
(2014) 07 SHI CK 0124

High Court of Himachal Pradesh

Case No: CWP No. 1215 of 2014-B

Ajay Kumar

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: July 7, 2014

Hon'ble Judges: Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench: Division Bench

Advocate: Naresh Kaul, Advocate for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Additional Advocate Generals, J.K. Verma and Kush Sharma, Deputy Advocate Generals, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.

By the medium of this writ petition, the petitioner has sought following reliefs amongst others:

i) That the respondents No. 1 & 2 may very be directed to consider the case of the present Petitioner for giving him posting in his home districts, keeping in view the peculiar facts and circumstances mentioned in the present writ petition & also in view of the recruitment and promotion Rules (Annexure P-5) & keeping in view the fact that the post of JBT Teacher being a class-III, Non Gazetted, District cadre post, while issuing a writ in the nature of Mandamus. Further, the petitioner is similarly situated (batch mates) to the Petitioner of CWP 7667/2011 etc. titled as Amit Thakur versus state of H.P. and ors i.e. judgment (Annexure P-6) dated 20.10.2011 as well as Petitioners of CWP 7715/2013 titled as Pardeep Kumar and anr. Versus state of HP and anr., in whose favour this Hon"ble court passed order dated 10.04.2013 (Annexure P-7) and Ld. Director also passed order dated 11.04.2013 (Annexure P-8), petitioner is similarly situated.

ii) That during the pendency of the present writ petition, the respondent No. 2 may be directed to accommodate the Petitioner to his home district i.e. Hamirpur, as

many posts were vacant at the time of appointment of petitioner in Distt. Una, after the posting of the petitioner and in near future as well as, on date various JBT's have been promoted as HT, hence, the petitioner claim can be considered as he is similarly situated to those, who have already been accommodated by the order of this Hon"ble Court, the delay and latches will not come in the way of the petitioner in view of the 05 judges bench of the Hon"ble Apex Court in [K.C. Sharma and others Vs. Union of India and others,](#).

2. Learned Counsel for the petitioner stated at the Bar that respondents be directed to examine the case of the petitioner in view of the averments contained in the writ petition read with Annexures P-6, P-7 and P-8.

3. Respondents have filed reply to the writ petition. It is apt to reproduce para 2 of preliminary submissions and para 6 of the reply on merits filed by the respondents, which read as under:

2. That it is submitted that though the post of JBT is a class-III, Non Gazetted and District cadre post but it is no where mentioned in the R & P Rules that a candidate to be given appointment as JBT will not be posted outside his/her home District. As such claim of the petitioner for not posting him outside his home District or posting him only in his home Distt. is not valid, as such not sustainable. Moreover, the Department has acted only as per approval of the Government i.e. Annexure P-2. The post of JBT is a Distt. Cadre post, due to this reason a candidate once appointed in a District is not transferred out of that District in normal course and is assigned seniority in that District. It is further submitted that teachers posted in other District and willing to get transferred to their home District, the Govt. has framed inter-district transfer policy under 1% quota with certain terms and conditions. It is further submitted that Smt. Mamta Devi mentioned in the present petition has also taken advantage of the 1% quota policy and got her transferred from Distt. Shimla to Distt. Kangra. The Petitioner is also free to take advantage of the 1% quota policy on fulfilling the terms and conditions for the purpose. Hence, the present petition filed by the petitioner deserves to be dismissed.

6. That this para also calls for no submission in view of the facts and submissions as submitted in the preceding paras. However, it is submitted that the names of candidates mentioned in this para, who have been said to be allotted their home Districts as alleged by the petitioner, are from General Category and SC category and they were considered under the respective category and got Districts as per the availability of seats in the respective category during the course of counseling, since they have scored more marks than the petitioner and were placed above the petitioner in the merit list. It is further submitted that the candidates who have passed training from Trisha College of Education Rangas, have also been allocated District on the same formula as has been applied in the petitioner's case, therefore, no discrimination has been done by the respondent state in the allotment of districts to the candidates. It is further submitted that as submitted supra the

Department has implemented the judgment passed by the Hon"ble Court on 20.10.2011 in CWP No. 7667/2011 titled as Amit Thakur v/s State of H.P. & others with connected matter and other judgments passed on the analogy of this judgment like Annexure P-7 passed on 10.04.2013 in CWP No. 7715/2012 titled as Pardeep Kumar v/s State of H.P. & others.

4. In the given circumstances, we deem it proper to dispose of this writ petition alongwith the pending applications, by directing the respondents to examine the of case of the petitioner, in light of the averments contained in the writ petition, particularly, read with Annexures P-6 to P-8, para-2 of the preliminary submissions and para-6 of the reply on merits filed by the respondents, reproduced hereinabove, and make decision as per the Rules occupying the field, within six weeks from today.