

(2011) 02 SHI CK 0127
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 8415 of 2008

Santosh

APPELLANT

Vs

The State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 2 ShimLC 38

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was interviewed for the post of Part Time Water Carrier on 27th January, 1999. The post was to be filled up for Government Primary School, Satog. However, the petitioner was not offered appointment letter. In the meantime, respondent No. 4 was appointed as Part Time Water Carrier for Government Primary School, Satog pursuant to letter dated 29th April, 2002. She joined her duties on 01.05.2002

2. Mr. Virender Verma, learned Counsel for the: petitioner has strenuously argued that once the selection process has been initiated for filling up the post of Water Carrier for Government Primary School, Satog, it should have been taken to its logical end. In other words, his submission was that on the basis of the recommendations of the Selection Committee, the petitioner was to be offered appointment letter.

3. Mr. P.M. Negi, learned Deputy Advocate General and Mr. Onkar Jairath, learned Counsel for respondent No. 4 have strenuously argued that respondent No. 4 has been appointed under Rule 12 of the Scheme notified on 27th July, 2001.

4. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

5. Petitioner belongs to I.R.D.P. family. She has been deserted by her husband as per Annexure A-4. No member of her family is in Government/ Semi Government employment. She submitted an application to be considered for the post of Water Carrier for Government Primary School, Satog. She was called for interview on 27th January, 1999. She appeared in the interview and according to Mr. Virender Verma, learned Counsel for the petitioner, her name was recommended. However, fact of the matter is that without completing the selection process, respondent No. 4 has been appointed vide letter dated 29th April, 2002 under Rule 12 of the Scheme notified on 27th July, 2001. Rule 12 of the Scheme reads thus:

12. COMPASSIONATE GROUND APPOINTMENT:-

The Government will have the power to appoint any candidate as part time water carrier on compassionate ground without following the selection process if the candidates are widows, women deserted by their husbands, or otherwise destitute handicapped persons and if the candidates falls below the poverty line as defined by the Rural Development Department from time to time.

6. It is evident from Rule-12 of the Scheme that the Government has the power to appoint Part Time Water Carriers on compassionate grounds without following the selection process, if the candidates are widows, women deserted by their husbands, or otherwise destitute handicapped persons and if they fall below the poverty line, as defined by the Rural Development Department from time to time.

7. In the instant case, the process has been initiated by the respondent-State by calling the applications, pursuant to which, the interviews were held on 27th January, 1999. Once the process has been initiated by the respondent-State, the same was required to be taken to its logical end. However, the respondent-State, without taking the selection process to its logical end, has appointed respondent No. 4 as Part Time Water Carrier vide letter dated 29th April, 2002. The Court is of the considered view that "the course adopted by the respondent-State was riot permissible under the law. The selection process initiated, was required to be completed by offering appointment to the candidate who was found suitable by the selection committee.

8. Mr. Virender Verma, learned Counsel for the petitioner has strenuously argued that his client suffers from 50% disability. He has referred to Annexure R-3. Petitioner also belongs to I.R.D.P. family and she has been deserted by her husband. Her case was also covered under Rule-12 of the notification dated 27th July, 2001. The public employment is not a largess to be distributed at the whims of the State. The process for filling up the post under the State must conform to Articles 14 and 16 of the Constitution of India. The respondent-State cannot be given absolute discretion to make public appointments by ignoring the entire selection process. Even if the appointments are to be made under Rule-12, the applications are required to be invited and thereafter, the merit list is to be drawn on the basis of disabilities/handicapped of the candidates.

9. What emerges from the observations and discussion made hereinabove, is that the action of the respondent-State to appoint respondent No. 4 was illegal, arbitrary and unreasonable. The respondent-State was required to complete the selection process initiated for filling up the post of Water Carrier in Government Primary School, Satog. The recommendations made by the Selection Committee were to be duly considered and thereafter, appointment letter was required to be issued to the candidate, whose name had been recommended by the Selection Committee. Once the selection process has been commenced, it was not open to the State to scuttle the same by offering appointment to respondent No. 4 on 29th April, 2002.

10. It is true that the petitioner has no indefeasible right to be appointed merely on the basis of the recommendations made by the Selection Committee, however, the reason to deny the public employment must be cogent and convincing.

11. Their Lordships of the Hon"ble Supreme Court in East Coast Railway and Another Vs. Mahadev Appa Rao and Others, have held as under:

14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ Court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

15. To the same effect is the decision of this Court in U.T. of Chandigarh v. Dilbagh Singh, where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a malafide manner. That was also a case where the selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for canceling what was described by this Court to be as a "dubious selection

16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the

competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner.

17. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.

12. Accordingly, the petition is allowed. The appointment of respondent No. 4 made vide letter dated 29th April, 2002 is quashed and set aside. Respondents No. 1 to 3 are directed to consider the case of petitioner for appointment to the post of Part Time Water Carrier on the basis of the recommendations made by the Selection Committee pursuant to interview held on 27th January, 1999, within a period of two months from the date of production of a certified copy of this judgment by the petitioner. No costs.