

(2012) 11 SHI CK 0055

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (T) No. 856 of 2008 (OA No. 1070 of 2008)

Vijay Kumar

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 ShimLC 405

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, for the Appellant; Ruma Kaushak, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—This petition has been filed by the petitioner for quashing corrigendum dated July, 2007 issued by respondent No. 2 whereby the petitioner has been placed at seniority No. 2433-A instead of 665 with further prayer for a direction to the respondents to grant all benefits to petitioner due to him at serial No. 665 of seniority list as was the position prevailing before issuance of corrigendum. The facts, in brief, are that the petitioner after completing M.Sc., B.Ed.(Biology) was appointed as TGT (Medical). On joining on 18.12.1993 his name was included in TGT list, he was also given responsibility of teaching as lecturer. This was done because of administrative decision taken by the respondents on account of scarcity of lecturers. The persons, who were having requisite qualification of lecturer and were appointed as TGT, were posted as lecturers. This has been clarified by the Department subsequently.

2. The Department held Departmental Promotion Committee on 17.4.1996 and vide office order dated 15.5.1996 promoted the petitioner as lecturer (school cadre) and had shown his date of appointment 17.12.1993. It is clear from office order dated 15.5.1996 that though the petitioner was TGT, but he was posted against the post of lecturer in his own pay scale. The petitioner was not the only

person posted against the post of lecturer even though he was appointed as TGT. There were many other persons like the petitioner mentioned in office order dated 15.5.1996. In the office order dated 15.5.1996, the date of appointment of petitioner as lecturer was shown 17.12.1993.

3. The seniority list of lecturer (school cadre) was issued by respondent No. 2 on 1.8.1997, the petitioner was shown at serial No. 1318 in the seniority list between Adit Bansal and Kranti Kumar. In that seniority list, the date of appointment of the petitioner has been shown 18.12.1993.

4. On 19.6.2003 on the recommendations of the Departmental Promotion Committee the office order was issued and petitioner was confirmed as lecturer and was placed at serial No. 224 between Adit Bansal and Prem Lal Sharma. The date of appointment of petitioner has been shown as 18.12.1993 and the date of confirmation of petitioner as 18.12.1995.

5. On 20.6.2003 the final seniority list of lecturers (school cadre) as it stood on 31.12.2001 was circulated and petitioner was shown at serial No. 665 between Adit Bansal and Kranti Kumar. One Milkhi Ram, who was below the petitioner in seniority list since the year 1997 filed O.A.(D) No. 526 of 2006 assailing seniority granted to the petitioner. The said Original Application was hopelessly time barred. The petitioner contested the said Original Application by filing reply. The respondents during the pendency of O.A.(D) No. 526 of 2006 unilaterally without giving an opportunity to the petitioner and in violation of principle of natural justice, unsettled the long settled position in the seniority list and issued corrigendum in July, 2007 changing seniority place of petitioner from serial No. 665 to 2433A.

6. It has been stated that the impugned action of the respondents is illegal, arbitrary, unjust, unfair and against the principle of natural justice. The petitioner on appointment as TGT (Medical) was posted lecturer and was performing the duties of lecturer.

7. The respondents in relaxation of the Recruitment and Promotion Rules due to scarcity of lecturers, promoted on adhoc basis such TGTs, who were having requisite qualifications for appointment as lecturer. The petitioner was fulfilling the qualification of lecturer, therefore, he was posted as lecturer on 18.12.1993 alongwith similarly situated persons, the corrigendum is illegal and liable to be quashed. The respondents have unsettled the position of around 13 years.

8. The respondents No. 1 and 2 filed reply and stated that petitioner was assigned seniority erroneously as lecturer on the basis of his initial appointment as TGT on 18.12.1993 instead of his date of promotion as lecturer on 15.5.1996. On realising the mistake, the respondents issued corrigendum in July, 2007. It has been stated that the petitioner was initially appointed as TGT (Med.) in the year 1993 and was promoted to the post of lecturer vide order dated 15.5.1996. The petitioner was assigned seniority No. 2433A instead of 665 by way of corrigendum to rectify the mistake. The petitioner has been given the benefit of

seniority from the date he was actually promoted on 15.5.1996 instead of erroneous date 17.12.1993 when petitioner was posted as TGT. The seniority number of the petitioner was changed from 665 to 2433A after perusing the record.

9. The petitioner has filed supplementary affidavit dated 20.3.2011 and has stated that petitioner is not the only person who was given the benefit of lecturer from the date of his initial appointment as TGT in relaxation of rules. It has been stated that one Vinod Kumar was appointed as TGT (Non-Medical) on 28.7.1990, he was promoted as lecturer (Physics) on 19.12.1991 in relaxation of the rules.

10. The respondents No. 1 and 2 have filed reply to supplementary affidavit and have stated that the petitioner was recruited as TGT Science only on 18.12.1993 and was assigned seniority No. 3976A. As per Recruitment and Promotion Rules, he could get the benefit of promotion as per his seniority position which was also granted to him when he was promoted lecturer (Biology) on 15.5.1996 alongwith other 18 incumbents. Milkhi Ram filed O.A. (D) No. 526 of 2006. At that time, erroneous seniority granted to petitioner was noticed and, therefore, corrigendum was issued placing the petitioner at serial No. 2433A instead of serial No. 665. Milkhi Ram was appointed during the year 1994 as lecturer and he was placed at serial No. 1277. The petitioner being TGT was promoted alongwith similarly situated 17 incumbents only on 15.5.1996. Vinod Kumar was appointed on 28.7.1990 alongwith some others, all of them were promoted in relaxation to Recruitment and Promotion Rules. The case of the petitioner is not similar to Vinod Kumar. Milkhi Ram was directly appointed during the year 1994 as lecturer. The plea of want of impleadment of necessary parties has been taken by the respondents.

11. Heard the learned Counsel for the petitioner and learned Additional Advocate General for the respondents. It has been submitted on behalf of the petitioner that the petitioner was appointed TGT and right from the day one, he was assigned the work of lecturer and posted as lecturer. He was promoted as lecturer on 15.5.1996. Thereafter, the petitioner in various seniority lists had been shown between Adit Bansal and Kranti Kumar as lecturer showing his date of appointment 17.12.1993. The respondents abruptly without adhering to the principle of natural justice in July, 2007 changed the seniority position of the petitioner from serial No. 665 to 2433A after the filing of O.A. (D) No. 526 of 2006. It has been stated that the seniority lists were published after inviting objections. The respondents unsettled the settled position after about 13 years which is not permissible. The learned Counsel for the petitioner has relied Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others,

12. On behalf of the respondents, it has been submitted that ex-facie the placement of the petitioner in the seniority list of lecturers showing his date of appointment as 17.12.1993 is erroneous. The mistake was noticed after filing of O.A.(D) No. 526 of 2006 and, therefore, in July, 2007 corrigendum in question was issued for correcting the mistake. The petitioner was appointed TGT on

17.12.1993, he was promoted lecturer on 15.5.1996. The petitioner is entitled to counting of his seniority as lecturer from 15.5.1996 and not from 17.12.1993. In the case of Vinod Kumar etc. relaxation was given for promoting him and other similarly situated persons as lecturers in relaxation of Recruitment and Promotion Rules.

13. The petitioner has not placed on record his appointment letter as TGT nor petitioner has placed on record Recruitment and Promotion Rules of lecturers (school cadre). It appears from the petition and reply that the petitioner was appointed as TGT on 17.12.1993 and he joined as such on 18.12.1993 and was assigned the work of lecturer since 18.12.1993 due to scarcity of lecturers.

14. As per office order dated 15.5.1996 the petitioner who was appointed as TGT and posted against the post of lecturer (school cadre) in his own pay scale was promoted as school lecturer. In the office order dated 15.5.1996 the date of appointment of petitioner has been shown as 17.12.1993 but without specifying whether date 17.12.1993 is date of appointment as TGT or lecturer (school cadre). In the office order dated 19.6.2003 the date of appointment of petitioner as school lecturer has been shown 18.12.1993 and date of confirmation as lecturer school cadre 18.12.1995. Similarly, in the seniority list circulated on 20.6.2003 placing petitioner at serial No. 665 in the seniority list of lecturer (school cadre) as on 31.12.2001 the date of appointment of the petitioner as school lecturer has been shown 18.12.1993. There is no foundation in the office order dated 19.6.2003 and final seniority list dated 20.6.2003 as it stood on 31.12.2001 how the petitioner was appointed as lecturer (school cadre) on 18.12.1993.

15. In Shiba Shankar Mohapatra (supra) it has been held that 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.

16. The Government has every right to correct or amend the seniority of employees. In State of Andhra Pradesh Vs. K. Ranganathan and Others, , it has been held as follows:-

.....In the first period there was a relationship of employer-employee between the government and the transferred employees. Hence, the government had every right to correct or amend the seniority of the employees up to that date. If, therefore, the government had advertently or inadvertently committed any error in preparing the seniority list upto October 1, 1973, or because of the decisions of the Courts it had to amend the said seniority list, not only it had power to do so but it was the only authority which could do it. The seniority list which was corrected by the government was the seniority list as on or before October 1, 1973.

17. The Supreme Court in R.M. Ramual Vs. State of Himachal Pradesh and Others, has held when a seniority list is prepared ignoring all just principles and

also the rules framed or directions given by appropriate authority, seriously affecting any officer, it is always liable to be examined and set aside by the Court.

18. In *Union of India (UOI) through Chandigarh Administration (U.T.), Chandigarh and Another Vs. Sh. S.K. Sharma*, Professor of Civil Engineering Punjab Engineering College, Chandigarh, the respondent was regularly selected as Professor (Junior Scale) and in view of the fact that the aforesaid post in the Civil Engineering Department was not vacant, he was adjusted against the post of Professor (P.G. Course) and subsequently against the post of Professor (Senior Scale) on ad hoc basis in his own grade. The Supreme Court has held as follows:-

In the circumstances mentioned above, we are clearly of the view that the respondent was not entitled to claim his seniority on the post of Professor (Senior Scale) from September 28, 1969 and the appellants had rightly counted his seniority from September 29, 1973 when he was regularly selected in accordance with the rules on the said post. In the result we allow this appeal, set-aside the judgment of the Tribunal dated March 3, 1988. In the circumstances of the case we direct no order as to costs.

19. In *Kuldip Chand Vs. Union of India and others*, the appellant had not been promoted to the post of Storekeeper in his own right. When that post was vacant, the appellant came to be posted by way of fortuitous circumstances and continued to work in that post, which was otherwise than in his own right. It was held that it would not be a ground to claim seniority over one Ashok Kumar, who admittedly was a Clerk from 29.11.1976.

20. It emerges from the material on record that petitioner was appointed TGT (Science) on 17.12.1993. He was given the work of lecturer (school cadre) not in his own right but due to circumstances prevailing at that time. The petitioner was working lecturer due to fortuitous circumstances that would not mean that the petitioner was appointed in his own right as lecturer from 17.12.1993. The petitioner was promoted lecturer (school cadre) on 15.5.1996.

21. It has been lastly contended that corrigendum dated July, 2007 has been issued in violation of principle of natural justice and therefore, corrigendum is not sustainable. The settled seniority of petitioner for 13 years has been unsettled by the corrigendum. The principle of natural justice is not a straightjacket formula, it depends upon the facts and circumstances of the case. The petitioner has failed to establish prejudice for want of compliance of principle of natural justice. The petitioner has not shown his legal right over the post of lecturer (school cadre) from 17.12.1993 instead of 15.6.1996.

22. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, it has been held as follows:-

As pointed recently in *M.C. Mehta Vs. Union of India (UOI) and Others*, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example

where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, it is not necessary to quash the order merely because of violation of principles of natural justice.

The Supreme Court also held:

The Principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi Vs. State Bank of India and Others*, *Sabyasachi Mukharji, J.* (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting *Wade's Administrative Law* (5th Edn., pp. 472-75), as follows: (SCC p. 58, para 31)

[It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala and others Vs. S.K. Sharma*, . In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in *Rajendra Singh Vs. State of Madhya Pradesh and others*,

23. The Supreme Court in *Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another*, has held that the question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straightjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality.

24. In *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, it has been held that principle of natural justice cannot be put in any straightjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise. A Court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences.

25. In view of peculiar facts and circumstances of the case the corrigendum

dated July, 2007 cannot be set-aside merely on the ground that before issuing corrigendum the principle of natural justice has not been followed. The petitioner has failed to prove prejudice for not following principle of natural justice. The seniority of petitioner as lecturer (school cadre) from 17.12.1993 instead of 15.5.1996 has no foundation and therefore, petitioner is not entitled to seniority as lecturer (school cadre) from 17.12.1993. The seniority position of the petitioner was considered by the respondents when it came to the notice of the respondents after filing O.A. (D) No. 526 of 2006 that seniority to petitioner as lecturer (school cadre) has been wrongly given after considering his date of appointment as lecturer (school cadre) 17.12.1993. The petitioner has also not impleaded persons in the petition who will be affected in case relief as prayed by petitioner is granted to him. In these circumstances, no fault can be found with corrigendum dated July 2007. In view of above discussion, there is no merit in the petition which is dismissed with no order as to costs.