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(2014) 05 SHI CK 0095

In the High Court Of Himachal Pradesh

Case No : CWP No. 2381/2008

State of Himachal Pradesh and Others — APPELLANT

Vs

Piar Singh — RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Citation : (2014) 05 SHI CK 0095

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Anup Rattan, Additional Advocate General and Mr. Vivek Singh Attri, Deputy Advocate General, Advocate for the Appellant; Onkar Jairath, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioners have assailed the judgment dated 5.4.2008 rendered by the erstwhile Himachal Pradesh Administrative Tribunal in O.A. No. 2216/95.

2. Pertinent facts necessary for the adjudication of this petition are that respondent is an ex-serviceman. He was appointed as Peon against unreserved post. He submitted joining report on 1.1.1975. However, he was not given the benefit of army service towards seniority. His representations were rejected on the ground that since the respondent was appointed against unreserved post, he could not be given the benefit available to the Ex-Servicemen under the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal Pradesh State Non-Technical Services) Rules, 1972.

3. Respondent approached the erstwhile Himachal Pradesh Administrative Tribunal by filing O.A. No. 2216/1995. The original application was contested by the petitioners. Case of the respondent before the erstwhile Himachal Pradesh State Administrative Tribunal was that his case was covered by the instructions contained in letter Annexure A-10 issued by the Government of Himachal

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Pradesh General Administration Department. The original application was contested by the petitioners. According to the petitioners, since the respondent had been appointed against unreserved post, his earlier services could not be counted towards seniority. The relevant portion of annexure A-10, as quoted by the erstwhile Himachal Pradesh Administrative Tribunal, reads as under:

..But where a Released Army Personnel has qualified against a non-reserved vacancy and has been appointed against a general unreserved vacancy in the first instance he should be given an option (only at the time of first appointment) to accept a reserved vacancy, even it is occurs subsequent to his appointment. This will automatically give the benefit of concession like seniority etc. in the manner specified in the Rules ibid.

4. It is evident from the plain reading of the instructions quoted herein above that when a released Army personnel has been appointed against a general unreserved vacancy in the first instance, he should be given an option at the time of first appointment to accept a reserved vacancy, even if it occurs subsequent to his appointment. It is not in dispute that such option has never been provided by the petitioners to the respondent. The representations made by the respondent were rejected against the spirit of instructions Annexure A-10. The vacancy became available after the appointment of the respondent as Peon on 1.1.1975. Petitioners were required to give options to the respondent at the time of his initial appointment to be considered against the post reserved for ex-servicemen, which would have become available after his appointment. Respondent cannot be made to suffer due to remissness on the part of the petitioners. It is in these circumstances erstwhile Himachal Pradesh Administrative Tribunal has rightly quashed Annexures A-8 and A-9 and the respondent was deemed to have been appointed against the vacancy reserved for Ex-serviceman, which became available after his appointment in the department as per instructions contained in Annexure A-10 with all the consequential benefits. There is neither any illegality nor any perversity in the judgment rendered by the erstwhile Himachal Pradesh Administrative Tribunal.

5. Accordingly, in view of the analysis and discussion made herein above, there is no merit in the petition and the same is dismissed. Pending applications, if any, also stand disposed of.

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