

Anil Kumar Vs. State of H.P. and Others

Anil Kumar Vs. State of H.P. and Others

SooperKanoon Citation : sooperkanoon.com/1115864

Court : Himachal Pradesh

Decided On : May-02-2013

Judge : The Honourable Chief Justice Mr. a.M. Khanwilkar & R.B. Misra

Appeal No. : LPA No. 594 of 2012

Appellant : Anil Kumar

Respondent : State of H.P. and Others

Judgement :

Oral:

A.M. Khanwilkar, C.J.

1. Admit. As short question is involved, taken up for final disposal forthwith by consent. Counsel for the respondents waive notice.

2. Heard learned counsel for the parties.

3. This appeal takes exception to the judgment of the learned Single Judge dated 5th December, 2012 in CWP No. 8407 of 2012-A. The appellant had sought writ of certiorari for quashing advertisement dated 8.9.2012, Annexure P-12, inviting applications for filling in vacant post of Assistant Professor (Oral and Maxillofacial Surgery) by way of direct recruitment on regular basis. Further direction was sought by the appellant against the respondents to fill in vacant post of Assistant

Professor in question on regular basis only by way of promotion of Lecturers, on the assertion that post for promotional category. The appellant also sought relief against the respondents to defer the process of selection for appointment to fill in the vacant post of Assistant Professor (Oral and Maxillofacial Surgery), until the appellant becomes eligible for promotion on acquiring three years teaching experience. The appellant asked for further alternative relief.

4. The learned Single Judge, after considering the rival contentions, negated the plea of the appellant and found that the appellant was ineligible for being considered to the post of Assistant Professor (Oral and Maxillofacial Surgery). That finding has been assailed by the appellant. However, we are not inclined to over turn the said finding, considering the fact that the sweep of Rule 11 of the Himachal Pradesh, Department of Medical Education and Research Assistant Professor (Dental) (Class-I Gazetted) Recruitment and Promotion Rules, 2012, which is the governing Rule in place pursuant to which the advertisement came to be issued on 8.9.2012. That Rule predicates that the said post could be filled in by promotion from amongst the Lecturers (Dentistry), subject to possessing of educational qualification, as prescribed for direct recruitment against Column No.7 coupled with three years regular service or regular combined with continuous adhoc service rendered by the candidate, if any, failing which the post could be filled in by direct recruitment from amongst the candidates possessing the stated educational qualification with at least three years teaching experience as Lecturer (Dentistry) in the concerned specialty.

5. Going by this provision, we have no manner of doubt that the appellant was ineligible to be considered for promotion to the said post on the date when the vacancy arose and in any case on the date when the advertisement was issued on 8.9.2012. Inasmuch as, the appellant claims to have been appointed on adhoc basis on 6.3.2010, as a Lecturer in Himachal Pradesh Government Dental College, Shimla in the Department of Oral and Maxillofacial Surgery against the overall vacant posts of Lecturers in the College vide Annexure P-1. Even if, we were to accept this contention as it is, the appellant by no stretch of imagination can be said to have completed three years of teaching experience as Lecturer, much less regular service or regular combined with continuous adhoc service,

which is the requirement of Rule 11 to become eligible for promotion. In other words, on the date of advertisement, i.e. 8.9.2012, the appellant did not fulfill the requisite eligibility criteria, specified in Rule 11 of the Rules 2012.

6. The next question is: whether it is open to such candidate to challenge the selection process and, in particular, advertisement already issued by the Department on 8.9.2012 being violative of Articles 14 and 16 of the Constitution of India? This was the sole contention, pressed into service before the learned Single Judge, as can be discerned from paragraph 6 of the impugned judgment. On that basis, it was further contended that the respondents be refrained from proceeding with the selection process for filling in the vacancy by direct recruitment, until the appellant would become eligible for promotion to be appointed on the said post. In our opinion, such reliefs claimed by the appellant to say the least is completely ill-advised. No right would inhere in such ineligible candidate to pray that the employer be refrained from proceeding with the appointment or filling in the vacancy by direct recruitment, even though the statutory Rule 11 authorizes filling in the vacancy by direct recruitment in absence of eligible candidate, who could be appointed on promotion against that post. The candidate may be able to claim, right to participate in the selection process, only if he possesses the requisite qualification. But, he cannot be heard to suggest that in anticipation of his fulfilling the qualification, the employer should defer the appointment or selection process.

7. Having said this, nothing more was required to be observed by the learned Single Judge nor do we intend to deal with any other contention. However, we may refer to the argument, now canvassed before us, relying on Rule 18 of the Rules 2012. It was suggested that the State Government can be directed to exercise the power to relax the conditions, specified in Rule 11, so that the appellant can be treated as eligible for being considered for appointment on promotion against the advertised post. Even this argument does not commend to us. The request of the appellant for relaxing the eligibility condition specified in Rule 11 cannot be entertained ex-post facto after the selection process was already set in motion pursuant to issuance of advertisement dated 8.9.2012. In fact, the private respondent has already been appointed after completing the requisite formalities. In our opinion, the argument that the State Government

should be directed to exercise the power to relax by invoking Rule 18 of the rules 2012 is, to say the least, an argument of desperation.

8. That takes us to the last aspect, which has been dealt with in paragraph 12 of the impugned decision. Paragraph 12 reads thus:-

12. The Court is of the considered view that the experience of the petitioner is to be counted from the date he was regularly appointed as Lecturer, i.e., 25.11.2011 and not w.e.f. 10.03.2010. If the petitioner has been designated as Lecturer strictly as per the Recruitment and Promotion Rules or on the basis of some instructions, in that eventuality, he could get this period counted from 10.03.2010 instead of 25.11.2011. The petitioner would become eligible for promotion to the post of Assistant Professor on 24.11.2014. The decision taken by the respondent-State to fill up the post by way of direct recruitment instead of promotion would fall in the realm of policy.

9. The correctness of this opinion has been put in issue before us relying on the language of Rule 11. It is not in dispute that the appellant was appointed vide order dated 6.3.2010 issued under the signatures of the Additional Secretary (Health) to the Government of Himachal Pradesh on the post of Lecturer in Himachal Pradesh Dental College Shimla in the Department of Oral and Maxillofacial Surgery against the overall vacant posts of Lecturers in the College. It is also not disputed that the appellant worked in that capacity from 10.3.2010 and was eventually appointed on regular basis as Lecturer in the same Department w.e.f. 25.11.2011 and that the appellant is in continuous service in that post since then.

10. The question is: whether the service rendered by the appellant from 10.3.2010 pursuant to order dated 6.3.2010 can be reckoned for the purpose of Rule 11? As mentioned earlier, it may not be necessary to elaborate on this issue, but for the observations found in paragraph 12 of the impugned decision. We have no manner of doubt that Rule 11 does not and cannot exclude the services rendered by the appellant from 10.3.2010 pursuant to order dated 6.3.2010 as Lecturer in the College for reckoning the eligibility in terms of Rule 11 of the Rules 2012. For, the expression *ad hoc* service has not been defined in the Rules of 2012. In that

case, any appointment other than regular appointment will have to be treated as adhoc service for the purpose of Rule 11, for reckoning the eligibility of three years regular service or regular combined with continuous adhoc service rendered by the candidate. Whether the appellant, in fact, rendered continuous service during this period is a matter of fact, which need not be decided in this proceeding. As and when that question arises, can be answered by the competent Authority. Indeed, that issue may arise in respect of future vacancy to be filled in by promotion.

11. The appeal is partly allowed only to this limited extent by setting aside the observations made in paragraph 12 of the impugned judgment. The pending application(s), if any, also stands disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com