
(2009) 08 SHI CK 0055
In the High Court Of Himachal Pradesh

Ravinder Singh	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Citation : (2010) 1 ShimLC 138

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—By means of this writ petition, the petitioner has challenged the order of the Committee dated 30.7.2008 recommending the cancellation of the appointment of the petitioner as PET in Government Senior Secondary School, Bhaloon on PTA basis and also the order dated 1.9.2008 passed by the Deputy Commissioner rejecting the appeal of the present petitioner.

2. Briefly stated, the facts of the case are that the petitioner was appointed as PET on PTA basis in Government Senior Secondary School, Bhaloon on 20.9.2007.

3. It would also be pertinent to mention that hundreds of appointments of PTA teachers were challenged before the erstwhile State Administrative Tribunal as well as this Court. It was held that the Tribunal had no jurisdiction to entertain such a dispute. A large number of writ petitions relating to PTA Teachers were pending before this Court. Therefore, the State decided to constitute certain Committees to look into the matter and decide the question as to whether the appointments made by the Parents Teachers Association were on the basis of merit or not. Notification constituting the committees to inquire into the cases of irregularly appointed teachers by the Parents Teachers Association was issued on 19th April, 2008. The State also formulated fresh criteria in terms of the directions of this Court on 27th May, 2008.

4. For the first time in June 2008 i.e. almost about one year after the selection of the petitioner the respondent No. 7 made a complaint to the respondent No. 4

that merit had been overlooked by the PTA while appointing the petitioner.

5. It would be pertinent to mention that the Committee headed by the respondent No. 3 does not appear to have issued any notice to the petitioner in respect of the complaint made to him. This is apparent from a perusal of the order of the Committee, which reads as follows:

Today on dated 30.7.2008 on the basis of notification No. EDN-A (Kha (7)3/2006 dated 19.4.2008, issued by the State of H.P. the Committee constituted for hearing the appointments made by the PTA held its sitting at Government Senior Secondary School, Summerkot, whereby the SDO (Civil) Rohru, Chairman, Principal, Govt. Sr. Section School Bhaloon and P.E.T. Government Middle School Shalawat, Member, were present to look into the complaint made against the P.E.T appointed by P.T.A. at Government Senior Secondary School Bhaloon. The complainant is present. After going through the whole record, it was found that only the PTA President has signed the interview sheet which does not seem to be justified. The distribution of marks allotted for educational qualification is not as per the guidelines issued vide Notification of the Government No. EDN-A-Kha(7) 3/2006 dated 27.5.2008. Therefore, recommendation to cancel the selection is made.

6. A perusal of the aforesaid order shows that only two grounds weighed with the Committee. One that only the PTA President has signed the interview sheet and secondly that the distribution of marks is not as per the guidelines issued vide notification dated 27.5.2008.

7. This Court has consistently held that all appointments by the PTA should be made on objective basis and merit should not be ignored. The PTA appoints teachers who are to teach the students who are the future of the country. Therefore, we felt that the appointments of teachers should be made on totally objective basis and the most meritorious teachers only should be appointed even on PTA basis. We quashed selection(s) made by the PTA(s) which were not made on objective basis. Having held so, if the PTA has followed a rational and objective criteria the Committee cannot sit in judgment over the decision of the PTA and cannot retrospectively apply the guidelines and criteria laid down vide notification dated 27th May, 2008, especially to those posts selection whereof was made on the basis of interviews held much prior to issuance of such notification.

8. The notification, dated 27th May, 2008 talks about the committees constituted in April, 2008. It provides that all complaints should be made latest by 20th June, 2008. It lays down the parameters which the Committees can inquire into. These are: Adequate publicity not made; Interviews not held; All the eligible applicants not invited for interview; Merit ignored; and or any other issue brought to the notice of the Committee. The notification also lays down that the complaints against ignoring of the merit shall be evaluated based on the evaluation criteria in Annexure-A attached to the notification. We are of the

considered view that this criteria cannot be applied retrospectively. If the PTA has followed a rational criteria this substituted criteria cannot be applied retrospectively to cases where interviews were held and selections made even before this criteria had been thought about by any person. It is a well settled principle of law that the State by executive instructions cannot take away the vested right of any person with retrospective effect. We may make it clear that we are not saying that if the PTA has not at all followed any objective criteria and has totally ignored merit, the Committee should not interfere. If, however, the PTA has followed some reasonable criteria then the fresh thought of criteria cannot be applied to set aside a valid selection.

9. Therefore, the criteria laid down in the notification dated 27.5.2008 could not have been applied retrospectively.

10. As far as the first point is concerned that the interview sheet was signed only by the PTA President, this matter should not have been decided at the back of the petitioner. One of the very basic premises of our jurisprudence is that no man should be condemned unheard. A right of hearing is one of the intrinsic principles which runs through our jurisprudence. It is one of the basic tenets of our judicial system. We expect that officers of the level of Deputy Commissioner and Divisional Commissioner who regularly discharge judicial and quasi judicial functions must be aware of this basic principle of law.

11. The principle of audi alterant partem, i.e. a person affected by a decision has a right to be heard is by now, too well an established legal principle to brook any challenge. The person against whom an action is taken must have a fair chance of presenting his side of the case before the concerned authority and persuading it that the grounds on which action is proposed to be taken against him are either non-existence or do not justify the action. This principle of natural justice has by now been extended even to quasi judicial and administrative decision in a large number of cases. It is the first principle of civilized jurisprudence that a person against whom any action is sought to be taken or whose rights or interests are being affected should be given a reasonable opportunity to defend himself. This principle has been totally ignored in the present case.

12. In view of the above discussion, we set aside and quash the orders of the Deputy Commissioner as well as the order of the Committee and hold that the criteria laid down cannot be retrospectively applied. However, the Committee after giving adequate opportunity of hearing to the petitioner as well as the respondent No. 7 can look into the matter and decide whether the appointment of the petitioner was valid or not. The Committee, while deciding the issue, will keep into consideration the observations made by us here-in-above. The petitioner be allowed to continue as PTA in Government Senior Secondary School, Bhaloon, till such inquiry is completed in accordance with law.

13. The writ petition is disposed of in the aforesaid terms. No order as to costs.