is evident from the approval so accorded by Vice Chancellor of the Himachal Pradesh University. Annexure P-5 is on record to this effect. Except for bald assertion, there is nothing on record to show that the appointment was in violation of any procedure laid down by the State. It is also not shown as to how the petitioner's engagement/employment was in excess of the norms of strength of the cadre of the teachers in the College.

3. Further in my considered view, respondents have taken a contrary stand before this Court. Petitioner has placed on record documents (Annexure P11 to P-17) to show that the State itself has taken over services of such of those employees who were appointed under the Self Financing Scheme.

4. Consequently, petition needs to be allowed. The State cannot take a contradictory stand. There cannot be any pick and choose while according benefits to similarly situated persons. All such persons have to be treated with equal hand and given equal treatment. Consequently, impugned order dated 7.7.2010 is quashed. As such, respondents are directed to take steps for taking over the services of petitioner, in accordance with law, w.e.f. 9th November, 2005, the date on which the Institution in question was taken over by the Government. All steps be positively taken, in the affirmative, within a period of three months from the date of production of certified copy of the order. Needless to add, all consequential benefits flowing as a result of such action shall also be taken over within the aforesaid period. Monetary benefits, if any, as may be found due and admissible, shall be disbursed to the petitioner within the aforesaid period, failing which, then thereafter, petitioner shall be entitled to interest thereupon @ 9% per annum, which shall be personally recovered from the erring official(s).

With the aforesaid observations, present petition stands disposed of, so also the pending application(s), if any.