

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

Civil Writ Petition No.813 of 2008.

Date of decision : 30.04.2010.

Suresh Kumar Verma

....Petitioner

Versus

State of H.P. & Others

....Respondents

Coram:

The Hon'ble Mr. Justice Dev Darshan Sud, J.

The Hon'ble Mr. Justice Kuldip Singh, J.

Whether approved for reporting?¹ No.

For the petitioner: Mr.Keshav Thakur, Advocate.

**For the respondents: Mr.P.K. Sharma, Additional
Advocate General with Mr.R.P.
Singh, Assistant Advocate General.**

Dev Darshan Sud, J.

This writ petition has been preferred by the petitioner against the order passed by the H.P. State Administrative Tribunal dismissing his application for execution of Annexure P-8, order passed in execution petition preferred before the Tribunal, and Annexure P-11 order in review petition preferred against the order Annexure P-8.

2. By an order dated 11.7.1996 passed in Original Application No.703 of 1996, instituted by the petitioner herein, the Tribunal disposed of the petition holding:-

¹ ***Whether Reporters of Local Papers are allowed to see the judgment? Yes.***

"3. In view of above we direct the respondents to fill up the vacant posts as and when necessity arises strictly in accordance with the Recruitment & Promotion Rules and the instructions referred to above by giving due representation to the batchwise recruitment."

3. The petitioner thereafter preferred a contempt petition pleading that this order had been violated. On 26.8.2004 the Contempt Petition was withdrawn. The Tribunal records:-

"26.8.2004:

Present Sh.Rama Kant, Advocate for the applicant.

Mrs.Abhilasha Kumari, Addl. Adv.General for respondents.

Since the execution petition is already pending, therefore, learned counsel for the applicant does not want to proceed with the contempt petition.

In view of this contempt petition is dismissed.

Rule against the respondents is hereby discharged."

4. The petitioner had instituted execution proceedings before the Tribunal seeking implementation of the order in the Original Application. However, this was dismissed by the Court by a detailed order passed on 25th October, 2005 holding:-

"5. There is no dispute that the aforesaid order was passed on July 11, 1996. The execution petition has been filed on November 4, 1998 that is after more than two years of the passing of the order. Therefore, the question which arises for determination is as to what is the period of limitation for filing the execution petition under Section 27 of the Act.

6. In "Hukam Raj Khinvsara Vrs. Union of India and Others" (1997) 4 SCC 284, the Apex Court while dealing with a similar question held as under:-

"5. The only question is: whether the application seeking implementation of the earlier order of the Tribunal was barred by limitation? S. 27 of the Administrative Tribunals Act, 1985 (for short, 'the Act') envisages thus:

"27. Execution of orders of a Tribunal.- Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any Court (including a High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in Clause (a) of sub-section (2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed."

6. Relevant part of sub-section (2) of Section 20 of the Act postulate that :

"20(2) For the purposes of sub-section (1) of Section 20, a person shall be deemed

to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance;".

7. Section 21 prescribes limitation in that behalf. Sub-section (1) (a) of Section 21 postulates that:-

"(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made."

8. Thus it could be seen that the final order passed by the Tribunal is executable under Section 27 of the Act within one year from the date of its becoming final. Admittedly, the final order was passed on March 13, 1992. Consequently, the appellant was required to file the execution application within one year from the said date unless the order of the Tribunal was suspended by this Court in a special leave petition/appeal which is not the case herein. Admittedly, the application came to be filed by the appellant on December 13, 1994 which is well beyond one year. Under these circumstances, the Tribunal was right in its conclusion that the application was barred by limitation.

7. In view of the aforesaid decision of the Hon'ble Supreme Court it is, thus, settled that final order passed by the Tribunal is executable under Section 27 of the Act within one year of its becoming final. In the case in hand the execution petition as stated hereinabove has been filed after more than two years of the passing of the order, hence was not filed within the aforesaid period of one year.
8. Be it stated that as is evident from the order sought to be executed, it was to be complied with and could be enforced "at the time as and when the necessity" to fill up the posts would have arisen. In the ordinary course where a sanctioned post is lying vacant, it can be presumed that there is necessity to fill up the same. In any case the necessity to fill the post will be writ large in the action of the employer where the employer initiates the process to fill the vacancy. It is not in dispute but is pleaded even by the petitioner that 56 posts were lying vacant on 3.12.1995 and some of such posts were vacant since 1989 and nine of such posts were filled in on 4.1.1997, that is after the passing of the aforesaid order.
9. In the aforesaid circumstances this execution petition has not been filed

within the said period of limitation and is thus, barred by time.

10. Be it stated that the petitioner has not filed application for condonation of delay. He has not even averred anything in the application for not filing the execution petition within time nor any reason(s) for condonation has been set out therein.

In view of the above, this execution petition being barred by time merits dismissal and is accordingly dismissed".

A review petition was instituted by the petitioner which was dismissed by a detailed order dated 2.1.2008, Annexure P-11, holding that no ground for review was made out. The petitioner now challenges both these orders on a number of grounds as urged in the petition.

We have heard learned counsel for the petitioner and have gone through the records of the case.

It is unfortunate that the petitioner has been litigating since the year 1996-97. After the direction was issued by the Tribunal, the petitioner filed contempt proceedings and withdrew them but persisted with the execution proceeding which was dismissed by the Tribunal on ground of limitation. We find from the order that the Tribunal was perfectly justified in holding that the execution suffered from

delay and that the petitioner had not even moved an application for condonation of delay before the Tribunal. We are also in agreement with the judgment passed by the Tribunal in review petition filed by the petitioner holding that review jurisdiction cannot be used as a guise for re-arguing the entire matter and converting the review proceedings into an appeal.

The order pertains to the year 1996 and execution has been sought after a period of 14 years, when a number of recruitments have been made to the post to which the petitioner claims a preferential right of consideration in view of the order passed by the Tribunal. At this stage it would not be possible to upset the appointments made, more especially when they have neither been challenged nor such incumbents having been impleaded as party respondents. We, therefore, find no merit in this petition which is dismissed. There shall be no order as to costs. This judgment shall not be deemed to overrule the judgment in Original Application No.706 of 1996 of the Tribunal. It is only the delay which has disabled the petitioner for pursuing execution proceedings.

(Dev Darshan Sud)
Judge.

April 30, 2010.
(aks)

(Kuldip Singh)
Judge.