

(2023) 07 SHI CK 0063
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4655 Of 222

Sandeep Sharma

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Citation : (2023) 07 SHI CK 0063

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : L.N. Sharma, Anup Rattan, Y.P.S. Dhaulta

Judgement

Jyotsna Rewal Dua , J

CMP No.8029/2023

Allowed and disposed of.

CWP No.4655/2022

1. With the consent of learned counsel for the parties, the matter is taken up for final disposal.

2. The services of 26 persons employed under E-Governance Society, District Shimla, were ordered to be absorbed under the decision taken on 06.03.2017 by the Revenue Department of Government of Himachal Pradesh. Services of 26 such employees were absorbed in the establishment of Deputy Commissioner, Shimla. The petitioner was left out and not granted the benefit of absorption in terms of decision dated 06.03.2017. Alleging discrimination, he has instituted the present petition for grant of following relief:-

“(i) That the directions may kindly be issued the respondents to absorb/regularized the services of the petitioner as per instructions dated 6.3.2007 (P-2) immediately and at par with similar other 26 employee with all consequential benefits.

(ii) That the respondents may be also directed to pay the difference of arrears of salary to the petitioner immediately.”

3. Facts

3(i) Petitioner was initially engaged as Data Entry Operator under office order dated 22.01.2007. His engagement was on the approval of respondent No.3 (Deputy Commissioner-cum-Chairman-E-Governance Society). The engagement was initially for three months on temporary basis on fixed honorarium of Rs.3600/- per month. It is an admitted fact that ever since his engagement on 22.01.2007, petitioner rendered his services continuously.

3(ii) The Government of Himachal Pradesh decided to absorb the services of E-Governance employees in the establishment of Deputy Commissioner's offices. Decision in this regard was taken on 06.03.2017. In terms of this decision, services of about 26 employees engaged by the E-Governance Society, District Shimla were absorbed in the establishment of Deputy Commissioner's office at Shimla. Petitioner, however, was left out. His services were not absorbed. Seeking absorption of his services in terms of decision taken under communication dated 06.03.2017, petitioner instituted OA No. 4969/2018 before the erstwhile Himachal Pradesh Administrative Tribunal, Shimla. The said original application was disposed of on 17.09.2018 with direction to the respondents/competent authority to consider and decide the case of the petitioner, in accordance with communication dated 06.03.2017.

3(iii) Respondent No.3 (Deputy Commissioner) considered and rejected the case of the petitioner vide order dated 14.12.2018. Respondent No.3 was of the view that the petitioner was though appointed by E-Governance Society, District Shimla, but ever since his appointment, had been working in the planning department and therefore, could not be said to be an employee of E-Governance Society, Shimla. According to respondent No.3, the petitioner had never worked for E-Governance Society since the date of his appointment and as such he was not entitled for benefit of absorption under the Government of Himachal Pradesh-Department of Revenue letter dated 06.03.2017. The operative part of order dated 14.12.2018 passed by the Deputy Commissioner Shimla, reads as under:-

“ NOW THEREFORE, keeping in view the above facts I am of the opinion that though Shri Sandeep Sharma was appointed by the E-Governance Society but since his appointment he is working in the Planning Branch and under no circumstances can be said to be an employee of the E- Governance Society. He has never worked for E-Governance Society since the date of his appointment and as such he is not entitled for absorption as per Govt. of Himachal Pradesh, Department of Revenue letter dated 06.03.2017 in the establishment of Deputy Commissioner Office, Shimla. Therefore, the representation submitted by Shri Sandeep Sharma for his absorption in the establishment of Deputy Commissioner office is hereby rejected. However, the District Planning Officer is directed to forward the representation of Shri Sandeep Sharma to Planning Department,

Government of Himachal Pradesh, alongwith entire detail of the case for further decision in the matter.”

3(iv) The petitioner, thereafter, represented to the Planning Department, Government of Himachal Pradesh. The Planning Department responded through a letter dated 14.02.2019 by saying that the Planning Department had not engaged the petitioner in service and as such no action was required to be taken by the department in the matter. It was also stated in the letter that the petitioner was appointed as Data Entry Operator under E-Governance Society Shimla, therefore, the matter was to be decided/reconsidered at the level of Deputy Commissioner. Letter dated 14.02.2019, written by Adviser (Planning) H.P. Shimla was addressed to the Deputy Commissioner, Shimla, District Shimla, H.P. No action in the matter, thereafter was taken up by either of the respondents. Resultantly the petitioner has instituted the present writ petition.

4. I have heard learned counsel on both side and considered the case record.

4(i) It seems to be a case of confusion all around at the end of respondent No.3 (Deputy Commissioner-cum-Chairman-E- Governance Society, District Shimla). In the order passed on 14.12.2018, respondent No.3 has already held that the petitioner was engaged by the E-Governance Society Shimla. According to respondent No.3, the engagement was for the purposes of “planning” and ever since his appointment, the petitioner had been working in the Planning Department. For the reason that the petitioner had been working in Planning Department and not in E-Government Society, he has been denied the benefit of decision of the State Government dated 06.03.2017 regarding absorption of employees of E-Governance Society in the establishment of Deputy Commissioner’s office, Shimla.

4(ii) The appointment order of the petitioner dated 22.01.2007 does not indicate that he was engaged by E-Governance Society for the purposes of “planning”. Rather the appointment order has been issued to the petitioner on the approval of respondent No.3 i.e. Deputy Commissioner-cum-Chairman- E- Governance Society, Shimla, whereunder the petitioner has been engaged as Data Entry Operator. The order does not reflect that he was to be deputed for “planning”. In case, the petitioner subsequently has been deputed by respondent No.3 to Planning Department, for that reason, the petitioner cannot be blamed. Respondent No.2 i.e. Planning Department has filed its reply. According to this respondent, the Planning Department had not engaged the petitioner in service. Its stand is that the petitioner was appointed as Data Entry Operator under E-Governance Society Shimla by respondent No.3. Reply is also to the effect that the action required to be taken by respondent No.3 in the matter of absorption of petitioner’s services under the Revenue Department letter dated 06.3.2017 is very clear. As per Planning Department, it is for respondent No.3 to decide and reconsider the matter keeping in view the instructions dated 06.03.2017 issued by the Revenue Department.

It appears that despite repeated communications sent by the Planning Department to respondent No.3, no further decision was taken by respondent No.3 in the matter. The matter was not reconsidered at all. During hearing of the case today, learned Additional Advocate General placed on record instructions dated 13.07.2023 issued by Secretary (Planning) to the Government of Himachal Pradesh addressed to the office of Learned Additional Advocate General. As per these instructions, the Planning Department had neither permitted the Deputy Commissioner to place the services of the petitioner an employee of E-Governance Soccity in Planning Department nor to appoint him in Planning Branch of Deputy Commissioner's office.

5. In view of above discussions, notwithstanding order dated 14.12.2018, respondent No.3 is required to reconsider the matter of absorption of the petitioner under the instructions dated 06.3.2017 issued by the Revenue Department. This writ petition is, therefore, disposed of by directing respondent No.3 to reconsider the matter concerning the absorption of petitioner under instructions dated 06.03.2017 issued by the Government of Himachal Pradesh Revenue Department viz-a-viz his absorption in the establishment of Deputy Commissioner's office at Shimla. This exercise be now completed within a period of three weeks from today. The order so passed shall be communicated to the petitioner.

The petition is disposed of in above terms. All pending miscellaneous applications, if any, also stand disposed of.