
(2014) 09 SHI CK 0143
In the High Court Of Himachal Pradesh
Case No : LPA No. 321 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Vidya Sagar

RESPONDENT

Date of Decision : 06-09-2014

Acts Referred:

Citation : (2015) LabIC 1119

Hon'ble Judges : Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Additional Advocate Generals and J.K. Verma, Deputy Advocate General, Advocate for the Appellant; Seema Guleria, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—The subject matter of this appeal is the judgment and order, dated 12th December, 2011, made by the Writ Court in CWP No. 4231 of 2010, titled as Vidya Sagar & others versus State of H.P. & another, whereby Annexure P-9 annexed with the writ petition came to be quashed with a command to the respondents to follow Annexure P-4 to the writ petition (hereinafter referred to as "the impugned judgment").

2. The writ petitioners-respondents herein were appointed as Agriculture Inspectors in Agriculture Department. The said posts were re-designated as Assistant Development Officers (Agriculture) vide notification, dated 10th May, 1980 (Annexure P-1 to the writ petition) in terms of the Rules occupying the field at the relevant point of time. The benefit of Proficiency Step Up was granted to the writ petitioners in terms of Annexure P-4 annexed with the writ petition, dated 5th September, 1991, was withdrawn by the appellants-writ respondents, in terms of Annexure P-5, in January, 2001, but with a modification that the writ petitioners were entitled to the said benefit notionally from the date of completion of eight years and monetary/financial benefit with effect from the date of passing the departmental examination, constraining them to file

representations, were rejected, they filed Original Application before the erstwhile H.P. State Administrative Tribunal seeking quashment of Annexure P-5, was transferred to this Court in view of the abolition of the Tribunal, came to be diarized as CWP (T) No. 7809 of 2008, titled as Vidya Sagar and others versus State of Himachal Pradesh and another, before this Court and this Court, vide order, dated 19th June, 2009, quashed Annexure P-5 with liberty to the writ respondents to proceed with the matter in accordance with law after hearing the writ petitioners. Thereafter, the writ respondents made order, dated 18th February, 2010 (Annexure P-9) on the basis of column 2 of the clarificatory letter, dated 18th July, 1992 (Annexure P-2) and benefit granted to the writ petitioners right from the due date, in terms of Annexure P-4, was withdrawn and were held entitled to monetary benefit from the date of passing their departmental examination.

3. Feeling aggrieved, the writ petitioners filed the writ petition seeking quashment of Annexure P-9. The Writ Court, after examining the pleadings, held, in terms of the impugned judgment, which is subject matter of this appeal, that Annexure P-9 is bad in law, not in accordance with the Rules occupying the field and quashed the same, restored the efficacy of Annexure P-4 and commanded the writ respondents to grant relief in terms of Annexure P-4 in favour of the writ petitioners.

4. It would be profitable to reproduce Rule 2(2) of the H.P. Departmental Examination Rules, 1976 (hereinafter referred to as "the Rules") herein:

"2. Commencement and application.-

(1)

(2) They shall govern the Departmental Examination in respect of-

(i) the members of the Himachal Pradesh Administrative Service;

(ii) the members of the Himachal Pradesh Forest Service;

(iii) Tehsildars and Naib Tehsildars;

(iv) all other gazetted officers working in connection with the affairs of the State of Himachal Pradesh not included in clauses (i) to (iii) above; and

(v) any other class or category of officers which may be included by the Government from time to time..... "

5. The service of the writ petitioners was not included within the fold of Rule 2(2) of the Rules in terms of Clause (v) (supra) before they had got the status of gazetted officers. It appears that the concerned officers, who were manning the posts of the concerned department, at the relevant point of time, applied their minds in terms of the Rules occupying the field and passed Annexure P-4, but, thereafter, a clarificatory letter (Annexure P-2) was issued by the Special Secretary (Training), Government of Himachal Pradesh under the head

"Clarification regarding proficiency step up to Gazetted Officers". It is apt to reproduce the relevant portion of Annexure P-2/T, the English translation of Annexure P-2, herein:

".....The clarification/guidance for releasing proficiency step up to Gazetted Officers is as follows:-

1. Proficiency step up as and when due to any officer may not be released till:-

(a) He does not pass Departmental Examination.

(b) Officer completes 50 years of age without passing departmental examination.

2. An officer who passes departmental examination within 8 years of appointment/promotion to any service/class may be sanctioned proficiency step up from due date.

..... "

6. While going through the same, it appears that the Proficiency Step up is not to be released to a Gazetted Officer unless he has not passed the departmental examination. It also provides that an officer, who makes the grade within eight years of appointment/promotion to any service/class, the proficiency step up may be sanctioned from the due date.

7. The word "due date" has been defined in the Black's Law Dictionary, Sixth Edition, at page No. 500 as under:

"Due date. In general, the particular day on or before which something must be done to comply with law or contractual obligation."

8. In The New Oxford Dictionary of English, definition of the word "due date" has been given at page No. 570 as under:

"due date noun the date on which something falls due, especially the payment of a bill or the expected birth of a baby."

9. Meaning thereby, the proficiency step up may be sanctioned to the writ petitioners from the due date, i.e. from the date they were entitled to.

10. Annexure P-5 has been issued on the basis of the said clarification, is not in accordance with the mandate of the Rules.

11. It would also be profitable to reproduce Rule 17(1)(i) of the Himachal Pradesh Agricultural Services (Class-I Gazetted) Non-Ministerial Recruitment and Promotion Rules, 1995, herein:

"17. Departmental Examination: (1) Every member of the service shall pass a Departmental Examination as prescribed in the Departmental Examination Rules, 1976 as amended from time to time, failing which he shall not be eligible to:-

(i) Cross the Efficiency Bar/Proficiency increment/placement in higher scale after

8 and 18 years of service,

..... "

12. Annexure P-4 has been made in terms of the Rules. It is apt to reproduce the relevant portion of Annexure P-4 herein:

"

On the recommendations of Departmental Promotion Committee, I am directed to convey the approval of the Government for the grant of higher scales viz. Rs. 10025-15100 and Rs. 12000-16350 after completion of 8 & 16 years of service as admissible in accordance with the instructions issued vide letter No. Audit II (B) 1/89 dated 8.10.90 and dated 123.3.91 in respect of the following of the Agriculture Department from the date shown against each:-

..... "

13. The writ petitioners had passed the departmental examination, were entitled to proficiency step up with arrears as per clarification No. 2 of the clarificatory letter, Annexure P-2, as reproduced hereinabove.

14. Learned counsel for the appellants-writ respondents heatedly argued that the writ petitioners are entitled to the said benefit from the date of passing of their departmental examination. He was asked to show any rule in support of his arguments, failed to do so. However, he has stressed on the word "due date", but in the same breath, has stated that the said benefit was granted to the writ petitioners notionally from the due date and the monetary from the date of passing of their departmental examination. He was again asked to show in terms of which Rules the said benefit was granted in such a way, again failed to do so.

15. In the Rules or the guidelines, it is nowhere provided that the Gazetted Officers are entitled to the said benefit notionally from the due date and monetary from the date of passing the departmental examination.

16. As per the Rules and the guidelines (supra), they were entitled to the said benefit from the due date, but the only rider was that they had to pass the departmental examination, which the writ petitioners did. Thus, Annexure P-9, on the face of it, is bad in law and Annexure P-4 holds the field.

17. Viewed thus, the Writ Court/learned Single Judge has rightly made the impugned judgment. No case for interference is made out. Hence, the appeal is dismissed alongwith all pending applications.