
(1980) 10 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 78 of 1972

Shri Thakur Dass

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 14-10-1980

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1981) ShimLC 145

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; A.G. and H.K. Paul, Assistant to A.G., for the Respondent

Final Decision : Allowed

Judgement

V.P. Gupta, J.—Thakur Dass Petitioner joined service in the Department of Forests on 4th August, 1958 as a Resin Watcher in Hamirpur Forest Division. After re-organisation of the State of Punjab, his services were allocated to the Union Territory of Himachal Pradesh, and since then he was serving in Himachal Pradesh as a Resin Watcher. On 1st January, 1968, the Petitioner was transferred to Una Forest Division. It is alleged by the Petitioner that Relu Ram, Respondent No. 4, was appointed as a Forest Guard on 9th March, 1971 (Annexure B) in Una Forest Division. The Petitioner alleges that he was senior to Respondent No. 4 and had a better claim for being appointed as a Forest Guard. The Petitioner feeling aggrieved from the order, dated 9th March, 1971 regarding the appointment of Respondent No. 4 as a Forest Guard, filed an appeal to the Chief Conservator of Forests, Himachal Pradesh, but the same was rejected. The Petitioner alleges that he was transferred to Hamirpur on 19th May, 1971. The Petitioner had challenged the appointment of Respondent No. 4 as a Forest Guard on the grounds that he was senior to Respondent No. 4 and that for appointment of a Forest Guard the criteria of seniority-cum-merit amongst the Resin Watchers is to be kept in view. The next attack of the Petitioner is that

even if the post was to be filled up by open selection then some type of intimation/advertisement/circular or notification should have been issued so that the Petitioner could also become one of the applicants for filling such post of a Forest Guard. On these allegations the Petitioner has prayed that the appointment/promotion of Respondent No. 4 be quashed and that he be promoted as a Forest Guard or atleast his case be considered for being appointed as a Forest Guard.

2. A return to the writ petition was filed on behalf of Respondents 1 and 2, and it was alleged that the post of a Forest Guard is not filled by promotion and the criteria of seniority-cum merit amongst Resin Watchers is not taken into consideration for filling this post. It is further alleged that the field of choice for filling the post of a Forest Guard is not confined to Resin Watchers only and if any Resin Watcher applies for this post then his name can also be considered for the post when the same is notified to the Employment Exchange. In the return it was further alleged that Respondent No. 4 was appointed as a Forest Guard vide order No. 141/1971, dated 9-3-1971, and that, in fact, there was an open competition for the selection of Forest Guards in the year 1967. It is further alleged that three vacant posts of Forest Guards were notified to the Employment Exchanges on 28th July, 1967, and about twenty-seven candidates appeared for interview, of these posts on 8th August, 1967. A panel of selected candidates was prepared, and in this panel the name of Relu Ram, (Respondent No. 4) was mentioned at serial No. 3. It is further alleged that one Piar Chand being a Scheduled Caste and departmentally experienced candidate was given preference and the other two candidates, Gurdev Singh and Hari Singh, were selected from the panel which had been prepared at the time of selection. In these circumstances, Relu Ram (Respondent No. 4) could not be selected at that time and was allowed to work as a Resin Watcher only. Thereafter Hari Singh one of the selected candidate resigned from service and in his place Relu Ram was appointed vide order, dated 9th March, 1971 (Annexure B). In view of these facts it was alleged that as Relu Ram was already in the panel of selected candidates of the year 1967, therefore, there was no question of notifying any vacancy as the vacancy had only been caused by the resignation of Hari Singh. It was further alleged that the appointment of Relu Ram is not a case of promotion.

3. A rejoinder on behalf of the Petitioner was filed to the return and the allegations of the writ petition were re-asserted.

4. I have heard Shri Chhabil Dass learned Counsel for the Petitioner and Shri H.K. Paul Assistant to the Advocate-General for the Respondents.

5. The learned Counsel for the Petitioner contended that no intimation regarding the filling of the vacancy caused by the resignation of Hari Singh had been sent to the Petitioner and this vacancy had not been notified to the Employment Exchanges or in any other manner, i.e. by publication etcetera. It was contended by the learned Counsel for the Petitioner that the Petitioner was eligible for filling up the vacancy of a Forest Guard and that he had a right to be considered for

this post and the vacancy should have been notified, so that the chances of the Petitioner for filling up this vacancy were not lost. In support of his contention, the learned Counsel referred to Mrs. Jayashree Bhattacharya alias Mrs. Jayashree Sen Mazumdar v. The Patna University through its Vice-Chancellor and Ors. 1976 (1) SLR 382, Uttam Chand and Ors. v. Municipal Council, Darwha and Ors. 1973 (2) SLR 286 , and Narayan Keshav Dandekar Vs. R.C. Rathi and Another,

6. The learned Counsel for the Respondents contended that there were three vacancies of Forest Guards in the year 1967 and that these vacancies had been duly notified to the Employment Exchanges. It was further contended that the Petitioner was never an applicant directly or through the Employment Exchanges for these vacancies and that Respondent No. 4 was one of the applicants for these vacancies. The learned Counsel further contended that Respondent No. 4 could not be appointed as a Forest Guard in 1967 because the vacancies which were available at that time were filled by other candidates who were found to be better than Respondent No. 4. It was further contended that after the resignation of Hari Singh from the post of Forest Guard, it was quite natural for the authorities to have appointed Respondent No. 4 in this vacancy because he was already in the panel of the selected candidates of 1967. It was contended that there was no need to issue any fresh notification or publication for filling up this vacancy and that the Petitioner could not be selected for this post.

7. I have considered the contentions of the learned Counsel for the parties and have also gone through the annexures attached with the writ petition.

8. According to the admitted facts the Petitioner had joined service as a Resin Watcher in August 1958 in the Hamirpur Forest Division of the then State of Punjab. After his allocation to the Union Territory of Himachal Pradesh he was serving in Himachal Pradesh as a Resin Watcher at the time of the filing of the writ petition. He was, however, transferred to Una Forest Division from 1st January, 1968 to 15th June, 1971 and thereafter he was again transferred to Hamirpur Forest Division. It is also admitted that Respondent No. 4 was appointed as a Forest Guard, vide order, dated 9th March, 1971. According to the return filed by the Respondents, the selection of Forest Guards was done in August, 1967, when Relu Ram was also one of the candidates, Relu Ram could not be appointed as a Forest Guard because his name did not figure within the number of candidates who could be adjusted in the vacancies. He had third position in the selection list while only two persons were to be appointed and as such he was not appointed as a Forest Guard in 1967. According to the Respondents one Hari Singh Forest Guard who was at serial No. 2 in the selection list and who had been appointed as a Forest Guard in 1967 resigned from service and, therefore, the vacancy caused by his resignation was filled by Respondent No. 4. According to them, this vacancy caused by the resignation of Hari Singh was not advertised for the reason that Relu Ram (Respondent No. 4) was already in the panel of the selected candidates in 1967. It is also admitted in the return that it was only in 1967 that the vacancies of Forest Guards were notified and

that no such notification or publication was done in 1971. According to the learned Counsel for the Petitioner, the vacancies which were to be filled in 1967 had already been filled and, therefore, to appoint Relu Ram (who was in the panel of selected candidates of the year 1967) in a vacancy which came into existence in 1971 is altogether illegal, but according to the learned Counsel for the Respondents the vacancy which was caused in 1971 by resignation of Hari Singh was, in fact, the original vacancy of 1967 and, therefore, the same could be filled by a person who was in the panel of selection list of 1967.

9. I have considered the matter and I feel that the vacancies which were available in 1967 had already been filled and if any vacancy became available in 1971 due to the resignation of Hari Singh then this was a fresh vacancy and the panel of the selected candidates of 1967 could not be considered for filling this vacancy. Hari Singh had remained in service for more than three years and, therefore, it cannot be said that the vacancy caused by his resignation in 1971 should be considered to be a vacancy which was available in 1967. In view of this matter the vacancy which came into existence due to the resignation of Hari Singh could only be considered to be a fresh vacancy and had to be filled in accordance with law, rules and the procedure. The Divisional Forest Officer had no authority to fill this vacancy in an arbitrary manner, and it was the bounden duty of the Respondents to have advertised this vacancy in the appropriate way whether by public notice or through Employment Exchanges.

10. In Narayan Keshav Dandekar's case (supra) it has been held that if a new post is to be filled then before making any appointment to such a post it is necessary to advertise this post and if the post is not regularly advertised and applications are not invited from persons qualified to hold the post then the provisions of Article 16 of the Constitution are contravened, because Article 16 of the Constitution of India requires that there shall be an equality of opportunity for all citizens in the matters relating to employment or appointment in any office under the State.

11. In Uttam and Ors. case (supra) in para 9 of the judgment it has been held: "The Fundamental Right guaranteed by the Constitution is not only a right to make an application for a post but a further right of being considered on merits for the post for which an application has been made". It is further held in para 12 of the same judgment: "Therefore, while making such appointments to the public posts, it is not only expedient but necessary that the persons duly qualified should be called upon to submit their applications and for this purpose, in our view issuing of an advertisement or public notice is the minimum requirement".

12. In Mrs. Jayashree Bhattacharya's case (supra), it is again stated, "The provision for advertisement serves two purposes. It secures, or attempts to secure, the best talents that may be available for the post. It also fulfils the constitutional requirement of giving equal opportunity to all, who are eligible in the matter of appointment".

13. In the present case, it is admitted that no public notice or advertisement was issued for filling up of the vacancy which was available in 1971. In the return it is also admitted that even Employment Exchanges were not notified about this vacancy. The result of not notifying this vacancy is, therefore, quite natural that persons who were eligible for this post could not have any notice and as such could not apply for being appointed to this vacancy. This is a clear violation of Article 16 of the Constitution of India and the Petitioner is rightly aggrieved with the order by which the vacancy has been filled in 1971 by appointing Relu Ram, Respondent No. 4, as a Forest Guard.

14. The learned Counsel for the Petitioner felt satisfied with the relief that the case of the Petitioner be considered for being appointed as a Forest Guard. I have already held that the procedure adopted in filling up the vacancy in 1971 was not warranted by law, and, therefore, it is appropriate in the circumstances of the case to give a direction to the Respondents to consider the case of the Petitioner for being appointed as a Forest Guard from the year 1971.

15. In view of the above discussion, this writ petition is allowed and Respondents 1 to 3 are directed to consider the case of the Petitioner for being appointed as a Forest Guard as if he was one of the applicants for the post in 1971. The Petitioner is allowed Rs. 150/- as costs of this petition, which will be paid by the Respondents.