

(2011) 01 SHI CK 0104
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 9351 of 2008

Subhash Sharma

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 01 SHI CK 0104

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed in the Respondent No. 5-Corporation as a Clerk. He was posted in Agricultural Workshop, Bhangrotu, District Mandi, Himachal Pradesh, which was transferred from Agriculture Department to the Corporation on 1st January, 1978. He was sent on deputation with Kandi Project at Una and was relieved from the Agricultural Workshop, Bhangrotu on 30th November, 1991. The Agricultural Workshop, Bhangrotu was retransferred to the Agriculture Department alongwith assets, liabilities and staff with effect from 31st March, 1994.

2. The name of the Petitioner could not be included in the list of employees whose services were liable to be absorbed in the Agriculture Department. The Managing Director of the Respondents No. 5-Corporation brought this fact to the notice of Respondent No. 2 on 12th January, 1995. Petitioner also made a representation to Respondent No. 3 and also to Hon''ble Chief Minister on 23.7.1998. However, the fact of the matter is that the Petitioner was not absorbed and he was repatriated from Kandi Project at Una to the H.P. Agro Industries Corporation Ltd.

3. Ms. Ranjana Parmar, learned Counsel for the Petitioner has strenuously argued that once the decision has been taken by the State Government to take over the Agricultural Workshop at Bhangrotu with all assets, liabilities including the

employees, Petitioner's services were also liable to be taken over. She then contended that the Petitioner cannot be permitted to suffer on the basis of the lapse of part of the Respondents.

4. Mr. P.M. Negi, learned Deputy Advocate General appearing on behalf of Respondents No. 1 to 3 has strenuously argued that since the name of the Petitioner could not be included in the letter dated 17.9.1996, he could not be absorbed in the Agriculture Department.

5. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

6. This Court had passed the following order on 20th April, 2010:

The case in hand appears to be an inter-se dispute between the two departments/Corporations of the State. According to Mr. Ram Murti Bisht, perhaps the matter can be resolved by the Committee which had been constituted in terms of the Notification dated 24.7.2003. The Petitioner, originally working as Junior Assistant with the Himachal Pradesh Agro Industry Corporation Ltd., was sent on deputation to the Forest Department. In terms of Office Order dated 15.11.1991, certain officers were placed on deputation with the IWS, Kandi Project Integrated Water Shed Management Project. The Petitioner's name is included in the said office order.

Letter dated 12.1.1995 (Annexure A-2) written by the Managing Director of the Himachal Pradesh Agro Industry Corporation Ltd., to the Director of Agriculture, Himachal Pradesh, records the fact that a list of persons who on repatriation were transferred to the Agriculture Department, had been prepared and the name of the Petitioner was inadvertently left out from the same.

In this view of the matter, the State is directed to resolve the issue at the earliest. Needful be positively done within a period of 8 weeks from today. The Principal Secretary (Agriculture) shall file his personal affidavit indicating the action taken in this regard.

In sequel thereto, the short affidavit has been filed by the Secretary (Agriculture) to the Government of Himachal Pradesh. It is averred in the affidavit that the case of the Petitioner cannot be considered for absorption in Agriculture Department at this belated stage. Moreover, the sanctioned strength of Senior Assistants in the Agriculture Department has already been filled up by 100% promotion amongst the feeder category under the Recruitment and Promotion Rules in existence.

7. It is not in dispute that the Petitioner was working in Agricultural Workshop at Bhangrotu. The State Government has taken a decision to take over the assets and liabilities including the staff of Bhangrotu Workshop. The transfer has taken place on 31st March, 1994. Petitioner, has in the meantime, been sent on deputation to Kandi Project, Una. It was the duty cast upon the Respondents to ensure that the name of the Petitioner was also included in the list of persons

who were working at Bhangrotu Workshop and their services were liable to be taken over with effect from 31st March, 1994. The Petitioner was not required to give separate option as pleaded by Mr. P.M. Negi, learned Deputy Advocate General. His name has been wrongly excluded by the Respondents resulting in miscarriage of justice to him. He has already made a representation for the redressal of his grievance. The Petitioner has been repatriated to Respondent No. 5-Corporation on 30th April, 2003. In the decision taken pursuant to the direction issued by this Court on 20th April, 2010, the main ground taken to deny the absorption of the Petitioner in Agriculture Department is that he could not be accommodated at this belated stage. The matter remained always alive and the Respondents ought to have considered the case of the Petitioner for absorption. The other ground taken by the Respondents is that the posts of Senior Assistant are already filled up, cannot be accepted. The case of the Petitioner was required to be considered for absorption on the basis of the conscious decision taken by the State Government. Similarly situate persons who were working in Agricultural Workshop at Bhangrotu, have been absorbed in Agriculture Department only on the ground that their names were mentioned in letter dated 17th September, 1996 with effect from 31.3.1994. The Petitioner cannot be discriminated against by the Respondent-State. The case of the Petitioner was also favourably recommended by the Managing Director of the Respondent-Corporation on 12.1.1995. Same was not addressed to by the Respondent-State.

8. Mr. P.M. Negi, learned Deputy Advocate General has also argued that the Petitioner now has been repatriated to Respondent No. 5-Corporation after completing his stint at Kandi Project, Una. The fact of the matter is that Petitioner's repatriation to Respondent No. 5-Corporation will not come in the way of the Petitioner to get absorbed at par with all those employees who were absorbed in the Agriculture Department with effect from 31.3.1994 and whose names were also included in the letter dated 17th September, 1996. Mr. P.M. Negi, learned Deputy Advocate General has also failed to place on record any tangible evidence to establish that the Petitioner was required to give his option for absorption in the Agriculture Department.

9. Accordingly, in view of the observations made hereinabove, the petition is allowed. Petitioner shall be deemed to have been absorbed in Agriculture Department with effect from 31st March, 1994, with all consequential benefits. The pending application(s), if any, also stands disposed of. No costs.