
(2011) 03 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 4304 of 2010

Suresh Kumar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0090

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as Part Time Water Career in Government Primary School, Bastori, Education Block Kullu-II pursuant to the approval accorded by the State Government on 29.08.2007 under Clause-12 of the Scheme framed by the Respondent-State for recruitment in the Schools of Education Department. Respondent No. 3 directed the Respondent No. 4 to issue appointment letter to the Petitioner on 05.10.2007. Respondent No. 4 issued the appointment letter on 08.10.2007, pursuant to which the Petitioner joined his duties as Part Time Water Carrier on 08.10.2007. He also entered into necessary agreement at the time of his appointment. However, the salary was not paid to him. He approached this Court by way of C.W.P. No. 1461 of 2010, seeking directions to the Respondents to pay his salary. This Court disposed of the writ petition on 30.04.2010, by passing the following judgment:

(i) That the Respondents may be directed to release the salary/pay of the Petitioner since 08.10.2007.

There will be a direction to the third and fourth Respondents to take action on the representations Annexures P-4 & P-5 and see that the eligible benefits, due to the Petitioner, are disbursed within a period of two months from the date of production of the copy of this order alongwith copy of the writ petition.

2. However, surprisingly, the Respondent No. 3 has issued office order dated

23.06.2010, whereby the appointment of the Petitioner made on 05.10.2007 was withdrawn with immediate effect, on the ground that no post of Part Time Water Carrier in Government Primary School, Bastauri was created.

3. Mr. R.S. Gautam, learned Counsel for the Petitioner has strenuously argued that issuance of Annexure P-7, dated 23.06.2010 is vindictive. Petitioner is penalized for approaching this Court by way of C.W.P. No. 1461 of 2010. He further argued that it cannot be presumed that the post of Part Time Water Career was not created. He finally argued that no show-cause notice was issued to the Petitioner before the issuance of office order dated 23.06.2010.

4. Mr. A.K. Bansal, learned Additional Advocate General has vehemently argued that since no post of Part Time Water Carrier was created in Government Primacy School, Bastori, there is no illegality in the office order dated 23.06.2010, whereby the appointment of the Petitioner was withdrawn.

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

6. Petitioner, as noticed above, is physically challenged to the extent of 55%. His case was approved by the State Government on 29.08.2007, which led to the issuance of letter dated 05.10.2007 by the Respondent No. 3 directing Respondent No. 4 to offer appointment letter to the Petitioner. Petitioner was offered appointment letter by Respondent No. 4 on 08.10.2007. He joined his duties on the same date. Since his salary was not paid, he filed a writ petition before this Court, which was disposed of on 30.04.2010. It is unfortunate that the Respondents No. 1 to 3 have victimized the Petitioner for approaching this Court for the redressal of his grievance. The plea raised by Mr. A.K. Bansal, learned Additional Advocate General that no post of Part Time Water Carrier in Government Primary School Bastori was created, cannot be accepted. The very fact that the process has been initiated, pre-supposes that the post stood already created, rather, there is a post of Part Time Water Carrier sanctioned for every school. The State Government has approved the appointment of Petitioner on 29.08.2007 under Clause 12 of the Scheme framed by the Respondent-State. The appointment of the Petitioner has been made on compassionate basis. Respondent No. 3 has directed the Respondent No. 4 to issue appointment letter to the Petitioner.

7. The matter is required to be considered from another angle. Petitioner has been appointed by invoking Clause-12 of the Scheme, being handicapped person. He has not been issued any show-cause notice before the issuance of Annexure P-7, dated 23.06.2010. He has suffered civil and evil consequences, since the action of the Respondents has effected his livelihood.

8. Their Lordships of the Hon'ble Supreme Court in Automotive Tyre Manufacturers Assn. v. Designated Authority and Ors. (2011) SCC 258 have held that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the

court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. Their Lordships have further held that the underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries.

Therefore, the principle implies a duty to act fairly i.e. fair play in action. The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Their Lordships have held as under:

"77. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak, it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasijudicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application.

9. The action of the Respondents of terminating the services of the Petitioner was arbitrary. What is arbitrary has been succinctly explained by their Lordships of the Hon"ble Supreme Court in East Coast Railway and Another Vs. Mahadev Appa Rao and Others, as under:

"20. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained.

Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

10. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexure P-7, dated 23.06.2010 being null and void, is quashed and set aside. Since the order dated 23.06.2010 is null and void, Petitioner shall be deemed to be in continuous service as Part Time Water Carrier in Government Primary School, Bastori and he will be permitted to join his duties within a period of two weeks from the date of production of a certified copy of this judgment by the Petitioner. He shall be paid salary w.e.f. 23.06.2010 till the date of his joining.