

(2021) 04 SHI CK 0272
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 3309 Of 2019

Vinay Kumar Bharti And Others

APPELLANT

Vs

Dr. Y. S. Parmar, University And Others

RESPONDENT

Date of Decision : 29-04-2021

Acts Referred:

Himachal Pradesh Universities Of Agriculture Horticulture And Forestry Act, 1986 —
Section 12, 39A

Citation : (2021) 04 SHI CK 0272

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Shradha Karol, Avinash Jaryal, Sumesh Raj, Dinesh Thakur, Sanjeev Sood, Kamal Kant Chandel, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this petition, the petitioners have prayed for the following reliefs:

"(i) That respondent State Government may be directed to give/convey its approval to the decision dated 30.03.2011 and the Notification dated 19/21.04.2011 (Annexures P-11 & P-12) taken by the Board of Management of respondent University upgrading the posts of Personal Staff of the University while issuing writ in the nature of mandamus.

(ii). That the respondent University may be directed to consider and promote/upgrade the petitioners to the posts of Senior Scale Stenographers, Personal Assistants, Private Secretaries, Senior Private Secretaries and Special Private Secretary by giving them the benefit of eligibility consideration for such promotions w.e.f. 21.04.2011 when the notification dated 19/21.04.2011 (Annexure P-12) upgrading the posts of personal staff was issued, with all consequential benefits while issuing writ in the nature of mandamus.

(iii). That the impugned order of rejection dated 25.02.2012 (Annexure P-16)

may kindly be quashed and set aside while issuing writ in the nature of Certiorari.

(iv). That Section 39-A (Annexure P-26) of the H.P. Universities of Agriculture, Horticulture and Forestry Act, 1986 may be quashed and set aside being arbitrary, unconstitutional, unreasonable and superfluous affecting the autonomy of the respondent University, on the analogy of H.P. University while issuing writ in the nature of Certiorari.

(v). That the respondents may be directed to produce the records of the case for perusal of this Hon'ble Court.

(vi). Any other order or direction, which this Court may deem just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner and against the respondent and justice be done."

2. When this case was taken up for consideration on 20.04.2021, the following order was passed:

"When this case was taken up for consideration, learned counsel for the petitioners submitted that the petitioners are praying for grant of reliefs No. (i) to (iii) as well as (v) and (vi) and are giving up relief No. (iv) in CWPOA No. 3309 of 2019. Her statement is taken on record.

Heard in part. For continuation, list on 22nd April, 2021. Learned counsel for the respondent-University to bring the original/photo copies of the proceedings of 74th & 79th meeting of the Board of Management on the next date of hearing."

Accordingly, the case has been heard today on reliefs No. (i) to (iii) as well as (v) and (vi).

3. Brief facts necessary for adjudication of the present petition are as under:-

The case of the petitioners is that petitioners No. 1 to 6 were appointed as Junior Scale Stenographers in the respondent- University in between the years 1989 to 1994 and at the time of filing of the petition, they were continuing to serve as such. Similarly, petitioners No. 7 to 18 were initially appointed as Junior Scale Stenographers in the year 1988 and thereafter, they were promoted as Senior Scale Stenographers on different dates and they were serving as such at the time of filing of the petition. Petitioners No. 19 to 23 were initially appointed as Junior Scale Stenographers on different dates in between years 1986 to 1988 and thereafter, they were promoted as Senior Scale Stenographers in between the years 1995-1996. They were further promoted as Personal Assistants on different dates mentioned in the writ petition and they were serving as such at the time of filing of the petition. Petitioner No. 24 was initially appointed as a Senior Scale Stenographer in the year 1986 and thereafter, he was promoted to the post of Personal Assistant in the year 1998. He was serving as such at the time of filing of the petition. Petitioner No. 25 initially joined as a Senior Scale Stenographer on 07.05.1986. He was promoted as Personal Assistant on 17.07.1995 and thereafter as Private Secretary on 06.09.2006. He was working

as such at the time of filing of the petition. Petitioners No. 26 and 27 were initially appointed as Junior Scale Stenographers in between the years 1985-1986 and there were promoted as Senior Scale Stenographers subsequently. They were further promoted as Personal Assistants and thereafter as Private Secretaries. They were serving as such at the time of filing of the petition. Petitioner No. 28 was initially appointed as Junior Scale Stenographer in the year 1982. He was promoted initially as a Senior Scale Stenographer and then to the post of Personal Assistant and thereafter to the post of Private Secretary. At the time of filing of the petition, he stood promoted to the post of Senior Private Secretary. Petitioner No. 29 initially joined as Senior Scale Stenographer in the year 1986. He was promoted against the post of Personal Assistant w.e.f. 17.07.1995 and thereafter to the post of Private Secretary w.e.f. 12.11.2008. He superannuated from service on 31.10.2013.

4. According to the petitioners, the respondent-University came into existence on 01.12.1985. After its establishment, the respondent-University vide Notification dated 21.11.1987, notified the Recruitment and Promotion Rules of Non-Teaching Ministerial and Administrative Staff, which were subsequently amended on 11.03.1988, whereby, the category of Personal Staff was made eligible for promotion in the Ministerial Cadre posts consisting of Superintendent Grade-II and Superintendent Grade-I, respectively. Vide Notification dated 19.04.1995 (Annexure P-3), the respondent-University approved the Recruitment and Promotion Rules for the cadre of Stenographers. This was followed by issuance of Annexure P-4, i.e., Notification dated 24.09.1998, vide which, the Recruitment and Promotion Rules earlier notified vide Notification dated 11.03.1988 were repealed and modified to the extent as mentioned in the said Notification. According to the petitioners, in terms of 1988 Rules, category of Personal Staff post holders, i.e., the posts which were being manned by the petitioners were eligible for promotion against the Ministerial Cadre posts of Superintendent Grade-II and Superintendent Grade-I, yet as a result of repealing of the said Rules in the year 1998, this benefit stood denied to the Personal Staff.

5. In order to remove the prolonged and unabated stagnation, which was now being faced by the category of Personal Staff, the respondent-University constituted a Committee in the year 2005 to look into the demands of the said staff for providing them promotional avenues. Vide Notification dated 02.04.2008 (Annexure P-6), the Board of Management of the respondent-University, in terms of the proceedings of its meeting held on 01.03.2008, constituted a Sub-committee to review the staffing pattern of Personal Staff of the respondent-University. This Committee consisted of Principal Chief Conservator of Forests, Himachal Pradesh, who was to be the Chairman, Chief Engineer, HP PWD (Retd.) as well as Comptroller and Registrar of the respondent-University, who were to be the Members and Member Secretary of the said Sub-committee, respectively. In the proceedings of the meeting of said Sub-Committee held on 09.03.2009 (Annexure P-7), the Committee recommended that there should be at least two promotions in personal career of an employee irrespective of the level of

recruitment, as was existing for all other Government jobs. The Committee further recommended the adoption of Personal Staff Pattern of the Himachal Pradesh University by the respondent-University.

6. To cut the controversy short, the proceedings of 79th meeting of the Board of Management of the respondent-University held on 20.07.2009 demonstrates that vide Item No. 7, the following was decided:

"Item No. 7: The matter regarding placing the recommendations of a sub-committee constituted by the Board of Management for the adoption of staffing pattern of personal. staff. of. Himachal. Pradesh University to the personal staff of this University.

7. It is clarified at this stage that the proceedings of the meetings of the Board of Management of the respondent-University were placed on record of this petition on the previous date by learned counsel representing the parties.

8. In the 84th meeting of the Board of Management of the respondent-University held on 30.01.2011, vide Item No. 10, the Board of Management approved the cadre strength as well as the up-gradation of posts from the feeder cadre(s) of Personal Staff, as recommended by the Sub-committee. This was followed by 85th meeting of the Board of Management held on 30th June, 2011, in which, vide Item No. 1, the Board of Management confirmed the proceedings of its 84th meeting held on 30th March, 2011.

9. Incidentally, a perusal of the 85th meeting of the Board of Management demonstrates that in this meeting besides others, was attended by the Principal Secretary (Horticulture) to the Government of Himachal Pradesh as well as Deputy Secretary (Finance) in his capacity as a representative of the Principal Secretary (Finance) to the Government of Himachal Pradesh. It is pertinent to mention at this stage that Principal Secretary (Finance) happens to be an Ex-officio Member of the Board of Management of the respondent-University in terms of the provisions of the Himachal Pradesh Universities of Agriculture, Horticulture and Forestry Act, 1986 (hereinafter referred to as 'the 1986 Act'). At this stage, it is also relevant to refer to Section 39A of the 1986 Act, which reads as under:

"39A. Creation of posts etc. -No post, position and assignment created by the University shall have any effect unless approved by the State Government."

It appears that in terms of the provisions of Section 39A of the Act, the recommendations of the Board of Management of the respondent- University were forwarded to the State Government. However, the same stood rejected by the State Government vide Notification dated 25th February, 2012 (Annexure P-16) in the following terms:

"I am directed to refer to your letter No. UHF. Regr/ GA/ 5-1(84)/ 2011/ -24180 dated 13.01.2012 on the subject cited above and to say that the matter was taken up with the Fin. Deptt. who have expressed its inability to concur in the

proposal."

It is in this background that the present petition has been filed by the petitioners for the reliefs already mentioned hereinabove.

10. Learned counsel for the petitioners has argued that rejection of the recommendations of the Committee of the Board of Management of the respondent-University by the respondent-State vide Annexure P-16 is not sustainable in the eyes of law, because a perusal of the same demonstrates that the recommendations have been rejected on the sole ground that the Finance Department has expressed its inability to concur with the proposal, whereas, an extremely important aspect of the matter has been ignored by the respondent-State that the representative of the Finance Department of the Government was part of the meeting which had approved the recommendations of the Board of Management with regard to the up-gradation of posts from the feeder cadre(s) of personal staff. Learned counsel thus submitted that rejection of the recommendations is arbitrary and, therefore, not sustainable in law. She has further argued that the recommendations otherwise were well reasoned and the same were based upon the Policy, which was not only being followed by the Himachal Pradesh University with regard to the Personal Staff, but also a Policy which was being followed by the Government to ensure that at least two promotional avenues should be available to an employee. Learned counsel thus prayed that the petition be allowed, as prayed for by quashing Annexure P-16 and directing the respondents to give effect to the recommendations of the respondent- University, with all consequential benefits.

11. The petition is opposed by the State, inter alia, on the ground that the claim of the petitioners for up-gradation of posts from the feeder cadre of Personal Staff was examined in consultation with the Finance Department and the said Department expressed its inability to concur with the proposal. Further, up-gradation of posts cannot be claimed as a matter of right and further to take care of stagnation, a new Assured Career Progression Scheme was introduced by the Government for grant of different financial benefits to the employees in the State, hence the writ petition deserved dismissal.

12. Learned Additional Advocate General, on the strength of the reply, while supporting the stand of the Finance Department, has submitted that except few petitioners, others were not stagnating on the same post on which they joined the respondent-University in terms of the Recruitment and Promotion Rules. He further submitted that the power conferred upon the State under Section 39A of 1986 Act was bonafidely exercised by the State and as the Finance Department only after taking into consideration all the pros and cons of the recommendations made by the respondent-University, did not concur with the same and further as there is no stagnation vis-a-vis the petitioners who are now getting the benefits of Assured Career Progression Scheme, the petition deserved dismissal. Further, while drawing the attention of the Court to Annexure P-20, he submitted that the recommendations of the respondent- University were not practical keeping in

view the reduction of staff of feeder entry category of Junior Scale Stenographer from 18 to 4, whereas simultaneously the number of posts of Senior Scale Stenographer stood increased from 13 to 16.

13. Learned counsel for the respondent-University has submitted that the recommendations which were made by the Board of Management of the respondent-University is a matter of record, but because the State Government has chosen not to approve the same, therefore, the respondent-University is not in a position to accept the request of the petitioners.

14. I have heard learned counsel for the parties and also gone through the record of the case as well as the minutes of the meetings of the Board of Management of the respondent-University placed on record by learned counsel for the parties on the previous date.

15. The University before this Court is a statutory University. It has come into existence by virtue of provisions of The Himachal Pradesh Universities of Agriculture, Horticulture and Forestry Act, 1986. The Board of Management of the said University stands constituted under Section 12 of the Act, meaning thereby that the said Board of Management has a statutory force behind it. A perusal of Section 12 of the Act demonstrates that the Board of Management, inter alia, shall be consisting of the following in respect of respondent- University:

"Ex-officio Members:-

- (i). Vice-Chancellor;
- (ii). Vice-Chancellor of Himachal Pradesh Krishi Vishva Vidyalaya;
- (iii). Agriculture Production Commissioner to the Government;
- (iv). Secretary (Horticulture) to the Government;
- (v). Secretary (Finance) to the Government;
- (vi). Secretary (Forests) to the Government;
- (vii). Heads of Government Departments of Horticulture, Forrester and Agriculture;

Other Members:

- (viii). one officer to be nominated by the Chancellor from amongst the Deans/ Directors of the University;
- (ix). two eminent scientists, one in horticulture and the other in forestry, to be nominated by the Chancellor;
- (x). two progressive orchardists or farmers to be nominated by the Chancellor;
- (xi). one progressive orchardist/farmer from the tribal areas of the State, to be nominated by the Chancellor;
- (xii). one outstanding woman social worker, preferably having background of

rural advancement to be nominated by the Chancellor;

(xiii). one distinguished engineer to be nominated by the Chancellor;

(xiv). one representative of the Indian Council for Agricultural Research, New Delhi; and

(xv). one representative of the Indian Council of Forestry Research and Education, Dehradun....."

Thus, Secretary (Finance) happens to be an Ex-officio Member of the Board of Management of the respondent-University.

16. A. perusal. of. the. proceedings. of. the. Board. Of Management placed on record demonstrates that in the 74th meeting of the Board of Management held on 1st March, 2008, vide Item No. 13, the following was decided:

"Item No. 13: The matter regarding constitution of a sub-committee to review the staffing pattern of Personal Staff of this University.

After a threadbare discussion on the issue, the Board of Management constituted a sub-committee consisting of Dr. Pankaj Khullar PCCF as Chairman and Er. G.R. Kaundal, Chief Engineer HP PWD (Retd.) & the Comptroller as its members. The Registrar will be the Member-Secretary of this sub-Committee. In the meantime, it was decided by the Board that the staffing position of the Personal staff may be obtained from the other Departments/Universities for placing it before the Sub-Committee."

This was followed by the 79th Meeting of the Board of Management, in which, under Item No. 7, the following was decided:

"Item No. 7: The matter regarding placing the recommendations of a sub-committee constituted by the Board of Management for the adoption of staffing pattern of personal staff of Himachal Pradesh University to the personal staff of this University.

After a threadbare discussion on the issue, the Board of Management accepted/approved the recommendations of the sub-committee constituted by it under item No. 13 of the proceedings of the 74th meeting held on 1.3.2008 for the adoption of staffing pattern of personal staff of Himachal Pradesh University in respect of personal staff of this University."

Thereafter, vide 84th meeting of the Board of Management, under Item No. 10, the following was decided:

"Item No. 10: Matter regarding adoption of staffing pattern of Personal Staff of HP University in respect of personal staff of Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, Solan.

The Board of Management, pursuant to the decision taken by its 74th meeting held on 1.3.2008, approved the cadre strength as well as upgradation of posts

from the feeder cadre(s) of personal staff, as recommended by the Committee so constituted for the purpose."

17. Thus, in its 84th meeting, the Board of Management, pursuant to the decision taken vide 74th meeting held on 1st March, 2008, approved the cadre strength as well as up-gradation of posts from the feeder cadre of personal staff, as recommended by the Committee constituted for the said purpose. Now, when the proceedings of 84th meeting of the Board of Management were placed before the 85th meeting of the said Board of Management held on 30th June, 2011, in which, besides other representatives, Deputy Secretary (Finance) was also present, the Board of Management, inter alia, vide Item No. 1, confirmed the proceedings of its 84th meeting held on 30th March, 2011, vide which, in terms of Item No. 10, the said Board has approved the cadre strength as well as up-gradation of posts from the feeder cadre(s) of personal staff, as recommended by the Committee so constituted for the said purpose.

18. In the considered view of the Court, the reason and rational as to why Secretary (Finance) to the Government of Himachal Pradesh is an Ex-officio Member of the Board of Management of the respondent-University is that whenever any decision is taken by the Board of Management, in terms of the power so conferred upon it under the Statute, then the financial aspects of the matter can also be taken into consideration and discussed. There is a purpose behind the Principal Secretary (Finance) being Member of the Board of Management and he is not a ceremonial representative to be there in the Board of Management. The only inference which can be drawn from the fact that in its 85th meeting, the Board of Management approved its proceedings of 84th meeting, in which, the Deputy Secretary(Finance), in his capacity as a representative of Principal Secretary (Finance) was also present, is that before the Board of Management approved the proceedings of its 84th meeting, the financial aspects of the Items discussed and approved in the 84th meeting, were also taken into consideration. In this peculiar background, in my considered view, the rejection of the proposal of up- gradation of posts from the feeder cadre of Personal Staff by the respondents vide communication dated 25th February, 2012 (Annexure P-16). only on the ground that the Finance Department had expressed its inability to concur with the proposal is not sustainable in law. The Court is holding so for the reason that when the representative of the Finance Department was the Member of the 85th meeting of the Board of Management of the respondent-University held on 30 th June, 2011, vide which, the Board of Management approved its earlier minutes of 84th meeting, then it is to be deemed that the Finance Department was having no issues with regard to the proposal of up-gradation of the posts from the feeder cadre of Personal Staff. If there were any reservations which the Finance Department was having with regard to the said recommendations, then the stage to express those reservations was in the course of meetings of the Board of Management held from time to time, including the 85th meeting of the Board of Management held on 30th June, 2011. The Finance Department cannot be permitted to take two

different stands with regard to the same issue. Besides this, the Court is of the view that the authority conferred upon the State Government under Section 39A of the Act with regard to grant of approval qua creation of posts etc. has to be exercised by the State Government judiciously with due application of mind, which has not been done in the present case. The State Government has rejected the proposal simply on the ground that the Finance Department has expressed its inability to concur with the proposal. In the considered view of the Court, the Finance Department is just one of the Department of the State Government and it is not the State Government. Section 39A envisages that "the State Government could take the call and not the Finance Department". The view of the Finance Department could have been one of the reasons as to why the State Government was not concurring with the proposal in issue, but the same could not have been the sole reason to take the decision.

19. In view of what has been discussed above, as this Court does not agree with the stand of the State, as has been taken vide Annexure P-16, dated 25th February, 2012 while rejecting the proposal with regard to up-gradation of posts from the feeder cadre of Personal Staff, simply on the ground that the Finance Department had expressed its inability to concur with the proposal, said communication is quashed and set aside. Consequently, the petition is allowed to the extent that the respondent-State is directed to re-consider the proposal with regard to up-gradation of posts from the feeder cadre of Personal Staff afresh, in terms of the provisions of Section 39A of the Act. Decision with regard to the said proposal shall be taken by the State Government on or before 31st May, 2021. While taking the decision, the State Government shall take into consideration the proceedings of 84th meeting of the Board of Management of the respondent Board, which subsequently were approved in the 85th meeting of the Board of Management of the respondent-University, in which, the Deputy Secretary (Finance), Government of Himachal Pradesh was present, in his capacity as representative of the Principal Secretary (Finance), Government of Himachal Pradesh. The Court further impresses upon the State Government to take a sympathetic view with regard to the recommendations of the Board of Management of the respondent- University and in the event of it concurring with the same, confer benefits to all the petitioners. Miscellaneous applications, if any, stand disposed of.