
(2005) 08 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : C.W.P. 1090 of 2004

Renu Bala

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 16-08-2005

Acts Referred:

Citation : (2006) 1 ShimLC 21

Hon'ble Judges : K.C. Sood, J;A.K. Goel, J

Bench : Division Bench

Advocate : Rakesh Dogra, for the Appellant; M.S. Chandel, General and Ashutosh Burathoki, A.A.G., for Respondents 1 to 4 and R.S. Gautam, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—Petitioner is aggrieved from the order dated 13.10.2004, passed in Original Application (OA) No. 3567 of 2003. By means of impugned order appointment of the petitioner as Primary Assistant Teacher, in Government Primary School, Parwadi under Gram Panchayat Shilly, Banjar, District Kullu, was quashed and set aside.

Petitioner was arrayed as respondent No. 6 in this OA and order impugned before the Tribunal was Annexure A-6.

2. Facts set out by respondent No. 6 before the Tribunal were, that petitioner was not a resident of the Gram Panchayat where the school in question was situate and thus her selection was contrary to the Scheme for recruiting such teachers formulated by the State of H.P. Further case set out by respondent No. 6 was that petitioner is residing with her father at Kalka, where he was a registered voter and was having his ration card also. On these grounds, she had challenged the petitioner's selection.

3. When official respondents were put to notice during the course of proceedings before the Tribunal, their stand was as under :

3. That the present original application filed by the applicant is not maintainable, because as per the information received from the respondent No. 4 Block Primary Education Officer, Banjar, District Kullu the respondent No. 6 Kumari Renu Bala was declared selected as Primary Assistant Teacher for Government Primary School Parwadi as per the result declared on 5.12.2003, which is clear from the Annexure A-6 as annexed by the applicant with the present original application. And the selection of the applicant has been made on the basis of merit. Therefore, the contention of the applicant is not admitted, that the result of the Primary Assistant Teacher declared on 5.12.2003 is illegal and wrong.

4 to 6 (i) to (x) xxx xxx xxx

(xi) That this para is not admitted, because the respondent No. 6 Renu Bala is permanent resident of village Garuli which falls in Shilly Panchayat, which is clear from the copy of the bonafide Himachali certificate, caste certificate and Kisan pass book. It is further submitted that as per the information received from the respondent No. 4 Block Primary Education Officer, Banjar that father of the applicant is presently serving in Haryana. Therefore contention of the applicant is totally wrong, that the respondent No. 6 is not the bona fide Himachali.

4. After hearing the parties, the impugned order was passed. Hence this petition.

5. In support of her claim, petitioner has placed on record photostat copy of the Himachal Pradesh Kisan Pass Book issued in favour of her father under the Himachal Pradesh Kisan Pass Book Rules, 2000. As per entries contained in it, her father is shown to be an agriculturist in Mohal Shilly, Tehsil Banjar, District Kullu, for the year 1995-96. She has also placed on record photostat copies of Bonafide Himachali Certificate issued by Executive Magistrate, as well as Certificate of her being a Scheduled Caste. Her father being an employee of HMT Ltd., at Pinjore is spelt out from Annexure P-3. Thus, it is evident that though petitioner is a resident of Shilly, Tehsil Banjar, District Kullu, but in connection with employment, her father is working with HMT Limited at Pinjore. Therefore, she is also residing with him.

6. When put to notice, stand of official respondents 1 to 4 in this writ petition, which has material bearing in this case is as under :

That the Hon"ble Administrative Tribunal while passing the impugned order has not properly appreciated the reply filed by the replying respondent, wherein it has been specifically submitted that the selection of the petitioner has been made on the basis of merit. In reply to para No. 6 (xi) to the original application No. 3567/ 03 titled as Durga Dass v. State of H.P. and Ors., the replying respondent has specifically submitted that the petitioner is a permanent resident of Village Garuli which falls in Shilly Panchayat, which is clear from the copy of bona fide Himachali certificate, Caste certificate and Kisan Pass Book, which are now annexed by the petitioner as Annexures P-1 and P-2, with the present Civil Writ Petition. The copy of the reply to the original application No. 3567/2003 titled as Durga Dass v. State of H.P. and Ors., is annexed and the same is

marked as Annexure R-1. It is further submitted that learned Administrative Tribunal has quashed and set aside the selection of the petitioner by wrongly relying upon the letter/certificate of Pradhan, wherein it is stated that the name of the petitioner is not entered in the Gram Panchayat, Shilly, during the year 1992-2004, and the letter dated 28.6.2004 signed by the Municipal Commissioner, Kalka, wherein it is stated that Sh. Pyare Lal father of the Petitioner is residing at Kalka for the last 20 years and is having his ration and voter card. However in this regard, it is submitted that the non entering of the name of the petitioner during the year 1992-2004 in Gram Panchayat, Shilly and residing the father of the petitioner at Kalka, where he is having his voter and Ration card does not at all disqualify the petitioner to be permanent residents of Village Garuli Panchayat Shilly. It is further stated that the father of the petitioner was serving at Kalka, therefore, it is obvious, that his children will get education at Kalka and there is no bar, that the father of the petitioner cannot prepare his voter and Ration card at Kalka. Therefore, the judgment/order dated 13.10.2004 passed by the Hon"ble Tribunal deserves to be set aside.

7. Whereas stand of respondent No. 6 is to the contrary. He has reiterated his stand as set out in the OA and has prayed for upholding the order of the Tribunal.

8. After having heard learned Counsel for the parties and for reasons to be recorded hereinafter, we find that the order dated 13.10.2004, in OA 3567 of 2003, passed by the Tribunal cannot stand the test of judicial scrutiny, therefore, the same is liable to be quashed and set aside and consequently the OA is liable to be dismissed.

9. On the basis of the contemporaneous official record copies whereof are placed on record of this writ petition, and further keeping in view the stand of the official respondents (supra), both before the Tribunal as well as in this writ petition, we are satisfied that petitioner is a bona fide resident of Himachal Pradesh, her father owns land at village Shilly, District Kullu. She has also been issued Bona fide Resident and Scheduled Caste certificates by the competent authority in accordance with law.

10. Merely because of petitioner's father being employed out of State for the purpose of earning his livelihood will not result in her either being a non bona fide resident of the area in question or her having ceased to be a Scheduled Caste of H.P. Further petitioner and respondent No. 6 may have claim and counter claim against each other, but stand of the official respondents 1 to 4 is in consonance with the record. This has not been taken note of by the Tribunal in its impugned order. In this behalf it may also be observed that it is not the case of respondent No. 6, that the official respondents are doing some out of the way favour to the petitioner meant to oust him. So far official respondents are concerned, in our view they are only interested in employment of a person who is eligible under the H.P. Primary Assistant Teachers Scheme, 2003. It is also not the case of respondent No. 6 that petitioner is otherwise not eligible, and as already noted, only ground on which he had challenged her appointment was

that she is not a bona fide resident of village Shilly because of her being residing at Kalka. For what reasons and under what circumstances petitioner was residing out of Village Shilly, has already been noted hereinabove.

11. Though Shri Gautam, learned Counsel for respondent No. 6 made an attempt to persuade the Court to uphold the impugned order of the Tribunal, but when confronted with the official record referred to hereinabove, as well as stand of respondents 1 to 4 both before the Tribunal as well as in this Court, he was not in a position to satisfy us as to on what legitimate ground the impugned order can be upheld. Though he persisted with vehemence that impugned order of Tribunal calls for no interference.

12. No other point is urged.

13. In view of the aforesaid discussion, this writ petition deserves to be allowed. Ordered accordingly. As a consequence of it, order dated 13.10.2004, passed by H.P. Administrative Tribunal, in case titled as Durga Dass v. State of H.P. and Ors., in Original Application No. 3567 of 2003, is hereby quashed and set aside, resultantly, O.A. stands dismissed. As an up-shot of this, position as it existed so far employment of petitioner prior to passing of the impugned judgment, shall stand restored forthwith and petitioner will be allowed to continue to work as Primary Assistant Teacher in Government Primary School, Parwadi under Gram Panchayat Shilly, Banjar, District Kullu, H.P.

Costs on parties.

CMP 1848 of 2004.

14. In view of the disposal of the main matter, interim order dated 8.12.2004 shall stand vacated forthwith and pending application(s), if any, shall stand disposed of.