
(2016) 03 SHI CK 0118
High Court of Himachal Pradesh
Case No: L.P.A. No. 52 of 2011

Manohar Lal

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: March 14, 2016

Acts Referred:

- Constitution of India, 1950 - Article 16

Citation: (2016) ILRHP 223 : (2016) LIC 3569

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

Bench: Division Bench

Advocate: Mr. Sunil Mohan Goel, Advocate, for the Appellant; Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan and Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for the Respondents/State

Final Decision: Dismissed

Judgement

Mansoor Ahmad Mir, C.J.(Oral)—These Letters Patent Appeals are directed against the common judgment and order, dated 17th December, 2010, made by the learned Single Judge/Writ Court in a batch of writ petitions, CWP No. 2977 of 2008, titled as Om Parkash v. State of HP and others, being the lead case, whereby all the writ petitions filed by the writ petitioners came to be dismissed (for short "the impugned judgment").

2. In the given circumstances, we deem it proper to determine all these appeals by this common judgment. Accordingly, this judgment will govern all the six appeals.

3. The writ petitioners invoked the jurisdiction of the Writ Court by the medium of separate writ petitions and sought writ of mandamus commanding Director Industries, Himachal Pradesh, Shimla, to place on record order, dated 6th November, 2008 and have also sought writ of certiorari to quash order, dated 6th November, 2008 and the followup order, dated 7th November, 2008 (Annexure P9 in CWP No. 2995 of 2008, subject matter of LPA No. 52 of 2011). Further, the writ petitioners have also sought writ of mandamus

commanding Director of Industries, Himachal Pradesh, Shimla, to allow them to perform their duties in Industries Department as Mining Guards and to permanently absorb them against the post of Mining Guards in Industries Department, on the grounds taken in the respective writ petitions.

4. Precisely, the case put forth by the writ petitioners before the Writ Court was that they were appointed as Timber Watchers in the Himachal Pradesh State Forest Corporation (for short "Corporation"), i.e. respondent No. 3, and thereafter, their services were regularised and were serving and performing their duties with respondent No. 3 Corporation as Timber Watchers on regular basis. Industries Department absorbed them against the posts of Mining Guards on permanent regular basis and they had opted for the said service only on the ground that they will be permanently absorbed in the said department as Mining Guards.

5. Further averred that thereafter, respondent No. 2 has issued order, dated 6th November, 2008, ordered their repatriation and also followup order was made on 7th November, 2008 (Annexure P9 in CWP No. 2995 of 2008), which is not in accordance with their appointments, thus, be quashed.

6. The respondents have filed replies. Respondents No. 1, 2 and 4 have filed joint reply and respondent No. 3 has filed separate reply.

7. Respondent No. 3, in its reply, has specifically averred that the writ petitioners were appointed on secondment basis for a period of one year and no option was given by the writ petitioners for their appointment on regular basis. The appointment orders, dated 1st December, 2006 (Annexure P6) are crystal clear, which only talk of appointment on secondment basis for a period of one year.

8. After completion of the said period, respondent No. 3 Corporation made a communication on 25th October, 2008, to respondent No. 2, i.e. the Director of Industries, Himachal Pradesh, Shimla, with a request to repatriate the Timber Watchers, whose services were placed at their disposal to the posts of Mining Guards on secondment basis in the Industries Department. Copy of the said communication has been annexed with the reply of respondent No. 3 as Annexure R3/A.

9. Respondents No. 1, 2 and 4 have specifically averred in their reply that in view of the appointment of the writ petitioners on secondment basis, they issued order of repatriation on 6th November, 2008, relieved them and directed them to join their parent department in terms of order, dated 7th November, 2008. The order of repatriation, dated 6th November, 2008, has been annexed as Annexure R4.

10. The writ petitioners have placed on record documents. Annexure P6, i.e. office/appointment order, dated 1st December, 2006, is the foundation of their cases. All the appointment letters were drafted in same words. It is apt to reproduce relevant portion of Annexure P6 in CWP No. 2995 of 2008 herein:

"Office Order"

Consequent upon the approval received from the Principal Secretary (Industries) to the Government of Himachal Pradesh to fill up the vacant posts of the Mining Guards from surplus pool of the Himachal Pradesh State Forest Corporation vide letter No. Udyog-II (B) 111/2004 dated 23.8.2006 and as per the candidate sponsored by the Managing Director, Himachal Pradesh State Forest Corporation, Shimla letter No.

SFC(1)B(15)13/98-Voll-II1-7800-05 dated 13.10.2006 and the interview conducted for the selection of the candidates on 13.11.2006, Shri Manohar Lal, Timber Watcher, Forest Working Division, Una, is hereby offered the appointment as Mining Guard in the pay scale of Rs. 25204140 in the Industries Department, Geological Wing on secondment basis for one year from the date of issue of this order in the first instance. This appointment on secondment basis will however, not involve any pay fixation and incumbent will draw the basic pay which he has been drawing in the parent organization.

The above incumbent if interested, shall join his duty in the Mining Office, Dharamshala (at Jawali), District Kangra within fifteen days from the date of issue this order failing which the offer of deployment shall stand withdrawn.

11. While going through the said office order, it is crystal clear that the writ petitioners were made to understand loudly and clearly that their appointment/absorption in the Industries Department was only on secondment basis, that too, only for one year.

12. The writ petitioners have accepted the said order and now, cannot make uturn by pleading in the writ petitions or by making representations that they had given option for their permanent absorption.

13. The word "secondment" has been described in the Black's Law Dictionary, Tenth Edition, at page 1555, as under:

"secondment. A period of time that a worker spends away from his or her usual job, usu. either doing another job or studying."

14. Secondment means a period which an employee spends away from his/her job usually either going to other department or studying.

15. In terms of the Oxford Advanced Learner's Dictionary, "secondment" means to send an employee to another department, office, etc. in order to do a different job for a short period of time.

16. The Chambers Dictionary describes the word "secondment" as temporary transfer to another position.

17. The writ petitioners have accepted the orders and were sent by the parent department, i.e. respondent No. 3 Corporation, to the Industries Department for

performing their duties as Mining Guards on secondment basis, cannot claim regular absorption. No such document/order is on the files, which can be made basis for holding that the writ petitioners had given option for regular/permanent absorption.

18. The writ petitioners, once have accepted the orders, cannot plead contrary to the said orders. Pleadings are not in tune with the documents filed by them with the writ petitions before the Writ Court. Thus, the pleadings and documents are contradictory.

19. It is also apt to record herein that the writ petitioners have not questioned the letter, dated 25th October, 2008, made by respondent No. 3 Corporation to respondent No. 2, i.e. the Director of Industries, Himachal Pradesh, Shimla, for repatriation of the Timber Watchers, whose services were placed at their disposal to the posts of Mining Guards on secondment basis in the Industries Department (Annexure R3/A).

20. Having said so, the Writ Court has rightly made the impugned judgment, needs no interference.

21. Viewed thus, the impugned judgment is upheld and all the appeals are dismissed along with all pending applications.