

Sanjeev Kumar Vs. H.P. Tourism Development Corporation Ltd. and Others

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Court : Himachal Pradesh

Decided On : Dec-20-2012

Judge : Rajiv Sharma

Appeal No. : C.W.P. No. 6598 of 2011

Appellant : Sanjeev Kumar

Respondent : H.P. Tourism Development Corporation Ltd. and Others

Judgement :

Rajiv Sharma, J.

1. Respondent-Corporation issued an advertisement on 2.12.2009 whereby applications were invited for filling up the post of Trainee (Kitchen). The last date for receipt of application was 21.12.2009. According to the advertisement, minimum qualification required for filling up the post of Trainee (Kitchen) was 10+2 or equivalent with 1 years diploma in Food Production/Bakery from a recognized institute. Written test was held on 28.3.2010. Petitioner secured 96% marks. He was also called for interview on 5.5.2010. The fact of the matter is that the petitioner was not selected, which led to filing of CWP No. 6090 of 2010. The same was decided by this Court on 5.4.2011. Petitioner was permitted to make a representation to the Managing Director. He filed representation to the Managing Director on 23.4.2011. The representation made by the petitioner has been rejected on 9.5.2011.

2. Mr. Subhash Sharma has vehemently argued that his client was fully eligible to be considered for the post of Trainee (Kitchen) on the basis of old Recruitment and Promotion Rules notified vide Annexure P-11 whereby the minimum qualification for filling up the post of Trainee (Kitchen) was matric with craftsmanship course in Food Production from a recognized institute. According to him, an amendment has been carried out in the Recruitment and Promotion Rules on 10.2.2010 and the same could not apply to the selection process, which had commenced on the basis of advertisement dated 2.12.2009. He lastly contended that the case of the petitioner has been rejected on 9.5.2011 in an arbitrary and unreasonable manner.

3. Mr. Naresh Kaul appearing on behalf of respondent No.1 has argued that since the petitioner did not fulfill the qualification as prescribed in the Recruitment and Promotion Rules notified on 11.2.2010, his case has rightly been rejected on 9.5.2011.

4. I have heard the learned counsel for the parties and have perused the pleadings carefully.

5. According to the rules called H.P. Tourism Development Corporation Limited Staff Recruitment and Promotion (Revised) Rules, 1985, the post of Trainee Kitchen was to be filled up 100% by direct recruitment having matric pass with craftsmanship course in Food Production from a recognized institute. The decision was taken by the Board of Directors in its meeting held on 25.3.2009 and 11.11.2009 to amend the rules. However, necessary office order in this regard was issued on 11.2.2010. The amendment in the H.P. Tourism Development Corporation Limited Staff Recruitment and Promotion (Revised) Rules, 1985 would take effect from the date of issuance of order dated 11.2.2010. Since the rules have only been notified on 11.2.2010, in the advertisement also, the qualification of the candidate was to be prescribed as per old rules (Annexure P-11), i.e. matric with craftsmanship course in Food Production from a recognized institute. Petitioner has passed his 10+2 examination and has also obtained course in Food Production and Patisserie from the recognized institute. One Sh. Mohinder Singh Verma had also obtained the similar diploma and was considered for appointment

and this fact was admitted by the respondent-corporation while filing supplementary affidavit in CWP No.6090/2010, which reads as under:

It is further submitted that Sh. Mohinder Singh Verma completed his Craftsmanship Course in Food Production in the year, 1995 and Diploma/Certificate awarded to him by the Himachal Pradesh Takniki Shiksha Board Dharamshala is equivalent to the certificate awarded to the petitioner by the National Council for Hotel Management and Catering Technology as both have completed the same course, copy of advertisement for admissions for various courses for the year 1994-95 in Foodcraft Institute, Kufri Shimla is annexed herewith as Annexure R/3-F.

6. The Managing Director of the respondent-corporation while rejecting the case of the petitioner has over looked very important fact that the amendment in the Recruitment and Promotion Rules, as discussed hereinabove, has come into force on 11.2.2010. The Managing Director while rejecting the case of the petitioner has come to a wrong conclusion that the petitioner was not eligible for the post in question. There was no occasion for him to equate the certificate obtained by the petitioner vis--vis the diploma in Food Production/Bakery. This exercise could only be undertaken, if new Recruitment and Promotion Rules were applicable in the case in hand.

7. The Apex Court in Harla versus The State of Rajasthan, 1951 SC 467 has held that natural justice requires that before a law can become operative it must be promulgated or published. The Apex Court has held as under:

8. We do not know what laws were operative in Jaipur regarding the coming into force of an enactment in that State. We were not shown any, nor was our attention drawn to any custom which could be said to govern the matter. In the absence of any special law or custom, we are of opinion that it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before the law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may

know what it is; or at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential. "

8. The Apex Court in *B.K. Srinivasan and others versus State of Karnataka and others*, (1987) 1 SCC 658 has held that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. The Apex Court has held as under:

15. There can be no doubt about the proposition that where a law, whether Parliamentary or Subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint, of Justice Holmes's 'Unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute are not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of

publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient. See *Narayana Reddy v. State of Andhra Pradesh*, 1969 (1) Andh WR 77.

9. The posts were required to be advertised strictly as per the Recruitment and Promotion Rules prevalent when the vacancy occurred and at the time of last date of receipt of applications. The respondent-corporation has erred in law by laying down the minimum essential qualification in the advertisement as per the Recruitment and Promotion Rules, which had not come into force even on the last date of receipt of applications. It is settled law that the appointments are to be regulated strictly as per the Recruitment and Promotion Rules and not as per the advertisement. Petitioner fulfilled the minimum essential qualification as per the old Recruitment and Promotion Rules, which were in force at the time of last date of receipt of applications.

10. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is allowed. Annexure P-15 dated 9.5.2011 is quashed and set aside. Respondents are directed to offer appointment to the petitioner as Trainee (Kitchen) within a period of four weeks from today. Pending application(s), if any, also stands disposed of.

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