
(2021) 04 SHI CK 0238
In the High Court Of Himachal Pradesh
Case No : CWPOA No.7851 Of 2019

Santoshi

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 22-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2021) 04 SHI CK 0238

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : R.S. Chandel, Anil Jaswal, Manoj Bagga

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. The candidature of the petitioner for the post of Physical Education Teacher was rejected by the respondents vide communication dated 11.11.2013 for the reason that she did not possess essential qualification as per the Recruitment & Promotion Rules (in short 'R&P Rules') for the said post. Aggrieved, the petitioner has filed the instant petition for the following substantive reliefs:-

"a. That order annexure A-2 dated 11/11/2013 may very kindly be quashed and set aside.

b. That respondents may very kindly be directed to appoint the applicant as Physical Education Teacher from the date when the other selected candidates have been appointed with all consequential benefits."

2. The respondents issued an advertisement on 15. 09.2012, inviting applications for 38 posts of Physical Education Teachers. The petitioner participated in the selection process, however, her candidature was rejected vide communication dated 11.11.2013 for the following reason:-

"1. You did not fulfill the essential qualification as per R&P Rules of the post of

P.E.T."

3. It is not in dispute that the selection process was undertaken in terms of R&P Rules for the post of Physical Education Teacher notified on 10.01.2011, whereunder the requisite educational qualification was prescribed as under:-

"(a) Senior Secondary School (+2) or its equivalent examination passed with atleast fifty percent marks and diploma in Physical Education (D.P.Ed.) of a duration of two academic years from the University/Board recognized by H.P. Govt.

OR

(b) Bachelor Degree in Physical Education with fifty percent marks (B.P.Ed.) from a University recognized by HP Govt.

OR

(c) Bachelor Degree with Physical Education as an elective subject with fifty percent marks in Physical Education from a University recognized by HP Govt.

OR

(d) For Ex-servicemen candidates Senior Secondary School (+2) or its equivalent examination passed with pass course of PTI from Army School of Physical Education Poona.

05% relaxation in marks will be given to those who have atleast participated in International/National/SGFI/Sports competition or position Holders in Inter-Zonal sports competitions."

From a perusal of R&P Rules (extracted above), it is evident that to become eligible for participating in the selection process, a candidate was, inter alia, required to possess Diploma in Physical Education for duration of two academic years from a University/Board recognized by the H.P. Government. It is not in dispute that the diploma possessed by the petitioner was of duration of one year and therefore, under the R&P Rules, she was not eligible for the post in question and as such, her candidature was rejected by the respondents.

4. Learned counsel for the petitioner submitted that vide communication dated 15.02.2011 (Annexure A-3), a decision was taken by the respondents to allow a period of five years to the teachers recruited under the pre-amended R&P Rules to improve their educational qualifications.

Learned counsel for the petitioner further submits that relying upon this communication, CWP No.8022 of 2012, titled Saroj Kumar and others Versus State of H.P. and others, was decided on 09.01.2013, whereby respondents-State was directed to consider the cases of similarly situated persons like present petitioner, in the light of decision taken in communication dated 15.02.2011. The judgment reads as under:-

"Essentially it is the petitioners' grievance that their case for appointment to the post of Physical Education Teachers were not considered for want of essential educational qualification.

2. Respondents have pointed out in their affidavit dated 9.10.2012 filed through the Deputy Director (Elementary Education), Mandi - respondent No.3, that with respect to similarly situated persons one time relaxation stands accorded vide communication dated 15.2.2011 (Annexure R -2), whereby a decision has been taken that teachers recruited on the basis of pre-amended Rules would be required to complete their eligibility criteria of essential qualification within a period of five years.

3. Under these circumstances, the writ petition is disposed of with a direction to the respondents to consider the cases of the petitioners for appointment to the post of Physical Education Teachers in the light of the decision so taken by the Government and the fact that the Government has already given appointment to similarly situated persons under the un-amended Rules. This would be subject to the petitioners acquiring educational qualification within five years from the date of appointment.

With the aforesaid observations, the writ petition is disposed of. Respondents shall positively take a decision within a period of two months from the date of production of a certified copy of this judgment. Pending application(s), if any shall stand disposed of."

Learned counsel for the petitioner submits that the judgment has been implemented by the respondents-State in respect of the petitioners in CWP No.8022 of 2012. It is further contended that case of the petitioner is similar to that of the petitioners in CWP No.8022 of 2012. Therefore, he also deserves to be appointed as Physical Education Teacher notwithstanding the fact that he does not possess requisite educational qualification under the R&P Rules for the post in question.

It is significant to notice that candidature of the petitioner was rejected on 11.11.2013. The selection process in question was completed in the year 2013. The judgment was delivered on 09.01.2013. Whereas the present petition has been preferred in June, 2016, i.e. after a lapse of about three years from the date of culmination of the selection process and date of delivery of judgment. In 2020(2) SCALE 728, titled Chairman/Managing Director, U.P. Power Corporation Ltd. & others VS Ram Gopal, Hon'ble Apex Court held that prolonged delay of many years ought not to have been overlooked or condoned. It was further observed that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester.

Relevant paras of the judgment read as under:-

"14. Finally, the prolonged delay of many years ought not to have been overlooked or condoned. Services of the Respondent were terminated within months of his appointment, in 1978. Statedly, the Respondent made a representation and served UPPCL with a legal notice in 1982, however such feeble effort does little to fill the gap between when the cause of action arose and he chose to seek its redressal (in 1990).

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala*, this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

(emphasis supplied)

In respect of the candidates claiming parity, it was observed that at one point of time, equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time. Para 17 of the judgment is as under:-

17. Similarly, in *Vijay Kumar Kaul v. Union of India* this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

"27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time."

The final result of selection process cannot be allowed to be opened years after culmination of the process. The candidature of the petitioner was rejected in 2013. At this stage, petitioner cannot be allowed to rake up a cause of action, which, if any, became available to him in 2013. It is not even his case that any

post of Physical Education Teacher is lying vacant. Petitioner admittedly did not possess the educational qualification in terms of the R&P Rules, under which the advertisement was issued. Therefore, without going any further into the merits of the case, the instant petition is dismissed on the ground of delay and laches. Pending miscellaneous application(s), if any, also stand disposed of.