

(2011) 06 SHI CK 0252

In the High Court Of Himachal Pradesh

Case No : LPA No. 190 of 2010, CWP No. 6915 of 2010 and CWP (T) No"s. 11486

State of H.P. and Others

APPELLANT

Vs

Raj Kumar
 Praveen Kumar Vs Praveen Kumar

Anisha Vs State of H.P. and Another

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 3 ShimLC 377

Hon'ble Judges : Kurian Joseph, C.J;Sanjay Karol, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The issue raised in all these cases pertains to recruitment of 393 posts of Forest Guards. As per the existing rules, it is not in dispute that 90% of the cadre strength is to be filled-up by the direct recruits and 10% by the in-service candidates. It appears that the Government has taken a policy decision during 2002 that out of the 90% direct recruits, 15% should be reserved for Home Guards. The writ Petitioners in all these cases are Home Guards. It is their claim that 15% of 393 vacancies should be given to the Home Guards on the basis of the government's decision dated 23.12.2002. It is seen that pursuant to the government's decision, steps have been taken for filling-up 393 posts by the Principal Chief Conservator of Forests as per communication, dated 23.12.2002. Quite strangely, though none of the writ Petitioners is in-service candidate, yet they have also been permitted to participate in the selection process. There cannot be any dispute from any corner that direct recruitment can only be through Service Selection Board. The limited direct recruitment is permissible only by the Department for selection of 10% quota, reserved for the in-service candidates. The selection process, that has been initiated and conducted by the Department, is only for 10% quota. If that be so, being a limited direct recruitment, pursuant to government's decision dated 23.12.202, the writ Petitioners being Home Guards, cannot stake any claim against 10% quota for in-service candidates. Their claim can be considered only when the direct recruitment for 90% of the cadre strength is conducted. The Petitioners

could not have been permitted to participate in the limited direct recruitment conducted by the Conservator of Forests, since they are not in-service candidates and since the recruitment, that has been conducted, is only a limited direct recruitment for 10% quota.

2. But we find that there are two judgments of the single bench with divergent views. In CWP(T) No. 9730 of 2008 (O.A. No. 2981 of 2003), decided on 8.3.2010, titled as Rajeev Kumar and Ors. v. State of H.P. and Ors., it has been held that the writ Petitioners, who are Home Guards, cannot stake any claim against 10% quota, since what is conducted is only a limited direct recruitment for the 10% quota. It has also been held, inter alia, that the claim of the writ Petitioners for 15% reservation out of 90% posts in the cadre strength can be considered only subject to the statutory rules.

3. In the facts and circumstances, as discussed above, we do not think it necessary to go into that moot question as to whether in the absence of rules, the Government policy for reservation of 15% can be resorted to. That question would arise for consideration only as and when the steps are taken for direct recruitment by the Service Selection Board for 90% of the cadre strength. However, it is brought to our notice that despite there being no amendment in the rules also, the Government has so far made direct recruitment of 76 Home Guards in the years 2007 and 2010. As we have already held above, those appointments can only be treated as direct recruitment and to be adjusted against the 90%. The learned Additional Advocate General points out that those 76 appointments were made in the year 2007-2010 through direct recruitment. Whether the direct recruitment has been conducted properly or not is not an issue before us and it cannot be gone into at the back of the affected candidates. Be that as it may. The writ Petitioners in the above circumstances are certainly entitled to stake their claim against 90% direct recruitment quota and as and when the proper selection for direct recruitment against 90% posts is conducted, it will also be open to the writ Petitioners to point out that the policy of the Government is being implemented despite amendment in the rules.

4. The learned Counsel for the Petitioners have brought to the notice of this Court that the posts to be filled-up by direct recruitment have been filled-up otherwise than through the Service Selection Board. If the submission is factually correct, it is certainly a serious irregularity. As far as direct recruitment to any post is concerned, the same shall be done only in accordance with the procedure as per the rules and if the rules contemplate, such selection to be conducted through the Service Selection Board, it shall be done in that manner only. If any such deviation is made, the officer concerned shall be liable for all the consequences in that regard. The Chief Secretary has to ensure compliance of the rules.

5. The learned Counsel for the Petitioners submit that the Petitioners have been bonafidely prosecuting this litigation under the impression that they can also get selection under the direct recruitment. Therefore, it is prayed that as and when

steps are taken for direct recruitment, they may be given due relaxation in the age. The Petitioners may bring this matter to the notice of the government and the government may pass appropriate orders in the background of litigation bonafidely prosecuted by the Petitioners, to meet the ends of justice and equity. We make it clear that in case there was any usurpation of the quota by the in service candidates, the same shall be duly adjusted as and when the next recruitment is made.

6. In the above circumstances, LPA Nos. 190 of 2010 and 80 of 2010 filed by the State are allowed, CWP No. 6915 of 2010, CWP (T) No. 11486 of 2008, CWP (T) No. 11487 of 2008, CWP (T) No. 11488 of 2008 and CWP (T) No. 11549 of 2008 are dismissed and C. Rev. No. 2/2011 is disposed of accordingly.

7. The Registry will communicate a copy of this judgment to the Chief Secretary.