



Devinder Singh vs. State of H.P. & Ors

CWP No.9981 of 2023

12.12.2023 Present: Mr. Anil Chauhan, Advocate, for the petitioner.

Mr. B.C. Verma, Additional Advocate General for respondents No. 1 to 5.

Mr. Rajat Kumar, Advocate, for respondent No.6.

Caveat Petition No.578 of 2023

Heard and disposed of.

CWP No.9981 of 2023

Notice. Mr. B.C. Verma, learned Additional Advocate General and Mr. Rajat Kumar, Advocate, appear and waive service of notice on behalf of respondents No. 1 to 5 and respondent No.6 respectively. Let reply be filed within three weeks.

CMP No.18312 of 2023

Notice in the aforesaid terms.

2. Case of the petitioner is that the selection for the post of Part Time Multi Task Worker (PTMTW) in Government Primary School Sertidhar, Tehsil Kupvi, District Shimla, was undertaken by the Selection Committee, in terms of the policy/scheme.

3. Record reveals that 10 candidates have applied for the post and out of 10 candidates three



candidates did not appear for the interview/evaluation. Out of remaining 7 candidates, the petitioner-Davinder Singh was found to be most meritorious with 30 marks out of total 38 marks whereas, respondent No.6-Ravinder Singh was awarded 22 marks out of 38 marks. In between the petitioner and private respondent one Sh. Rakesh Kumar was awarded 25 marks out of total 38 marks in terms of scheme.

4. Pursuant to the selection by the Selection Committee on 29.06.2022, the result of selection was declared on 18.07.2022 and thereafter the petitioner joined as Part Time Multi Task Worker in Government Primary School, Sertidhar, Kupvi, District Shimla in the month of July, 2022 and he is continuing as Multi Task Worker, in the said school till day.

5. The respondent No.6-Caveator has opposed the grant of interim prayer for the reason that the matter with respect to the selection of the petitioner, and awarding of marks for Primary Class (5th Class Examination-Certificate) was not in order.



In this context, the learned counsel for the private respondent No.6 submits that the matter with respect to the non admissibility of marks for 5th Class i.e. Primary Class Certificate was looked into and in para 5 to 7, the Additional District Magistrate (L&O) Shimla has recorded a finding on 13.07.2023, *Annexure P-1*, stating therein that the 5th Class Certificate appears to be manipulated one and the appointment of petitioner was set aside, with a direction to redraw the merit, for the post of Part Time Multi Task Worker for Government Primary School Sertidhar.

He further submits that feeling aggrieved against the orders passed by the ADM Shimla, the petitioner had filed an appeal before the Appellate Authority-Respondent No.2-Director of Elementary Education, which was decided on 21.07.2023, *Annexure P-4*, setting aside the appointment of the petitioner with the finding that no record exists in GPS Jubar, showing the petitioner to have passed 5th Class Examination either as a regular candidate or private candidate.



6. In the background, of the order(s) passed by the ADM on 13.7.2023, (Annexure P-1) and the orders passed by Appellant Authority i.e. Director of Elementary Education on 21.7.2023, (Annexure P-4), once the appointment of the petitioner was set aside and the merit was to be redrawn then, the petitioner has no right to continue.

7. Heard the learned counsel for the parties and also perused the material available on record.

8. Without going into the rival claims and contentions of the parties, at this stage, which shall be adjudicated upon after filing of replies by the respective parties, this Court is of the considered that once the petitioner is continuing in Government Primary School Sertidhar, Tehsil Kupvi, after due selection by the Selection Committee on 29.06.2022 and had joined in July, 2022 and is continuing as such, till day, therefore this Court inclined to grant interim protection to the petitioner till the next date of hearing. This interim protection is being granted for the reason that once the petitioner was awarded 8 marks on account of the Qualifications i.e. "5 marks



for 5th Class Certificate” and a perusal of Para 4 of the communication dated 21.8.2023, Annexure P-3, reveals that the petitioner had passed 5th Class Examination, and as per the records the certificate was issued by the Block Primary Education Officer (referred to at page 23/24 of the paper book), by permitting the petitioner to undertake the 5th Class Examination and even the Inquiry Committee constituted on 5.7.2022, has scrutinized the records and has found that the Primary Certificate (5th Class) and the marks mentioned therein, pertain to the petitioner.

9. In addition to this, one more aspect needs to be highlighted, and once the petitioner had neither appeared in 5th Class Examination either as a regular candidate or as a private candidate but as a “special case” in view of the established practice in the department, that a candidate who is desirous of improving his qualification or acquiring higher qualification of Primary (5th Class) can apply to the Block Elementary Education Officer concerned or higher authorities who permit such a candidate to appear in the examination of 5th Class and on this



basis, the petitioner is stated to have acquired the said qualification.

10. In this view of the matter, this Court is of the prima facie view, that once the petitioner is continuing in service as a Part Time Multi Task Worker in GPS Sertidhar (Kupvi District Shimla) since July, 2022 on the basis of due selection, till today i.e. till filing of this writ petition; therefore, the respondents are directed to permit the petitioner to continue working as Part Time Multi Task Worker in Government Primary School Sertidhar, Tehsil Kupvi, District Shimla, till next date of hearing.

11. List the matter after three weeks.

(Ranjan Sharma)
Judge

12th December, 2023
(himani)