

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

L.P.A. No. 126 of 2015

Reserved on : 06.03.2024

Date of decision : 21.03.2024

State of H.P. and another

..Appellant

Versus

Jai Ram Kaundal

..Respondent

Coram :-**The Hon'ble Mr. Justice M. S. Ramachandra Rao, Chief Justice****The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge****Whether approved for reporting ?¹**

For the Appellants : Mr. Anup Rattan, Advocate General, with Mr. Rakesh Dhaulta & Mr. Pranay Pratap Singh, Additional Advocates General and Mr. Arsh Rattan & Mr. Sidharth Jalta, Deputy Advocates General.

For the Respondent : Mr. Sanjeev Bhushan, Senior Advocate, with Mr. Sohail Khan, Advocate

Jyotsna Rewal Dua, Judge

Respondent's writ petition seeking deemed appointment to the post of Medical Officer (M.O.) (Dental) (Ex-serviceman) (Schedule Caste) w.e.f. 31.10.1996 was allowed by the learned Single Judge on 21.11.2014. Feeling aggrieved, the State has challenged the aforesaid decision in this Letters Patent Appeal.

¹ Whether reporters of print and electronic media may be allowed to see the order? Yes.

2. Following **facts** are not in dispute.

2(i) Respondent was released from Army on 06.08.1992 on completion of 5 years of service. He was appointed as M.O. (Dental) on 31.05.1993. The said appointment was against a post advertised and reserved for candidates belonging to Scheduled Caste category. The respondent accepted his appointment as M.O. (Dental) (SC) and joined his duties as such on 04.06.1993.

2(ii) Three years later, i.e. on 31.10.1996, the State advertised a post of M.O. (Dental) falling to (Ex-serviceman) (SC) category.

2(iii) The respondent represented on 02.11.1996 that he being an ex-serviceman be straight away absorbed against the post of M.O. (Dental) (ex-servicemen) (SC) advertised on 31.10.1996. Respondent made this request with a view to avail the benefits of his past Army service. The State turned down respondent's request on 06.10.2008 on the ground that benefit of approved Military service for fixation of pay and seniority under the Ex-servicemen (Reservation of Vacancies in Himachal Pradesh Technical Services) Rules, 1985 is admissible to an ex-serviceman only when he is appointed against the post reserved for ex-serviceman and not otherwise. While rejecting the respondent's representation, the State also relied upon Department of Personnel Instructions dated 21.07.1982.

2(iv) Feeling aggrieved, respondent filed CWP No. 2624 of 2010 on 14.05.2010. The writ petition was allowed on 21.11.2014. Learned Single Judge held that :- respondent was an ex-serviceman, but he had joined the post that became available immediately after his retirement from Army as he could not wait till the availability/advertisement of the post of ex-serviceman; It was in compelling circumstances that the respondent had accepted the appointment against the post advertised for SC category. Learned Single Judge also held that the State had mis-construed the instructions dated 21.07.1982. These instructions would apply only when an ex-serviceman belonging to SC or ST category is selected for appointment against vacancies reserved for being filled by ex-serviceman. It was further observed that in the case in hand, the post of ex-serviceman was not available in the year 1993, therefore, the petitioner had no option at that time, but to join as M.O. (Dental) (SC). The post of M.O. (Dental) (Ex-servicemen) became available on 31.10.1996 for which the petitioner gave his option for absorption, hence he should have been considered against this post of ex-serviceman with all the benefits.

3. We have heard learned counsel on both sides and perused the case file. Our **observations** are as under :-

3(i) Admittedly, respondent was an ex-serviceman belonging to SC category. As per his pleaded case, he had rendered 5 years of service as M.O. (Dental) in Military at the time of his release by the Army on 06.08.1992.

3(ii) The respondent accepted his appointment on 31.05.1993 as M.O. (Dental) against the post advertised only for SC category. The post of M.O. (Dental) at that time was not available for ex-servicemen.

3(iii) The appellant-State advertised a post of M.O. (Dental) for Scheduled Castes Ex-servicemen category on 31.10.1996. Respondent claims his deemed absorption against this post.

3(iv) Instructions dated 21.07.1982 are applicable to the issue involved in the case. These instructions are extracted hereinbelow :-

“Copy of H.P.Govt. Deptment of Personnel letter No. 2-11/72-DP-(A-II)-Pt. File dated 21.07.1982 addressed to al the Secretaries, Head of Departments etc. (Referred to in paras 18.2 and 18.4.8)

Subject: Reservation for Sch. Castes/Sch. Tribes/Ex.servicemen..Clarification regarding.

I am directed to say that various Departments have sought clarification from the Government on the following points relating to the instructions from the Government on the following points relating to the instructions on reservation for Sch. Castes/Sch. Tribes and the Ex-servicemen :-

i) x

ii) *When a person who happens to be an Ex-serviceman also belongs to Sch. Caste or Sch. Tribe, how the reservation is to be given ?*

2. *The matter has been examined by the Government in consultation with the Government of India and it has been decided to issue the clarification on the above points, as under :-*

i) x

ii) If any Ex-serviceman belonging to Sch. Caste or Sch. Tribe is selected for an appointment, out of the vacancies reserved for being filled by Ex-serviceman, his selection will be counted against the over-all quota of reservation that shall be provided to Sch. Caste or Sch. Tribe, as the case may be. This implies that once a person has been considered against Sch. Caste or Sch. Tribe quota, he cannot claim any benefit of being an Ex-serviceman on a later date.”

As per above instructions once an ex-serviceman has been considered against SC or ST quota, he cannot claim any benefit of being an ex-serviceman on a later date as his selection would be counted against SC/ST slots. These instructions were in force at the time of respondent's appointment as M.O. (Dental) (SC) category on 31.05.1993 & governed his appointment. Respondent challenged these instructions in the Writ Petition filed by him on 14.05.2010. During hearing of this appeal, no illegality in these instructions was demonstrated.

In the instant case, the respondent had accepted his appointment as M.O. (Dental) against the post that was advertised only for SC category. He was appointed as such on 31.05.1993. Respondent's claim for his deemed appointment as an ex-serviceman (SC) against the post advertised by the State on 31.10.1996 is not tenable. Having accepted the appointment as M.O. (Dental) (SC), having joined his duty as such on 04.06.1993, the respondent cannot be permitted to lay claim for his deemed absorption against the post of M.O. (Dental) (ex-servicemen) (SC category) advertised on 31.10.1996. It is not the case of

respondent that he participated in the selection process for the post that was advertised on 31.10.1996.

No statutory provision/rule/notification was brought to our notice which could confer such automatic deemed absorption/appointment of the respondent on the post of Ex-serviceman (SC) advertised on 31.10.1996 i.e. later to the respondent's actual appointment as M.O. (Dental) on 31.05.1993 against the slot meant only for SC category. It be clarified here that we have only examined the justiciability of claim of respondent (writ petitioner) for his deemed absorption against the post of M.O. (Dental) (ex-serviceman) (SC) category that became available on 31.10.1996.

4. For all the foregoing reasons, there is merit in the present appeal and the same is allowed. Judgment passed by learned Single Judge on 21.11.2014 in CWP No. 2624 of 2010 is set aside. Consequently writ petition is dismissed. Pending applications, if any, also stand disposed of.

**M. S. Ramachandra Rao,
Chief Justice**

21st March, 2024 (K)

**Jyotsna Rewal Dua
Judge**