

Narinder Kumar and Anr. Vs. Hon'ble High Court of Himachal Pradesh and Anr.

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Court : Himachal Pradesh

Decided On : Sep-24-2008

Reported in : 2008(3)ShimLC464

Judge : Rajiv Sharma, J.

Appellant : Narinder Kumar and Anr.

Respondent : Hon'ble High Court of Himachal Pradesh and Anr.

Disposition : Petition dismissed

Judgement :

Rajiv Sharma, J.

1. Mr. Tarlok Chauhan has submitted at the threshold that since petitioner No. 2 has already been selected to the post of Clerk, he has instructions not to press this petition on his behalf. The present petition now will be treated to be filed only by petitioner No. 1 Narender Kumar.

2. The brief facts necessary for the adjudication of this writ petition are that respondent No. 2 issued an advertisement whereby the applications were invited from the eligible candidates for the appointment of Clerks in the Civil and Sessions

Division, Mandi. The petitioner submitted an application for getting his candidature considered for the post of a Clerk. The written examination was conducted on 22nd August, 2004. He also appeared in the interview on 29.10.2004 pursuant to call letter dated 16th October, 2004. In sequel to the selection process initiated by respondent No. 2 initially 5 persons were appointed as Clerks in the month of November, 2004. The petitioner was offered appointment as a Clerk on temporary basis on 20th January, 2005. He discharged his duties from January, 2005 till March, 2007. His services were terminated vide office order dated 28/30th March, 2007 (Annexure P-6) under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Respondent No. 2 issued a fresh advertisement on 17th March, 2007 whereby process for filling up the posts of clerks was taken. In sequel to this advertisement, petitioner No. 2 was selected, however, the petitioner was not selected. The principal stand of the petitioner in the petition is that the respondents have not issued any show-cause notice to him before terminating his services and he should be deemed to have confirmed after the completion of two years of service. The stand of the respondents is that there were large scale manipulations and irregularities while filling the posts pursuant to the advertisement issued on 9th July, 2004.

3. Mr. Tarlok Chauhan has strenuously argued that the services of the petitioner have been terminated in violation of the principles of natural justice and his client should be deemed to have been confirmed immediately after the lapse of two years.

4. Mr. Vinay Kuthiala has strenuously argued that there were large scale illegalities and irregularities which led to the constitution of a Committee of two Hon'ble Judges by this Court and it is on the basis of the report submitted by the Hon'ble Judges Committee that the services of the petitioner were terminated.

5. I have heard the learned Counsel for the parties and perused the record carefully.

The process for filling up the posts of clerks in Civil and Sessions Division, Mandi commenced vide advertisement dated 9th July, 2004. The petitioner had appeared in the written test held on 22.8.2004. He was called for the interview and he

appeared in the interview on 29.10.2004. He was offered appointment of clerk and he joined as such in the month of January, 2005.

6. Mr. Vinay Kuthiala at the threshold has drawn the attention of the Court to the record. It is evident from the record that anonymous complaint was received against the recruitment process initiated by respondent No. 2. After the receipt of the complaint, the matter was looked by a committee of two Hon'ble Judges. The Hon'ble Judges have submitted the report on 18th December, 2006. The gist of the report primarily was that the answer sheets had not been re-checked in a fair manner and some of the candidates admittedly were related to the Judicial Officer and he should not have taken part in the selection process. The Committee had also shown its concern how figure of 53% marks was provided for deciding which papers should be re-evaluated. The abstract of the relevant portion of the report dated 18.12.2006 reads thus:

Hon'ble the Chief Justice had directed the undersigned to go through the 80 answer sheets in which the marks had been re-evaluated by Sh. J.L. Gupta the then District and Sessions Judge, Mandi.

We have gone through the 80 answer sheets. On a careful perusal of the answer sheets, we find that the answer sheets have not been re-checked in a fair manner. Marks of some of the candidates who had obtained high marks in the original assessment and who were otherwise also well qualified, have been reduced substantially which resulted in elimination of apparently more meritorious candidates. In our considered view, the re-evaluation has not been done in a proper manner. Since some of the candidates were admittedly related to the Judicial Officer, he should not have taken any part in the selection process. One of the candidates selected is related to Shri J.L. Gupta. We also fail to understand as to how the figure of 53 marks was arrived at for deciding which papers should be re-evaluated. There is admittedly no written recommendation of anybody that the marks have been granted liberally. Even if that was the case, then the marks of all the candidates who had obtained minimum pass marks should have been re-evaluated. However, to be fair to the officer, it is pointed out that in some of the cases the initial assessment/markings were liberal.

Keeping in view the aforesaid facts, we recommend that the selections made on the basis of the marks obtained after re-evaluation by Shri J.L. Gupta and the interviews conducted thereafter may be cancelled. The Full Court may also decide whether the process of selection should be started all over again or whether the selections be made on the basis of the marks obtained by the candidates before re-evaluation.

7. Consequently on the basis of the recommendations made by the two Hon'ble Judges Committee vide report dated 18th December, 2006, the appointment of five persons, namely, Jitender Kumar, Sher Singh, Hitkamni Gupta, Saurabh Bhagra and Tej Singh was cancelled under Section 18(4) of the Himachal Pradesh Courts Act, 1976 vide letter dated 7.3.2007. The subsequent appointments of petitioner was also cancelled and set aside vide letter dated 28/30.3.2007. The appointment of the petitioner was on temporary basis. His services were terminated by invoking the proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 as well.

It will be pertinent to take note of Section 18 of the Himachal Pradesh Courts Act, 1976, which reads thus:

18. Ministerial officers of Courts.-(1) The ministerial officers of the District Court other than Superintendent of the Court shall be appointed by the District Judge. The Superintendent of the District Court shall be appointed by the High Court.

(2) The ministerial officers of Civil Courts, under the control of the District Judge, shall be appointed by the District Judge.

(3) Every appointment under this Section shall be subject to such rules the High Court with the prior approval of the Government may make in this behalf.

(4) Any, order passed by a District Judge under this Section shall be liable to be reserved or modified by the High Court.

8. It is evident from the phraseology of Section 18 of the Himachal Pradesh Courts Act, 1976 that though ministerial officers of the District Court other than Superintendent of the Court are to be appointed by the District Judge, however,

any order passed by the District Judge is liable to be reversed or modified by the High Court.

9. In the present case the selection process has been initiated pursuant to the advertisement issued by respondent No. 2. The written test, as noticed above, was held on 22.8.2004. The Committee comprising of two Hon'ble Judges of the Court had invited the comments of the then District and Sessions Judge, Mandi under whom the selection process was initiated and concluded. The Hon'ble Judges Committee in its report, abstract of which has already been quoted hereinabove, has noted the manner in which the answer-sheets have been re-evaluated and the figure of 53% was provided. The process adopted by the then District Judge Sh. J.L. Gupta was illegal and it is only when the illegalities and irregularities were pointed out by an anonymous complaint that the Committee of two Hon'ble Judges was constituted by the High Court. The High Court has the jurisdiction to reverse or modify the orders passed by the District Judge, including the appointment made by him. It is only on the basis of the recommendations of the Hon'ble Judges Committee that fresh advertisement on 17.3.2007 for filling up the posts of clerks in the pay scale of Rs. 3120-5160 was issued. Since the appointment of the petitioner was on temporary basis, he was not required to be served with any notice as argued by Mr. Tarlok Chauhan. He had no right to hold the post.'

10. In the present case the services of the petitioner have been terminated, as noticed above, while exercising the power under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

11. Mr. Tarlok Chauhan has vehemently argued that his client was appointed with effect from 20th January, 2005 and he has completed his probation in the year 2007 and he shall be deemed to be confirmed. His further submission is that once his client is confirmed, the Central Civil Services (Temporary Service) Rules, 1965 could not be invoked.

12. Before advertng to the submission of Mr. Tarlok Chauhan, it will be apt to take note of Rule 11 of the Himachal Pradesh Subordinate Courts' Staff (Recruitment, Promotion and Conditions of Service) Rules, 1997. Rule 11 reads thus:

11. (a) Every person appointed to a permanent post shall be on probation for a period of two years:

Provided that the period of probation, may in the case of any person, be extended or reduced or dispensed with altogether by the Appointing Authority for reasons to be recorded.

(b) A person on probation shall be liable to be discharged from service without assigning any reason:

Provided that if he holds lien on any permanent post in any other service he shall be liable to be reverted to that post.

(c) A person on probation, who holds a lien on any permanent post, shall, if he so desires during the period of probation, have the option to revert to his permanent post after giving due notice.

13. Rule 13 deals with the confirmation. It postulates that person appointed on probation may be confirmed by the appointing authority on satisfactory completion of his/her initial or extended period of probation, however, the confirmation of such person shall be subject to the availability of permanent posts. It is evident from the combined reading of language employed in Rules 11 and 13 that a person appointed to a permanent post shall be on probation for a period of two years and the period of probation can be extended or reduced or dispensed with altogether by the Appointing Authority for reasons to be recorded and a person on probation shall be liable to be discharged from service without assigning any reason. As far as the confirmation is concerned, a person appointed on probation is to be confirmed by the Appointing Authority on satisfactory completion of his initial or extended period of probation. In the present case the petitioner cannot claim deemed confirmation in view of the language employed in Rule 13. It was necessary for the Appointing Authority to see whether he had completed his probation period satisfactorily or not. As per proviso to Rule 11 (a), the period of probation can be extended or reduced or dispensed with. If the petitioner has been permitted to work beyond January, 2007, he cannot claim deemed confirmation.

14. Their Lordships of the Hon'ble Supreme Court in Registrar, High Court of Gujarat and Anr. v. C.G. Sharma : AIR 2005 SC344 , have held that there cannot be a right to automatic confirmation when relevant rules require work being found to be satisfactory and existence of vacancy as per the Gujarat Judicial Service Recruitment Rules, 1961. Their Lordships have held as under:

A large number of authorities were cited before us by both the parties. However, it is not necessary to go into the details of all those cases for the simple reason that Sub-rule (4) of Rule 5 of the Rules is in pari materia with the Rule which was under consideration in the case of State of Maharashtra v. Veerappa R. Saboji, and we find that even if the period of two years expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, work has to be satisfactory which is a prerequisite or pre-condition for confirmation and, therefore, even if the probationer is allowed to continue beyond the period of two years as mentioned in the Rule, there is no question of deemed confirmation. The language of the Rule itself excludes any chance of giving deemed or automatic confirmation because the confirmation is to be ordered if there is a vacancy and if the work is found to be satisfactory. There is no question of confirmation and, therefore, deemed confirmation, in the light of the language of this Rule, is ruled out. We are, therefore, of the opinion that the argument advanced by learned Counsel for the respondent on this aspect has no merits and no leg to stand. The learned Single Judge and the learned Judges of the Division Bench have rightly come to the conclusion that there is no automatic confirmation on the expiry of the period of two years and on the expiry of the said period of two years, the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory. The Rule also does not say that the two years' period of probation, as mentioned in the Rule, is the maximum period of probation and the probation cannot be extended beyond the period of two years. We are, therefore, of the opinion that there is no question of automatic or deemed confirmation, as contended by the learned Counsel for the respondent. We, therefore, answer this issue in the negative and against the respondent.

15. In the present case also it is clear from the language employed in Rules 11 and 13 that it excludes any chance of giving deemed or automatic confirmation. The probationer remains on probation unless he is confirmed on the basis of work evaluation. In other words, the work of the probation has to be assessed and thereafter the order has to follow whereby he has to be confirmed in case the permanent vacancy exists. Therefore, the contention raised by Mr. Tarlok Chauhan is misconceived.

In view of the aforesaid reasoning, there is no merit in this writ petition and the same is dismissed. There shall be no order as to costs.

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