

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWP No.2343 of 2014.
Reserved on : 24.5.2016
Decided on: 31st May, 2016.**

Ramesh Chand

....Petitioner.

Versus

State of H.P. & others.

...Respondents.

Coram

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

***Whether approved for reporting?*¹ Yes.**

For the petitioner : Mr. P.P. Chauhan, Advocate.

For the respondents No.1 to 5 : Mr. Virender Kumar Verma, Addl. Advocate General with Mr. Pushpinder Singh Jaswal, Dy. Advocate General.

Chander Bhusan Barowalia, Judge.

The present writ petition is maintained by the petitioner for issuance of appropriate writ, order or direction to the respondents directing them to appoint the petitioner as Mid Day Meal Worker.

2. As per the petitioner, he was not being given appointment letter by the respondents for the post of Mid Day Meal Worker in Government Primary School, Mana, despite having been selected by a duly constituted selection committee. The case of the petitioner is that on 5.6.2013 one Shri Rattan Singh tendered his resignation from the post of Mid Day Meal Worker in Government Primary School, Mana, Sub Tehsil Kamroo, District Sirmour, which was duly considered in the meeting of School Management

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Committee held on 5.6.2013 and a decision was also taken to fill up the said post. Notices were published and duly placed at conspicuous places simultaneously with a view to give wider publicity to fill up the said post by calling for the applications from prospective candidates. Petitioner as well as other two candidates applied for the said post and the meeting of selection committee was convened on 12.6.2013 at 10:00 am and selection proceedings were drawn. The other two candidates being overage could not qualify and the petitioner was selected for the said post vide selection proceedings dated 12.6.2013. The minutes of selection proceedings were drawn on the same day and it is very categorically mentioned that President of School Management Committee, Shri Ramesh Chand, due to personal animosity, is objecting to the selection of the petitioner, therefore, the said selection was subjected to the voting by the present members of the School Management Committee and it was unanimously resolved that the petitioner be selected and appointed as a Mid Day Meal worker for Government Primary School, Mana. Despite this, an appointment letter has not been issued to the petitioner till date.

3. Reply to the writ petition was filed by respondents No.1 to 5. It is averred in the reply that Government has decided to start Hot Cook Meal programme in all the Govt./Govt. Aided Primary Schools of Tribal area of the State in 1st phase w.e.f. May,

2003 and the Govt. vide letter No. EDN-C.B (2)2001-5 (Loose) dated 2.8.2004 has started this programme in Non-Tribal Area of the State in 2nd phase w.e.f. 1.9.2004. In order to start the programme the replying respondent as per the directions of the Govt. dated 12.8.2004 directed all the Deputy Directors of Elementary Education to ensure implementation of cooked meal scheme (Mid Day Meal) in Primary Schools of their area. It is further averred that vide clause 6.1 of the letter dated 12.8.2004, it was required that committee has to be framed for implementation of the cooked meal in the school comprising for the following members :

1. President of Concerned Committee or any active member Nominated for the purpose. Member
2. President of MTA/PTA or any Active Member nominated for the purpose Member
3. C.H.T/H.T/Senior Teacher of the School. Coordinator/ Member Secretary.
4. It is further averred that Committee is responsible to make arrangement for hiring the services of the helper/cook at the honorarium as per the guidelines of the project. It is further averred that the replying respondents have no role to play in the engagement of a cook or helper under the Mid Day Meal Scheme. This matter is, at best, between the said Mid Day Meal Committee and the petitioner. The present writ filed by the petitioner against the replying respondents is not

maintainable because, as per the information received from the Block Elementary Education Officer, Sataun, District Sirmour, after the resignation of one Shri Rattan Singh, post of cook/helper was advertised in Govt. Primary School, Mana. The President of School Management Committee, Mana, invited the applications for filling up the post of cook/helper in the Govt. Primary School, Mana and three persons appeared in the interview on 12.6.2013. On this day, President of the concerned Committee was not present in the interview due to this reason appointment could not be given to the petitioner as Mid Day Meal worker in Govt. Primary School, Mana. It is further averred that Shri Rattan Singh, Ex. Mid Day Meal Worker represented to respondent No.3 on 16.9.2013 stating therein that he is illiterate and cannot write the resignation from the post of Mid Day Meal Worker. So, he may be re-engaged as Mid Day Meal Worker in Govt. Primary School, Mana. Thereafter, Shri Rattan Singh, was re-appointed as Mid Day Meal Worker in Govt. Primary School, Mana, by the President, School Management Committee, Mana and joined there on 29.10.2013 and now the post of Mid Day Meal Worker is not vacant in Govt. Primary School, Mana. On merits, it is submitted by the respondents that, as per the information received from Block Elementary Education Officer, Sataun, District Sirmour, after the resignation of one Shri Rattan

Singh, post of cook/helper was advertised in Govt. Primary School, Mana. The President of School Management Committee, Mana, invited applications for filling up the post of cook/helper in Govt. Primary School, Mana and three persons appeared in the interview on 12.6.2013. On this day, President of the concerned Committee was not present in the interview due to this reason appointment could not be given to the petitioner as Mid Day Meal Worker in Govt. Primary School, Mana. It is further submitted that Shri Rattan Singh Ex. Mid Day Meal Worker represented to respondent No.3 on 16.9.2013 stating therein that he is illiterate and cannot write the resignation from the post of Mid Day Meal Worker. Therefore, he may be re-engaged as Mid Day Meal Worker in Govt. Primary School, Mana. Thereafter, Shri Rattan Singh was re-appointed as Mid Day Meal Worker in Govt. Primary School, Mana by the President, School Management Committee, Mana and joined there on 29.10.2013 and now post of Mid Day Meal Worker is not vacant in Govt. Primary School, Mana. Respondents have prayed that as the post is not vacant, writ petition be dismissed.

5. Heard. Mr. P.P. Chauhan, learned counsel appearing on behalf of the petitioner and Mr. Virender Kumar Verma, Addl. Advocate General for respondents No.1 to 5.

6. Vide clause 6.1 of the letter dated 12.8.2004, the Committee has been framed for implementation of the cooked meal in the School comprising for the following members :

1. President of Concerned Committee or any active member Nominated for the purpose. Member
2. President of MTA/PTA or any Active Member nominated for the purpose Member
3. C.H.T/H.T/Senior Teacher of the School. Coordinator/ Member Secretary.

7. From the above, it is clear that Committee is responsible for arrangement for hiring the services of the helper/cook at the honorarium as per the guidelines of the project. It is further averred that the replying respondents have no role to play in the engagement of a cook or helper under the Mid Day Meal Scheme. This matter is, at best, between the said Mid Day Meal Committee and the petitioner. The present writ filed by the petitioner against the replying respondents is not maintainable because, as per the information received from the Block Elementary Education Officer, Sataun, District Sirmour, after the resignation of one Shri Rattan Singh, post of cook/helper was advertised in Govt. Primary School, Mana. The President of School Management Committee, Mana, invited the applications for filling up the post of cook/helper in the Govt. Primary School, Mana and three persons appeared in the interview on 12.6.2013. On this day, President of the concerned

Committee was not present in the interview due to this reason appointment could not be given to the petitioner as Mid Day Meal worker in Govt. Primary School, Mana. The present President was not present at the time of interview, Shri Rattan Singh has withdrawn his resignation. Consequently, he was engaged again as Mid Day Meal Worker in Govt. Primary School, Mana, as there is no post lying vacant and further as the petitioner was never offered appointment merely on the basis of selection, if any, he cannot claim appointment to the post and especially when the person who has resigned has already withdrawn his resignation and was re-appointed on the post.

8. As neither the post is lying vacant nor the petitioner was ever offered appointment, he has no right to the post. The action of the respondents in re-appointing Shri Rattan Singh after withdrawing his resignation is as per law and so the claim of petitioner is without merit.

9. In view of the above discussion, the petition is devoid of any merit and the same is dismissed. No order as to costs. Pending application (s), if any shall also stands disposed of.

31st May , 2016
(CS)

(Chander Bhusan Barowalia),
Judge