
(2012) 09 SHI CK 0131
In the High Court Of Himachal Pradesh
Case No : CWP. No. 1987 of 2008

Sukhdev Singh, Suraj Kamal, Rakesh Kumar and Bal Krishan APPELLANT
Vs
State of HP RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Citation : (2012) 09 SHI CK 0131

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, for the Appellant; P.K. Sharma, A.A.G., for the Respondent

Judgement

Dev Darshan Sud, J.—This writ petition has been preferred by the petitioners herein seeking the difference in pay scale granted to them. The case pleaded is that according to the notifications which were issued, they were entitled to the pay scale of Lab. Assistants against which posts they were absorbed by the State vide notification Annexure: P2. They plead that they were considered for allowance of pay against the post of Lab. Attendant which is a Class-IV post. The petitioners were employees of Vishnu Sanatan Dharam College, Bhatoli, District Una which was taken over by the Government vide notification Annexure: P1 dated 14th September, 2006. Vide Annexure: P2, the petitioners were appointed as laboratory staff against the four posts of Lab. Assistants. The notification is as under:

Government of Himachal Pradesh Department of Higher Education.

No. EDN-A-Ja (2)-2/2006 dated Shimla-2 the 4th January, 2007.

Notification.

The Governor, Himachal Pradesh is pleased to order the taking over of services of Teaching and Non-teaching staff of SVSD College, Bhatoli, Distt. Una w.e.f. 14.9.2006 i.e. the date of take over as per Annexures "B", "C" and "D"

respectively as per UGC guidelines, R&P rules of the concerned Categories and terms and conditions of taking over of staff of private colleges notified vide Notification No. Chha (15)-3/86-Shiksha-Ka, dated 25.8.94 subject to decision of the Hon"ble Court in CWP No. 18/2001.

The Governor, Himachal Pradesh is further pleased to order the creation of teaching and non-teaching posts for the college as under:-

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Laboratory Staff

1. Lab. Asstt. (Class-III)

4 posts.

2. Lab. Attendent (Class-III).

5 posts

3. Lab. Attendent (Class-IV)

1 post.

The post of Librarian created for this college will be filled up through promotion/ transfer. The service of present incumbent is to be taken over as Asstt. Librarian and may be posted in other college or elsewhere against vacant post of

Asstt. Librarian.....

Laboratory Staff:

S. N.

Name & Father's name of the employee

Deng. Appointed by nature of appointment

Date of Birth & Date of Appi.

Education Qualification

% age of marks

Board/ University

Bonafide of Himachal yes/No.

Proposed designation

1.

Sh. Bal Kishan son of Parkash

Lab. Asstt. Management permanent.

7.5.53

11.12.79

Matric

PUC

43.66

37.75

HPB

HPU

Himachali Bonafide certificate

Lab. Asstt. Class-III.

2.

Sukh Dev Singh

Lab. Asstt. Managem. Permanent

21.5.62

11.12.79

Matric

41.64

PSEB

Himachali Bonafide certificate required

Lab. Asstt. Class-III.

3.

Sh. Suraj Kamal son of. Baldev Chand

Lab. Asstt. Manage. Permanent

30.1.65

10.9.81

MatricPUCDip.in Lab. Science.

55.22

36.87

66.6

HPB

HPU

KU

Himachali Bonafide Certificate Required

Lab. Asstt. Class-III.

4.

Sh Rakesh Kumar S/o Sh. Jyoti Parkash

Lab. Asstt. Managem Permanent

5.4.63

10.9.81

Matric

PUC

52.88

40.25

HPB

HPU

Himchali Bonafide Certificate Required.

Lab. Asstt. Class-III.

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2. It is undisputed before me that the school was de-notified by notification dated 30.6.2008 in compliance to the judgment passed by this Court in CWP No. 18 of 2001 and CWP No. 1258 of 2006 decided on 29.5.2008. In these circumstances, they remained on the pay roll of the Government for a short period from 14.9.2006 to 30.6.2008, the petitioners have been paid the salary for this period (which has been received by them) as Lab. attendants and not as Lab. Assistants against which post they were absorbed. The respondents submit that according to notification Annexure: P2, four posts of Lab. Assistants (Class-III) and five posts of Lab. Attendants (Class-III) and one post of Lab Attendant (Class IV) were created and according to the Government, they were recommended to be designated as Laboratory Assistants (Class III). The respondents submit that in private aided colleges, there is no post of Lab. Assistant but only of Lab. Attendant. And in this event; they were not entitled to the pay scales as claimed by them.

3. Learned Counsel for the petitioner submits that according to the Recruitment and Promotion Rules of the Government (Annexure P3/T), there are sanctioned posts of Junior Lecturer Assistant/Laboratory Assistant clubbed together for purposes of pay. In this eventuality, when the petitioners have been taken over

against the post of Laboratory Assistant, there could be no question about there being appointed as Lab. Attendants. These are the undisputed facts.

4. It is also urged by the State that the college not having been impleaded as a party, it is not open to the petitioners to claim any relief against the State.

5. The first submission made on behalf of the respondent-State is that prior to the institution of the present petition, the issue had been raked up by the respondents when the college has been informed that the post of Laboratory Assistants were not sanctioned/available with Government Aided College and in this event, they could not be paid the salary of Laboratory Assistants. Learned Counsel submits that if that be so, when the services of the petitioners were taken over vide Annexure: P2, they could not be granted the pay scales of Laboratory Assistants but, in fact, have been correctly paid the scales of Lab. Attendants. I cannot accept this submission.

6. A perusal of Annexure: P1 would show that there were four posts of Laboratory Assistants (Class III) and five posts of Lab. Attendants (Class III). I also find from the Recruitment and Promotion Rules that there is no post of Laboratory Attendant but only that of Laboratory Assistant. In this eventuality, it cannot be said that the petitioners are not entitled to the payment of wages of Laboratory Assistant against which posts the services have been taken over vide Annexure: P2 extracted supra. In these circumstances this petition is allowed. A direction is issued that the petitioners shall be entitled to the difference in salary paid to them for the period when the college was taken over by the State. They will be entitled to the salary of admissible Laboratory Assistant for the period for which they worked with the respondent-State from the date of notification Annexure: P1. This petition does not determine the plea that on repatriation the petitioners would be entitled to the same pay as determined herein. That shall be governed by the rules applicable. Petition is disposed of. No order as to costs