

(2015) 01 SHI CK 0023

High Court of Himachal Pradesh

Case No: LPA No. 154 of 2014

Munish Dulta

APPELLANT

Vs

Himachal Pradesh University

RESPONDENT

Date of Decision: Jan. 1, 2015

Hon'ble Judges: Mansoor Ahmad Mir, C.J.; Dharam Chand Chaudhary, J.

Bench: Division Bench

Advocate: Sanjeev Bhushan, for the Appellant; J.L. Bhardwaj, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Dharam Chand Chaudhary, J.

Challenge herein is to the judgment dated July 14, 2014, passed by learned Single Judge in CWP No. 7770 of 2013, whereby the writ petition filed by the appellant-writ petitioner, with a prayer to quash the order dated September 20, 2013 (Annexure P-27), qua his posting in Himachal Pradesh University Regional Centre at Dharamshala on repatriation from the Department of Public Administration, PG Centre, Shimla, has been dismissed on the sole ground that similar relief sought by the writ petitioner in CWP No. 9231 of 2011 he previously instituted was not granted and as such to be treated to have declined.

2. Complaint is that the order Annexure P-27 sought to be quashed by filing the writ petition has been issued after the decision of previously instituted writ petition, i.e., CWP No. 9231 of 2011. Therefore, learned Single Judge should have decided the writ petition on merits in view of there being more than one reason for quashing the same disclosed from the perusal of the writ petition. Also that allowing the incumbent appointed in the year 2004 as Assistant Professor in HP University, Regional Centre Dharamshala to serve in the Public Administration Department of the respondent-University at Shimla at the cost of the writ petitioner, a physically challenged person now repatriated to Regional Centre, Dharamshala vide order sought to be quashed, is arbitrary and also discriminatory and as such learned

Single Judge should have gone into all questions raised in the writ petition. The writ petitioner, a disabled person, on humanitarian ground was entitled to better treatment and in the matter of posting, a station of his choice, but the respondent-University in view of he having approached this Court earlier shown its displeasure and ordered to send him back to Regional Centre, Dharamshala, contrary to the direction of this Court qua his posting in the Department of Public Administration at Shimla. It has further been pointed out that at the time of filing of CWP No. 9231 of 2011 cause of action was entirely different and as per order passed in that writ petition, the writ petitioner was posted in the Department of Public Administration, PG Centre, Shimla. Now the cause of action is different, as vide order sought to be quashed in the writ petition, the writ petitioner has been repatriated and ordered to be posted at Regional Centre, Dharamshala.

3. The grouse as brought to the Court in this appeal in a nutshell is that the writ petition should have been decided on merits, being not hit by the principle of res-judicata, by taking a pragmatic approach keeping in view that the writ petitioner, a physically challenged person and the post of Assistant Professor is lying vacant in the Department of Public Administration, HP University Campus, Shimla.

4. The writ petitioner herein has claimed the following reliefs in the writ petition:

"(i) That writ in the nature of mandamus may kindly be issued and the impugned order 20.9.2013 (Annexure P-27) may kindly be quashed and set aside.

(ii) That writ in the nature of mandamus may kindly be issued directing the respondent University to consider the candidature of the petitioner for appointment as Assistant Professor in the department of Public Administration P.G. Centre, Shimla, with effect from the year 2010 as per the judgment passed by this Hon'ble Court on 28.10.2010 in CWP No. 1762 of 2010.

(iii) That the respondent University may kindly be directed to give all the consequential benefits including the arrears of salary, seniority etc. from the year 2010."

5. The perusal of the judgment under challenge makes it crystal clear that learned Single Judge while taking note of the factum of the relief sought in the previously instituted writ petition, i.e., CWP No. 9231 of 2011 identical in nature and also the interim order therein passed on November 23, 2011, whereas final order on December 7, 2011, as well as placing reliance on the ratio of the judgment of the Apex Court in State Bank of India Vs. Ram Chandra Dubey and Others, has arrived at a conclusion that the relief sought in that writ petition having not been granted, is treated to have declined and no relief, as sought in the subsequent writ petition, dismissed vide judgment under challenge in the present appeal, can be granted. It is the legality and validity of the conclusion so drawn by learned Single Judge is under challenge in the present appeal on the grounds, as highlighted at the very outset.

6. On hearing Shri Sanjeev Bhushan, Advocate, learned Counsel appearing for the appellant-writ petitioner and going through the entire record, we find no illegality or irregularity having been committed by learned Single Judge while dismissing the writ petition for the reason that a Coordinate Bench in previously instituted CWP No. 9231 of 2011 had directed the respondent-University to examine as to whether there is justification of two Assistant Professors at Regional Centre, Dharamshala or that the writ petitioner can be permitted to discharge his duties in the Department of Public Administration, PG Centre, Shimla, as a special case. The writ petition ultimately was disposed of vide judgment dated December 7, 2011 in terms of the order to the above effect passed in the interim. It is by virtue of the order so passed in the previously instituted writ petition vide order dated January 4, 2012 (Annexure P-23) to the writ petition, the writ petitioner was permitted to work in the Department of Public Administration, PG Centre, Shimla with immediate effect. He, however, now has been ordered to be sent back to the place of his posting, i.e., HP University Regional Centre, Dharamshala vide order Annexure P-27.

7. A Co-ordinate Bench of this Court in its wisdom deemed it appropriate to direct the respondent-University to consider as to whether the writ petitioner can be permitted to work at Shimla for the time being as a special case in the previously instituted writ petition by him. The relief sought in that writ petition was also that he consequent upon the judgment dated October 28, 2010 in CWP No. 1762 of 2010 should have been appointed against the post advertised for the Department of Public Administration, PG Centre Shimla and not at Dharamshala.

8. Division Bench while deciding CWP No. 9231 of 2011, however, not deemed it appropriate to grant such relief and rather passed only a direction to consider the posting of the writ petition in PG Centre, Shimla for the time being and as a special case. The writ petitioner has no legal right to remain posted in PG Centre, Shimla, particularly when vide order of his appointment Annexure P-19 to the writ petition he has been appointed as Assistant Professor in Public Administration, Regional Centre, Dharamshala. Admittedly, on his appointment, he had submitted his joining report there. True it is that his application was for appointment as Assistant Professor, Public Administration in PG Centre, Shimla, however, there were no provisions of making reservation to the extent of 3% for physically handicapped person(s), when the advertisement was issued. He filed CWP No. 1762 of 2011 for seeking a direction to the respondent-University to make a provision for reservation in the category of physically handicapped person. This Court vide judgment dated October 28, 2010, directed the respondent-University to reserve one of the posts of Assistant Professor in the Department of Public Administration for the category of disabled person(s) and that in case the petitioner is otherwise found suitable, may be considered for appointment against the said post. The respondent-University had taken a decision for providing reservation to physically handicapped category and reserved one post in its Regional Centre at Dharamshala. He was called for interview vide letter Annexure P-15 against the post of Assistant Professor (Public

Administration) in Regional Centre, Dharamshala reserved for physically handicapped category. True it is that he made representation(s) to the respondent-University qua his appointment in PG Centre, Shimla, however, was offered appointment vide letter Annexure P-19 in Regional Centre, Dharamshala, which he accepted and even joined duties also.

9. On the basis of the judgment dated October 28, 2010 in CWP No. 1762 of 2010 the writ petitioner cannot claim his appointment in PG Centre at Shimla, as it was only a direction to consider him from the category of physically handicapped in that judgment. Above all, the contempt petition he preferred also stands dismissed. True it is that he is physically handicapped person, however, in our considered opinion, he is not entitled to claim his posting at Shimla, particularly when he is appointed in Regional Centre of respondent-University at Dharamshala. The another Assistant Professor appointed in the year 2004 in Regional Centre, Dharamshala and brought to PG Centre, Shimla can not be said to be a circumstance of discrimination as it is for the employer, i.e., respondent-University to utilize the services of the teaching staff in its own way and in the interest of administration to maintain academic standard. The writ petitioner, who has been appointed in Regional Centre, Dharamshala and joined his duties there, cannot be said to have any complaint of arbitrariness and discrimination when the respondent-University in its wisdom deemed it appropriate to post him in Regional Centre, Dharamshala. True it is that as per the guidelines circulated by Government of India in the matter of posting, the person with disability should be given preference, however, subject to the administrative constraints. Here when the writ petitioner is appointed for Regional Centre, Dharamshala, there is no question of obtaining his preference because vide order Annexure P-27 sought to be quashed he has been posted at the place of his appointment, i.e., Regional Centre, Dharamshala. Therefore, on merits also no case is made out warranting interference in the judgment under challenge in this appeal.

10. In view of what has been said hereinabove, we find no force in the present appeal and the same is accordingly dismissed. Before parting, we would like to observe that the dismissal of appeal will not come in the way of the writ petitioner in case the respondent-University at some later stage otherwise considers his case for transfer to its PG Centre at Shimla. The appeal stands disposed of. Pending application(s), if any also stands disposed of.