
(2021) 12 SHI CK 0058

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 6358 Of 2020

Surender Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 17-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 32
Administrative Tribunals Act, 1985 — Section 5(4), 19, 20(2)(a), 20(2)(b), 21, 21(1),
21(1)(a), 21(1)(b), 21(2), 21(3)

Citation : (2021) 12 SHI CK 0058

Hon'ble Judges : Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Jiya Lal Bhardwaj, Ashok Sharma, Rajinder Dogra, Shiv Pal Manhans, Bhopinder Thakur, Dinesh Thakur, Vijay Singh Thakur, Vinod Thakur, Anupam Kumar

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan J

1. The petitioner initially filed this petition before the erstwhile Tribunal and after closure thereof, the same has been transferred to this Court. The petitioner preferred an application for amendment of the petition, which was duly allowed and on the basis of the amended petition, the petitioner has now sought for following substantive reliefs:

i. That appointment of respondent No.5 on secondment basis de-hors the qualification prescribed in the Act rules and statute be quashed and set aside, with all consequential actions.

ii. That the absorption of respondent No.5 de-hors the qualification prescribed in the Act rules and statutes be quashed and set aside, with all consequential actions.

iii. That respondent No.3 be directed to place on record the public notice issued

for the appointment to the post of Assistant Registrar on secondment basis de-hors the qualification prescribed in the Act be placed on record and same may kindly be declared illegal.

iv. That respondent No.3 be directed to place on record the entire proceeding undertaken to absorbed respondentNo.5 de-hors the qualification prescribed in the Act and same may be quashed and set aside.

v. That respondent No.5 be directed to be repatriated to his parent employer respondentNo.4.

vi. That the recruitment year of the petitioner be declared as 2014 as recruitment process was delayed inordinately by respondents due to intervention of respondent No.5.

vii. That a writ in the nature of quo warranto may kindly be issued to quash the appointment of respondent No.5 as Assistant Registrar on secondment basis in respondent No.3-University as per office orders dated 21.01.2013 and 26.02.2013 (Annexures A-11 and A-

12) and thereafter his absorption on the post of Assistant Registrar as per office order dated 02.09.2015(Annexure A-14) issued by respondent No.3-University.

viii. That a writ in the nature of mandamus may kindly be issued directing respondent No.3-University to repatriate respondent No.5 to his parent department i.e. respondent No.4-Federation and justice be done.

ix. That a writ in the nature of mandamus may also be issued to make inquiry regarding illegal appointment of respondent No.5 on secondment basis as Assistant Registrar in the respondentNo.3-University since his testimonials have neither been dated nor the stamp/seal of the Managing Director of respondent No.4-Federation has been appended on the documents supplied to the applicant under RTI and further he was ineligible to be taken on secondment basis and suitable action may be taken against the erring officer for which the applicant shall ever pray for.

2 The respondent-University issued a notice for filling up three posts including the post of Assistant Registrar on secondment basis and the same reads as under:

"Applications are invited from eligible employees of H.P. Govt. /State Public Sector undertakings/Autonomous Bodies/State Universities in H.P. holding the analogous posts on regular basis with at least minimum three years of regular service in the posts for filling up the following posts in the given pay scale 'on secondment basis' as per terms and conditions of deputation/secondment of Govt. of Himachal Pradesh. The appointment will be initially for a period of two years, which can be extended upto three years. Eligible officials may send applications containing their bio-data through proper channel. While forwarding the application it may be certified by the sponsoring authority that the particulars

furnished by the official concerned are correct and that no vigilance or disciplinary case is pending or contemplated against the officers concerned. Copies of ACRs for the proceeding three years may also be sent under sealed cover duly marked "confidential". Application should reach in the office of the Registrar, Himachal Pradesh Technical University, Gandhi Chowk, Hamirpur-177001 (HP) within one month from the date of publication of this notice. Applications received after last date and incomplete in any respect are liable to be summarily rejected.

Name of Post

No. of posts and place of posting

Pay scale

Remarksq

Private Secretary

1

10300-34800+5000 Grade Pay

On secondment basis

Estate Officer

1

As applicable

On secondment basis

Assistant Registrar

1

15600-39100+5400 Grade Pay

On secondment basis

Willing candidates upto the age 45 years on 1st September 2012 may apply within on month from the date of this publication through proper channel."

3 The aforesaid notice was published on the official website of the respondent-University on 29.8.2012 and thereafter sent through post to the various departments of the Government including H.P. Vidhan Sabha, CPWD Shimla, Himachal Pradesh University Shimla, Dr. Y.S. Parmar University Nouni, Solan and CSK Krishi Vishavavidyalaya, Palampur.

4 It is not in dispute that respondent No.5 applied directly for the post in question to the respondent-University vide application dated 3.10.2012 and the same application was also routed through the employer, which was received by the respondent-University on 6.11.2012 along with requisite NOCs. The

application submitted by respondent No.5 directly to the respondent-University processed at one stage was even rejected by the Vice Chancellor of the respondent-University. However, later on discussions took place between the Vice Chancellor and the Registrar of the respondent-University and a committee of the Registrar along with two other members was constituted to look into the matter and it is only thereafter that respondent No.5 came to be appointed as Assistant Registrar on secondment basis.

5 Therefore, in the given facts and circumstances of the case, first and foremost question that is required to be considered is that whether the application submitted by respondent No.5 directly to the respondent -University without being routed through proper channel could have been considered by the respondent-University.

6 It is a well settled rule of interpretation that in dealing with matter relating to general public, statutes are presumed to use words in their popular sense and they should be given their ordinary, natural and familiar meaning. Popular sense means that the sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it.

7 In our considered view, the same rule of interpretation has to be applied while constructing words and phrases used in non-statutory rules meant for observance of public authorities and statutory functionaries.

8 The expression 'filing the application through proper channel' has not been defined statutorily or otherwise. But then, the expression is well understood by all concerned, who are in service either of the Government or Corporations and institutions like universities. It has always been understood as meaning to move the superior authorities through hierarchical channel.

9 It is now well settled that where there is a defined procedure, even without statutory force, it must be scrupulously observed and non-observance results in rendering the act void being violative of Article 14 of the constitution.

10 In *Sadhu Singh vs. State of Punjab*, 1984(2) SCC 310, the Hon'ble Supreme Court has held that any existing executive instructions could be substituted by issuing fresh executive instructions for processing the cases of lifers for premature release, but once issued, these must be uniformly and invariably applied to all cases of lifers so as to avoid the charge of discrimination under Article 14 of the constitution.

11 In *A.I. Kalra v. The Project and Equipment Corporation of India Ltd.* 1984(3) SCC 316, the Hon'ble Supreme Court has held that an administrative authority who purports to act by its regulation must be held bound by the regulation. Even if these regulations have no force of law the employment under these corporations is public employment and; therefore, an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulations.

12 Having said so, it still cannot be ignored that this petition was initially filed before the erstwhile Tribunal only on 25. 2.2019, whereas respondent No.5 was appointed to the post of Assistant Registrar on secondment basis in the respondent-University vide office order dated 21.1.2013. The Tribunal established under the Administrative Tribunals Act could have entertained the original application; provided the same was filed within limitation as prescribed under Section 21 of the Act.

13 This issue has been elaborately considered and dealt with by the Hon'ble Supreme Court in D.C.S. Negi vs. Union of India & ors., 2018 (16) SCC 721, wherein it was observed as under:

12. Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:

"21. Limitation.-(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in subsection (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in subsection (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

13. A reading of the plain language of the above reproduced section makes it

clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section

(3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

14. In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant.

14 It is not in dispute that the petitioner while preferring the original application did not file any application seeking condonation of delay. The only explanation offered by the petitioner for filing the original application after a period of 6 years is that the original application has been filed against the recurring cause of action as illegality is continuing till date and respondent No.5 is usurper to the post of Assistant Registrar as basis of his appointment is illegal.

15 Even if it is assumed that there is no period of limitation prescribed, even then in the matters relating to promotion and appointments, the courts need to draw a line. After all, every person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.

16 In coming to such conclusion, we are duly supported by the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Rabindra Nath Bose & ors. vs. Union of India & ors.*, 1970 AIR 470, wherein it was held as under:-

"In so far as the attack was based on the 1952 rules, it must fail on the ground that this petition under article 32 of the Constitution had been brought about 15 years after the 1952 Rules were promulgated and effect given to them in the Seniority List prepared on August 1, 1953. Even though article 32 is a guaranteed right it does not follow that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay. It would be unjust to deprive the respondents of the rights which had accrued to them. Every person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years."

17 Likewise, if a party having a right stands by and sees another acting in a

manner inconsistent with that right and makes no objection while the act is in progress, he cannot afterwards complain. This principle is based on doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

18 Thus, in those cases, where period of limitation is prescribed, within which the action is to be brought before the Court, if the action is not brought within that prescribed period, the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over.

19 Similar reiteration of law can be found in the judgments of the Hon'ble Supreme Court in *Union of India and others vs. Chaman Rana*, (2018) 5 SCC 798 and *Union of India and others vs. C. Girija and others* 2019(3) SCALE 527, wherein the Hon'ble Supreme Court observed that remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and would bring a tsunami in the service resulting in administrative chaos.

20 In *P.S. Sadasivaswamy v. State of Tamil Nadu*, 1974 AIR(SC) 2271, the Hon'ble Supreme Court has categorically observed that in matters of promotion and seniority should be agitated without delay and at least within six months or at the most one year from the date of accrual of cause of action.

21 Additionally, we may notice that at the time when the petitioner approached the erstwhile Tribunal, he had sought only for the following substantive reliefs:

- i. That appointment of respondent No.5 on secondment basis de-hors the qualification prescribed in the Act rules and statute be quashed and set aside, with all consequential actions.
- ii. That the absorption of respondent No.5 de-hors the qualification prescribed in the Act rules and statutes be quashed and set aside, with all consequential actions.
- iii. That respondent No.3 be directed to place on record the public notice issued for the appointment to the post of Assistant Registrar on secondment basis de-hors the qualification prescribed in the Act be placed on record and same may kindly be declared illegal.
- iv. That respondent No.3 be directed to place on record the entire proceeding undertaken to absorb respondent No.4 de-hors the qualification prescribed in the Act and same may be quashed and set aside.
- v. That respondent No.5 be directed to be repatriated to his parent employer respondent No.4.
- vi. That the recruitment year of the petitioner be declared as 2014 as recruitment process was delayed inordinately by respondents due to intervention of respondent No.5.

22 It is only later when the original application was transferred to this Court that the petitioner amended the same and sought for writ in the nature of quo warranto, which writ obviously could not have been granted by the erstwhile Tribunal.

23. Therefore, what, in substance, the petitioner had originally filed before the erstwhile Tribunal was a public interest litigation in service matters, which obviously was not maintainable in view of the judgment rendered by the Hon'ble Supreme Court in *Hari Bansh Lal vs. Sahodar Prasad Mahto & ors.*, 2010 (9) SCC 655, relevant portion whereof reads as under:

"PIL in service matters:

6) About maintainability of the Public Interest Litigation in service matters except for a writ of quo warranto, there are series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a Member in terms of Section 5(4) and from among the Members of the Board, considering the qualifications specified in sub-section (4), the State Government, after getting a report from the vigilance department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence. We have already pointed out that the person who approached the High Court by way of a Public Interest Litigation is not a competitor or eligible to be considered as a Member or Chairman of the Board but according to him, he is a Vidyut Shramik Leader. Either before the High Court or in this Court, he has not placed any material or highlighted on what way he is suitable and eligible for that post.

7) In *Dr. Duryodhan Sahu and Others vs. Jitendra Kumar Mishra and Others*, (1998) 7 SCC 273, a three- Judge Bench of this Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated". In para 21, this Court reiterated as under:

"21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

8) In *Ashok Kumar Pandey vs. State of W.B.*, (2004) 3 SCC 349, this Court held thus:

"16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been

indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

9) The same principles have been reiterated in the subsequent decisions, namely, *Dr. B. Singh vs. Union of India and Others*, (2004) 3 SCC 363, *Dattaraj Nathuji Thaware vs. State of Maharashtra and Others*, (2005) 1 SCC 590 and *Gurpal Singh vs. State of Punjab and Others*, (2005) 5 SCC 136.

The above principles make it clear that except for a writ of quo warranto, Public Interest Litigation is not maintainable in service matters."

24 Similar reiterations of law can be found in the judgment delivered by this Court in *Smriti Gupta & anr. vs. State of H.P. & ors.*, 2016 Latest HLJ 191 and judgment rendered by one of us (Justice Tarlok Singh Chauhan) in CWP No. 6098/2012, titled *Babita Thakur & ors. vs. Union of India & ors.*, dated 23.12.2019.

25 In view of aforesaid discussions and for the reasons recorded above, in our considered view, the instant petition at the first place was not maintainable before the erstwhile Tribunal as it was in the nature of public interest litigation and secondly on the ground of limitation. Since considerable time has otherwise elapsed, we are not inclined to interfere with the appointment of respondent No.5. Mere fact that the petitioner has thereafter amended the petition and the same has been allowed cannot give him any advantage as it cannot cure the defect as pointed above.

26 The writ petition is dismissed, in the aforesaid terms, so also the pending application(s), if any, leaving the parties to bear their own costs.