

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

**CWP (T) No. 7967/2008**

**Reserved on: 25.11.2010**

**Decided on: 30.11. 2010**

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**Dwijender Sharma and others.**

**Petitioners.**

**Versus**

**State of Himachal Pradesh and another. ...Respondents.**

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**Coram:**

**Hon'ble Mr. Justice Rajiv Sharma, Judge.**

**Whether approved for reporting?<sup>1</sup> Yes**

**For the petitioners : Mr.D.P. Gupta, Advocate vice Mr. K.D. Shreedhar,  
Advocate.**

**For the Respondents: Mr. P.M. Negi, Dy. Advocate General with Mr.  
R.P. Singh, Asstt. Advocate General for  
respondent No.1.**

**Mr. Adarsh Sharma, Advocate for respondent  
No.2.**

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**Justice Rajiv Sharma, Judge.**

Petitioners were appointed as Lecturers in different disciplines in the respondent-Department with effect from 24.10.1986, 4.8.1979, 16.1.1990 and 29.7.1986, respectively. Respondent No.2 was appointed Lecturer on 22.8.1996. Respondent-Department has issued seniority list on 25.9.2000. Petitioners rank at Sr. No. 10, 6, 12 and 9,

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? yes

respectively of the seniority list (Annexure A-1). Respondent No.2 is placed at Sr. No.8 whereof.

Mr. D.P. Gupta has strenuously argued that respondent No.2 could be given the benefits of approved military service under the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972 only from the date he acquired the minimum educational qualification, i.e. post-graduation.

Mr. P.M. Negi, learned Deputy Advocate General and Mr. Adarsh Sharma has supported the decision of the State of assigning seniority to respondent No.2 after giving him the benefit of entire approved military service.

I have heard the learned counsel for the parties and have perused the pleadings carefully.

Respondent No.2 has acquired the post-graduation qualification in the year 1992 only. He was appointed on 22.8.1996.

The question raised in this petition is no more *res integra* in view of the law laid down by the Division Bench of this Court in CWP No. 177/2000, titled as ***Pritam Chand versus State of Himachal Pradesh and others*** decided on 22.7.2008. The Division Bench has held as under:

**"Now, the Court has to consider the second contention of Mr. O.P. Thakur, that respondent No.1 has acquired the minimum qualification for the post of Statistical Assistant in the month of April, 1983 alone and he should be granted the benefit of approved military service with effect from April, 1983 onwards and not before that as has been done by the respondents. There is a considerable force in the submission of Mr. O.P. Thakur. This plea was specifically raised before the learned Tribunal by way of supplementary affidavit, but the same has been overlooked by the Tribunal. The question whether an ex-serviceman could be granted the benefit of approved military service when he was not eligible is no more *res integra* in view of the definitive pronouncement of law on the same issue by a Division Bench of this Court in *Janeshwar Goyal and others versus Hon'ble High Court of H.P. and others*, 1995 (2) S.L.C. 205. Their Lordships have held as under:**

**"The upshot of the aforesaid discussion is that respondent No.3 cannot be given the benefit of authorized military service while determining his seniority vis-à-vis the petitioners and others in judicial service. The seniority of the judicial officers including the respondent No.3 will have to be determined in accordance with Rule 7 of 1973 Rules. The petitioners also submit that even otherwise the impugned orders are arbitrary, and violative of Articles 14 and 16 of the Constitution of India It is 15 particularly submitted that the impugned orders have the effect of making respondent No.3 a Judicial Officer from 1974 when he was not even qualified to hold the said post. As has been noticed earlier, respondent No.3 was only a matriculate when he joined the Indian Air Force in November 1965. He passed his B. A. in 1971 and LL.B., in 1976 Rule 4 of 1973 Rules provide that no person shall be appointed to be a subordinate judge who is not a Law Graduate or has not possessed of an equivalent examination Clearly, therefore, respondent No. 3 was not eligible to be appointed as a Subordinate Judge before 1976. It is, therefore, a case where he has been treated as having**

been appointed before he was eligible to be so appointed. The rule, if any, made in this behalf and having the aforesaid effect would require consideration in the context of Articles 14 and 16 of the Constitution. It has, however, been held that there has been no such Rule in existence and hence the consideration of said question would not arise. Since the impugned orders are supported de hors the rules, it is necessary to consider whether they are arbitrary as alleged. Assuming that respondent No 3 being the Ex-Armed Personnel would fall in a distinct and separate category at the time of his entering the service and hence reservation of post will be constitutionally valid, the same distinction would disappear after his induction into the service. Thereafter it will not be possible to grant the said respondent any such benefit and the said grant would be prima facie arbitrary. It is well settled that persons though recruited from various source as members of the service, are treated as having become part of the said service after their appointment and thereafter no distinction between them can be made. In this view of the matter, respondent No.3 could not be given the said benefit. The said benefit would be violating Rule 4 of 1973 Rules and cannot be justified in any manner. 1973 Rules have statutory force and cannot be permitted to be violated. Then conferring benefits on the respondent No. 3 from a date when he was not even eligible for appointment would, in our opinion, be wholly arbitrary and unjustified.”

In the present case also since respondent No.1 had acquired the minimum qualification of graduation required for filling up the post of Statistical Assistant in April, 1983, he could not be granted the benefit of entire approved military service before April, 1983.”

Accordingly, the petition is allowed. Annexure A-1 dated 25.9.2000 is quashed and set aside. Respondent-State is directed to redo the seniority list by assigning the seniority to respondent No.2 from the date of acquiring the requisite

qualification by him. Needful be done within a period of two months from the date of production of certified copy of this judgment by the petitioners. No costs.

**(Rajiv Sharma),  
Judge**

30.11. 2010

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