

(2022) 12 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 190 Of 2020

Sanjay Kumar And Others

APPELLANT

Vs

State Of H.P. And Another

RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Citation : (2022) 12 SHI CK 0004

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Ashok Sharma, Rajinder Dogra, Vinod Thakur, Shiv Pal Manhans, Shalini Thakur

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following substantive reliefs:-

"(a) That annexure A-12 dated 18.8.2016 may very kindly be quashed and set aside in the interests of justice and fair play.

(b) That respondents may be restrained from assigning seniority to respondent No.2 from any date prior to date of his appointment on 21.7.2006, on the post of Assistant Engineer (Electrical), in the Public Works Department.

(c) That Order dated 23.6.2014, annexure A-9, may very kindly be quashed and set aside whereby respondent No.2 was exonerated with further directions to the respondent No.1 to reinitiate inquiry in view of the orders passed by the Central Administrative Tribunal on 1.12.2015 (annexure A-10)."

2. Ms. Shalini Thakur, learned counsel for respondent No.2 raised preliminary objection regarding the petition being barred by delay and laches.

3. According to her, a tentative seniority list of Assistant Engineer (Electrical) was issued on 01.12.2011 wherein the name of respondent No.2 Dalip Singh, Ex-

serviceman, figured at Sr. No. 1 because being an Ex-serviceman and his notional date of appointment was determined with effect from 24.05.1989 after counting his service of 16 years, 7 months and 4 days rendered in the Armed forces in terms of Rule 3(1) of the Ex-serviceman (Reservation for vacancies in Himachal Pradesh Technical Services) Rules, 1985. The tentative seniority list was finalized on 09.07.2012 and, therefore, the instant petition filed in the year 2016, that too, without assailing the seniority list issued in the year 2012, which was barred by delay and laches, more particularly, when the representations filed by the petitioners for assailing the seniority list also stood rejected.

4. On the other hand, Shri Sanjeev Bhushan, Senior Advocate assisted by Shri Rajesh Kumar, Advocate, for the petitioners would contend that vide order dated 11.11.2009, it was the Government itself that decided to keep in abeyance the assigning of seniority to respondent No.2. That apart, the tentative seniority list as existing on 31.10.2011 itself made it abundantly clear that the same was subject to the final outcome of CWP No. 4552 of 2009 titled Dalip Singh versus State of H.P

5. According to the petitioners it was the respondent, who had filed the aforesaid writ petition and the same was surreptitiously withdrawn on 11.08.2020 i.e. during the pendency of the instant petition.

6. We have heard the learned counsel for the parties and have gone through the material placed on record.

7. It is not in dispute that vide Office Order dated 11.11.2009 the Government itself had decided to keep in abeyance the question of assigning seniority to respondent No.2. This was so specifically stated in the tentative seniority list issued on 31.10.2011 as finalized on 09.07.2012. Not only this, the tentative seniority list existing as on 31.10.2011 itself made it clear that the same shall be subject to the outcome of the petition filed by none other than respondent No.2 being CWP No. 4552 of 2009. This petition admittedly remained pending and was withdrawn on 11.08.2020 by which time the petitioners had already approached the Court.

8. Therefore, by no stretch of imagination can it be held that the petition filed by the petitioners herein is barred by delay, laches or on account of acquiescence or estoppel or the like.

9. Therefore, the objection is answered accordingly.

10. List the case for hearing on 15.12.2022.