(1973) 07 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 33 of 1971

Shri Ishwari Kumar — APPELLANT

Vs

State of Himachal Pradesh and Another — RESPONDENT

Date of Decision : 27-07-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Himachal Pradesh Excise and Taxation Department (Inspectors Class III Service) Recruitment, Promotion and Certain Conditions of Service Rules, 1963 — Rule 14

Citation : (1973) 2 ILR HP 745

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : P.N. Nag, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioner was appointed an Excise and Taxation Sub-Inspector on January 17, 1959. According to the terms of his appointment, the post was temporary, it carried the pay scale of Rs. 100-5-140/6-170 and he would have to pass Departmental Examination in respect of both Excise and Taxation within two years of his appointment failing which his services in the department would be liable to termination. The Petitioner accepted the conditions and entered upon his duties on January 24, 1959.

2. Subsequently, on August 17, 1959, the Excise and Taxation Commissioner, Himachal Pradesh issued a memorandum to the Excise and Taxation Officers in Himachal Pradesh stating inter alia that all the unqualified Excise and Taxation Sub-Inspectors would get the scale of Rs. 100-5-140/6-170 with effect from May 1 1957, "subject to the condition that they will not get the first increment in the scale until they qualify the Departmental Examination." This condition was made applicable to the newly appointed Excise and Taxation Sub-Inspectors who had already been allowed the scale of Rs. 100-5-140/6-170. This was followed by a further memorandum dated May 26, 1960, which recited that Excise and

Taxation Sub-Inspectors appointed after October 1, 1958, must qualify in the Departmental Examination in papers Nos. I, III, IV to VII before they could be granted the first annual increment in their pay scale. In 1963 the Himachal Pradesh Administration published the Himachal Pradesh Excise and Taxation Department (Inspectors Class III Service) Recruitment, Promotion and Certain Conditions of Service Rules, 1963. Rule 14 provides that no person appointed to the service would be retained unless he had passed the Departmental Examination within a period of three years.

3. The Petitioner appeared for the Departmental Examination from time to time. He has passed papers I, II, III, IV, V and VII and admittedly only one paper is left to pass. The examination is held in Punjab as there is no arrangement for holding the examination in this State.

4. The Petitioner did not receive any increments nor has he been confirmed in service. He made a number of representations, but they have been turned down on the ground that it was necessary that he passed the remaining, paper of the Departmental Examination before the increments could be released and he could be confirmed. The Petitioner prays for relief under Article 226 of the Constitution.

5. The Petitioner contends that he was bound by the terms of his appointment only and it was not open to the Respondents to issue executive instructions subsequently imposing further conditions. It is pointed out that no restriction was imposed under his terms of appointment on the accrual of increments, and by virtue of Fundamental Rule 24 he was entitled to receive them. He urges that the memoranda dated August 7, 1959, and May 26, 1960, cannot defeat the operation of the said Fundamental Rule nor can they alter the conditions of service settled at the time of appointment that the memoranda were not issued by a competent authority and further that they operated prospectively only and could not apply to him. It is also urged that the memoranda violate Article 14 of the Constitution.

6. In my opinion it is not necessary to enter upon the merits of the Petitioner''s contention. His conduct disentitles him to relief. It is not disputed that the Petitioner appeared at the Departmental Examination repeatedly in compliance with the instructions contained in the aforesaid memoranda. Admittedly, he passed a number of papers and only one paper is left. There; is no material on the record to show that when he appeared at the examinations from time to time he did so under protest. The Petitioner says in paragraph 7 of the writ petition that he appeared at the examination although he was not bound to do so. The averment does not amount to saying that when he appeared at the examination he did so under protest. The Petitioner says that he made a number of representations submitting that he was entitled to his increments and to confirmation without having to appear at the examination, but the writ petition does not disclose when those representations were made. The earliest representation, of which Annexure-PG is an annexure to the writ petition, is dated December 24, 1970, and that discloses that the Petitioner had already

qualified in six papers. It seems to me that the Petitioner must be considered to have acquiesced to the conditions contained in the memoranda. By his conduct he has accepted those conditions as additional conditions to the terms of his appointment. It may be that the Respondents have not specifically raised a plea of acquiescence in the return filed by them, but that: can afford no defence to the Petitioner because it is always open to the court suo moto to consider the conduct of the Petitioner when granting relief to the Petitioner in a writ petition.

7. Therefore, it is not necessary to consider the submissions of the Petitioner on the merits. As regards the contention that the memoranda are discriminatory, I am not satisfied that the Petitioner has made out any case. The memorandum dated August 7, 1959, does not create any discrimination at all. That is clear from its terms. As regards the memorandum dated May 26, 1960, it divides the Excise and Taxation Sub-Inspectors into two groups, those appointed before October 1, 1958, and those after that date. The department was re-organised on October 1, 1958, and that date could be taken as a reasonable point of reference for dividing the Sub-Inspectors into two groups.

8. The learned Advocate-General has raised a plea that the petition was barred by laches. Inasmuch as the petition fails on another ground I need not consider that plea.

9. The petition is dismissed. But in the circumstances there is no order as to costs.

