

Hem Chand Vs. State of H.P. and ors.

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Court : Himachal Pradesh

Decided On : May-18-2009

Reported in : 2009(2)ShimLC256

Judge : Deepak Gupta and; V.K. Ahuja, JJ.

Appellant : Hem Chand;krishan Kumar

Respondent : State of H.P. and ors.;hem Chand and ors.

Advocate for Def. : Ms. Ranjana Parmar

Advocate for Pet/Ap. : Shri. Dilip Sharma

Disposition : Petition dismissed

Judgement :

Deepak Gupta, J.

1. These petitions reflect an amazing state of affairs where a representative of the public i.e. Pardhan Gram Panchayat-Savindhar, Tehsil Karsog, has flouted all directions given by the State and has made the life of the petitioner a living hell.

2. Briefly stated the facts are that the State of Himachal Pradesh, exercising its powers under Clause 12 of the Recruitment Scheme for appointment of Part Time Water Carriers, recommended that the petitioner be appointed Part Time Water

Carrier in Government Primary School, Alyas, Tehsil Karsog, on compassionate basis. According to the petitioner, the appointing authority in respect of part time water carriers is the Gram Panchayat and the appointment letter has to be issued by the Pradhan. Respondent No. 4 is the Pradhan of the Gram Panchayat. The petitioner avers that pursuant to the aforesaid recommendation he approached the respondent No. 4 for issuance of letter of appointment in his favour on 29th June, 2004. According to him, the Pradhan did not issue any letter of appointment in his favour and therefore, the petitioner made two complaints to the Deputy Director (Panchayati Raj) and the Deputy Director (Education) on 30th June, 2004 and 1st July, 2004 respectively, attached as annexure RJ/3 and RJ/4 with the rejoinder.

3. Admittedly, after these complaints were filed, on 6th July, 2004 the respondent No. 4 filed a complaint against the petitioner with police that he had been intimidated by the petitioner. According to the report of the police, attached as Annexure RJ/5 with the rejoinder, this complaint was found to be totally baseless.

4. On 19th July, 2004 one Bimla Devi approached the erstwhile H.P. State Administrative Tribunal against the appointment of the petitioner to the post of part time Water Carrier. Admittedly, this stay order was vacated on 10th January, 2007.

5. In the meantime, the Panchayat concerned passed a resolution on 15th June, 2006, which is attached as annexure RJ/6, in which it was resolved that the police had not acted properly in the manner of the complaint of the respondent No. 4 and therefore, the police be again requested to record an F.I.R. This F.I.R. was in fact registered on 2nd August, 2006 and the petitioner faced a criminal trial which ended in his acquittal vide judgment dated 3rd September, 2008.

6. The petitioner filed an original application before the erstwhile Administrative Tribunal, which was numbered as O.A. No. 690 of 2007 and the learned tribunal passed an interim order on 17.8.2007, which reads as follows:

MA-2068/2007

The matter is at pre-admission stage as yet, therefore, this application for early hearing is allowed and the original application is ordered to be taken up today.

Heard.

In view of the reply filed by the respondent State, it clearly emerges that the State Government and its functionaries in the Education Department had approved appointment of the applicant as a Part Time Water Carrier in Government Primary School Alias and has issued directions to respondent No. 4 to do the needful. The stand of the State as reflected in its reply is that respondent No. 4 is not bothered to comply with its orders and the State has therefore submitted that this Tribunal may direct respondent No. 4 to issue directions to respondent No. 4 to give appointment to the applicant. I am very sure that the State Government is not helpless in making a Pradhan Gram Panchayat to abide by its lawful orders provided that it wants its orders to be implemented. It hears strange that the State Government instead of discharging its obligations of implementing its orders is making a request to the Tribunal for issue of directions to implement its decision.

In view of the above respondent No. 1 is directed to get the order of appointment of applicant implemented within a fortnight and report compliance through the learned Additional Advocate General.

List on September 11, 2007.

7. The Pradhan-respondent No. 4 has filed an application seeking review of this order on the ground that till the petitioner produces character certificate and IRDP certificate he cannot be offered appointment.

8. We have heard Shri Dilip Sharma, learned Counsel for the petitioner, Shri R.K. Bawa, Advocate General with Mr. Ram Murti Bisht, Deputy Advocate General for the State and Ms. Ranjana Parmar, learned Counsel for respondent No. 4.

9. The contest is mainly between the petitioner and the respondent No. 4. The stand of the State is that it has made the recommendation and it is for the respondent No. 4 to issue the letter of appointment. The stand of the respondent No. 4 is that the petitioner has not produced the IRDP certificate and the character certificate despite the fact that respondent No. 4 issued a large number of

letters/notices to the petitioner in this regard. According to respondent No. 4 the petitioner cannot be offered appointment till he produces the requisite certificates. On first blush this argument appears to be very logical and in normal course any appointment letter can be issued only if the requisite certificates are furnished by the candidate. However, on a deeper analysis of this case, we are clearly of the view that it is the respondent No. 4, the Pradhan himself, who has managed the matter in such a manner that the petitioner cannot get either IRDP certificate or a character certificate.

10. The only ground for refusal of character certificate is that a criminal case is pending against the petitioner. This case was instituted at the behest of the Pradhan. The trial in this case ended in the acquittal of the petitioner. We would not like to comment on the merits of the case, which was the subject-matter of a criminal trial but it is apparent that initially a complaint was made by the Pradhan on 6th July, 2004. This related to alleged intimidation on 29th June, 2004. Why the Pradhan kept silent for seven days is something which makes it obvious what was the purpose behind filing such complaint. The police found after enquiry that this complaint was without any merit. Thereafter, a resolution was passed by the Gram Panchayat, of which respondent No. 4 is the Pradhan, on the basis of which F.I.R. was registered and the petitioner was made to face a criminal trial. This case admittedly ended in the acquittal of the petitioner. Therefore, we find that there is no reason to deny character certificate to the petitioner.

11. The second stand of the respondent No. 4 is that the name of the petitioner has been removed from the list of the IRDP families by the Gram Panchayat. According to the petitioner, his name has been removed from the list of IRDP families vide resolution passed by the Gram Panchayat in February, 2007. Admittedly, the petitioner already had an IRDP certificate issued on 29.4.2004, Annexure A/2, which was valid for six months. The relevant date in our considered view is the date when the petitioner was to be issued the letter of appointment. The petitioner has been denied the letter of appointment for the last more than five years and in the meantime his brother has been appointed Beldar on daily wages and this is the only ground to refuse IRDP certificate to the petitioner.

12. We feel that this subsequent event should not be taken into consideration. The subsequent events cannot be taken into consideration because the relevant date for the purpose of issuance of appointment letter would be 29th June when the petitioner initially approached the respondent No. 4 alongwith all requisite certificates for issuance of letter of appointment. The respondent No. 4 first filed a criminal complaint and then got the petitioner removed from the list of IRDP families and it would be a travesty of justice in case these ulterior and oblique objects of respondent No. 4 are allowed to fructify ending in total denial of justice to the petitioner.

13. We, therefore, have no hesitation in holding that the petitioner shall be deemed to belong to an IRDP family. As far as the Character certificate is concerned, we in the circumstances of this case direct the petitioner to approach the SDO (Civil), Karsog, alongwith a copy of this judgment within three weeks from today for issuance of character certificate. If such character certificate is issued by the SDO, the respondent No. 4 is directed to issue appointment to the petitioner within one week of his producing the character certificate. It is made clear that the respondent No. 4 shall not insist on the production of any new IRDP certificate. We have found that the petitioner has been denied employment for almost five years due to the absolutely illegal machinations of Shri Krishan Kumar, the respondent No. 4. We, therefore, direct that respondent No. 4 in his personal capacity shall pay exemplary costs of Rs. 20,000 to the petitioner. The costs shall be paid/deposited within three months from today. Copy of this judgment shall also be sent to the Principal Secretary (Panchayati Raj) to the Government of Himachal Pradesh, who may initiate proceeding in accordance with law against Shri Krishan Kumar, Pradhan, Gram Panchayat-Savindhar, Tehsil Karsog, District Mandi for misutilising his position of Pradhan.

14. In view of the above discussion the writ petition is allowed. There is no merit in the review petition which is accordingly dismissed.