courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 16/09/2026

(2021) 12 SHI CK 0065

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 3785, 4247, 4304 Of 2020

Sapna Devi And Others — APPELLANT

Vs

State Of Himachal Pradesh And Others — RESPONDENT

Date of Decision : 18-12-2021

Acts Referred:

Citation : (2021) 12 SHI CK 0065

Hon'ble Judges : Tarlok Singh Chauhan, J;Satyen Vaidya, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Ashok Sharma, Rajinder Dogra, Shiv Pal Manhans, Vinod Thaku, Bhupinder Thakur, Ekta Kapta, Raj Kumar Negi, Jitender Kumar, L.N. Sharma, B.L. Soni

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. Since common questions of law and facts arise for consideration in all these petitions, the same were taken up together for hearing and are being disposed of by a common judgment.

2. Respondent No.3-Commission issued an advertisement dated 18.10.2016, for filling up various posts including 50 posts of Supervisors on contract basis through limited departmental recruitment vide post code No. 561. These 50 posts of Supervisor were further bifurcated into various sub categories and out of 50, 10 posts were reserved for BPL category. Respondent No.3 conducted screening test for the posts of Supervisors and recommended 49 candidates for appointment, out of which, only 7 candidates were recommended for being selected against BPL category.

3. However, before these appointments could be made, respondent No.2 came across instructions issued by the department on 11.3.2014, which read as under:-

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sapna-devi-and-others-appellant-…

"No. SJE-B(2)3/2003-loose

Government of Himachal Pradesh

Social Justice and Empowerment Department.

From:

The Addl. Chief Secretary(SJ&E) to the Government of Himachal Pradesh

The Director,

Women Child Development,

Cedar Home Brent Wood Estate,

Himland Bamloe, Shimla-1,

Himachal Pradesh,

Dated: Shimla-2 the 11th March,2014

Subject: Regarding Advertisement No.27/2013 dated 21.11.2013.

Madam,

I am directed to refer to your letter No. WCD-A-B(1)9/2012, Estt. loose dated 18-1-2014 on the subject cited above and to say that the matter was taken up with Personnel Department who has observed as under

"Examined. Since the posts in the instant case are to be filled-up from amongst the Anganwari Workers already in service through Limited Direct Recruitment, as such, the posts can not be reserved for IRDP now B.P.L, as the B.P.L candidates seizes to be so as soon as he/she get employed.

However, the post reserved in the instant case under horizontal reservation can be filled-up from the residuary category to which the point originally belongs."

You are, therefore, requested to take necessary action in the matter as per advice given by the DOP.

Yours faithfully,

Sd/-

(Dr. M.P Sood)

Spl. Secretary (SJ&E) to the

Govt, of Himachal Pradesh

Ph.No.2622059"

4. Since Anganwari workers initially appointed under IRDP/BPL category would cease to be BPL/IRDP category as soon as one gets employment, therefore, respondent No.3 was requested vide letter dated 19.1.2018 to make appropriate

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sapna-devi-and-others-appellant-…

amendments in the list of candidates recommended, but respondent No.3 refused to do so as is evident from the letter dated 1.2.2018, relevant portion whereof reads as under:

"In this connection, it is pertinent to mention here that the recruitment process in r/o all the posts is conducted by the Commission in accordance with the provisions of Recruitment & Promotion Rules of the posts, Rules of business and procedures of the Commission and reservation break-up of posts provided by the requisitioning authorities in the requisition. The Commission cannot alter the break-up of posts at its own. The matter of BPL status of Anganwari Workers was not kept in view by your department while sending the requisition to the Commission. Moreover, the candidates recommended against the posts reserved for BPL categories are in possession of BPL certificates issued by competent authorities.

It is also informed that some candidates while appearing for evaluation for 15 marks, provided Non Employment certificates in support of their claim of 01 marks admissible to the candidates belonging to families having no member employed in Govt/semi Govt. Organizations along with a clarification, letter No. SJE-29/87-1CDS dated 4.5.2017 where it has been mentioned that the Anganwari workers etc. are not in the ambit of Govt. Employees being non salaried post. (Copy enclosed.)"

5 It is in this background that this Court called for the presence of respondent No.2 and respondent No.3.

6 The Secretary of respondent No.3-Commission has fairly conceded that the stand taken by the Commission before this Court and even while issuing letter dated 1.2.2018 is not in accordance with law and, therefore, indefensible.

7 We may observe that even if such opinion was not given by the Secretary of respondent -Commission, even then the stand taken by respondent No.3 was totally not tenable as it was merely a selecting authority and could not have gone beyond the requisition of the employer.

8 At this stage, we may also make note of the defence of the selected candidates, who, apart from raising pleas of estoppel and waiver, have virtually no other defence.

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

10 At the outset, we need to observe that the requisition as sent by respondent No.2 for filling up 10 posts of BPL category was absolutely without any application of mind as it failed to visualize the fact that as per the eligibility prescribed for the posts in question, the candidates, already in service, were drawing emoluments more than the income criteria fixed for the BPL candidates and that is precisely what had been clarified by the government vide its letter dated 11.3.2014 (supra).

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sapna-devi-and-others-appellant-…

11 Once that be so, obviously no appointment to the category, as was sought for, from respondent No.3 could have

been made and, therefore, it had been rightly decided by respondent No.2 that 7 posts of Supervisors recommended against the BPL category be filled up from the respective unreserved categories of General/SC/ST/OBC as per details given below:

Sr. No.

Category

No. of posts

1.

General (UR)

04

2.

SC (UR)

01

3.

OBC (UR)

01

4.

ST (UR)

01

Total

07

12 Mr. B.L. Soni and Mr. L.N. Sharma, Advocates, learned counsel for private respondents would strenuously argue that having participated in the selection process, the petitioners could not have turned around and challenged the same.

13 We are at complete loss as to how this proposition of law can be made applicable to the facts of the instant case when admittedly the post in question as per existing qualifications could not have been filled up at all for want of any eligible candidates.

14 In view of aforesaid discussions, we find merit in these petitions and the same are accordingly allowed. Consequently, appointment of the private respondents is ordered to be quashed and set aside and respondent No.3 -Commission is directed to send names of the eligible candidates to the employer strictly in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sapna-devi-and-others-appellant-…

accordance with respective unreserved categories of General/SC/ST/OBC, as sought for by the employer and in case the petitioners or any one or more are found to be eligible, then appointment be made to them from the same date when the candidates of selection in question were appointed, which, in no event, shall be later than 30 days and they shall be entitled to all other consequential benefits, save and except benefit of pay, which shall be granted to them from the date of their actual joining. Pending application(s), if any, also stands disposed of.

15 Before parting, it needs to be observed that entire mess has been created because of lack of coordination between the various stake holders and on account of each of the stake holders trying to prove their supremacy by entering into unnecessary and unwarranted written communications. The matter could have been conveniently resolved if the authorities would have worked in unison and tandem and applied their minds in a better and effective manner, rather than engaging in unnecessary written communications.

16 Respondent No.3, as a matter of propriety and procedure, should not have engaged in written communication at all, particularly when the decision of the government had already been placed before it regarding non-eligibility of the candidates.

17 We hope and trust that the respondents shall give no occasion for complaint in future and in case of any doubt, consult the legal department or office of the learned Advocate General before resorting to impulsive and mindless correspondences.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sapna-devi-and-others-appellant-…