IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Review Petition No. 36 of 2023 a/w
LPA No. 78 of 2023
Reserved on: 24.5.2023
Date of decision :31.5.2023.

1. **Review Petition No. 36 of 2023**

Bandana Kumari & others ...Petitioners.

Versus

State of H.P. & others ...Respondents.

2. **LPA No. 78 of 2023**

Jivender Kumar & others ....Appellants

Versus

State of H.P. & others ....Respondents.

Coram:

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

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

For the petitioners : Mr. Ashok Sharma, Sr. Advocate with Ms. Anubhuti Sharma, Advocate in Review Petition No. 36 of 2023 and for respondents No. 9 to 11, 15, 16 and 18 in LPA No. 78 of 2023.
Mr. Dilip Sharma, Sr. Advocate with Mr. Manish Sharma, Advocate, for the appellants in LPA No. 78 of 2023.

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

For the respondents : Mr. Y.P.S. Dhaulta, Additional Advocate General for the respondent-State.
Mr. Deven Krishan Khanna, Advocate, for respondents No. 3 to 5 in Rev. Pet No. 36 of 2023.

Satyen Vaidya, Judge:

Petitioners by way of instant review petition have prayed for reviewing the common judgment dated 22.3.2023, passed by this Court in LPA No. 168 of 2022, LPA No. 154 of 2022 and CWP No. 6930 of 2022.

2. Review petitioners were not party to any of the aforesaid proceedings.

3. By two separate writ petitions i.e. CWP No. 2765 of 2019 titled as Intzar & others vs. State of H.P. & others and CWP No. 3077 of 2020 titled as Sandeep Kumar & others vs. State of H.P. & others, challenge was laid to communication dated 8.8.2019, issued by Principal Chief Conservator of Forests, H.P., on the ground that the communication/instructions dated 8.8.2019 were against statutory Recruitment & Promotion Rules. Both the writ petitions were dismissed

by the learned Single Judge by a common judgment dated 22.8.2022. The communication dated 8.8.2019 was held to be valid.

4. Aggrieved against the judgment passed by learned Single Judge, petitioners in CWP No. 2765 of 2019 had preferred LPA No. 154 of 2022 and petitioners in CWP No. 3077 of 2020 had preferred LPA No. 168 of 2022 before this Court.

5. During the pendency of CWP No. 2765 of 2019 and CWP No. 3077 of 2020, impugned communication dated 8.8.2019 was implemented in some of the Forest Circles of H.P. Aggrieved against such implementation, CWP No. 6930 of 2022 was preferred.

6. This Court allowed both LPA No. 168 of 2022 and LPA No. 154 of 2022 vide common judgment dated 22.3.2023 by holding that the communication dated 8.8.2019 issued by PCCF was *de-hors* the rules and accordingly the said communication was quashed and set aside. CWP No. 6930 of 2022, as a consequence of

judgment passed in aforesaid appeals, also was allowed by same judgment.

7. The grievance of the review petitioners is that they were not impleaded as parties either in CWP No. 2765 of 2019, CWP No. 3077 of 2020 or CWP No. 6930 of 2022. They were not impleaded as parties even in LPA No. 168 of 2022 and LPA No. 154 of 2022, notwithstanding the fact that they had been promoted as Deputy Forest Rangers *vide* office order dated 5.9.2022 immediately after the dismissal of CWP No. 2765 of 2019 and CWP No. 3077 of 2020 by learned Single Judge on 22.8.2022.

8. Keeping in view the restrictive jurisdiction vested in this Court to review its judgment, we proposed and asked Sh. Ashok Sharma, learned Senior Counsel for the review petitioners to satisfy the Court as to maintainability of the review petition, keeping in view the fact that the review petitioners had omitted to come forward either before the writ Court or the appellate Bench to raise any grievance.

9. As we proposed to decide said issue in the first instance, we have heard the learned counsel for the parties on the above issue only. We have also gone through the record carefully.

10. The first question arises whether the review petitioners were necessary parties before the writ Court or the Appellate Court?

11. *Vide* office communication dated 8.8.2019, PCCF, H.P. had issued directions to all concerned to recast the seniority list of Forest Guards, as per merit gained in direct recruitment/limited direct recruitment. Petitioners in CWP No. 2765 of 2019 and CWP No. 3077 of 2020, assailed the aforesaid communication dated 8.8.2019, primarily on the ground that it was not in consonance with the prevalent R&P Rules and hence, the administrative instructions would not supersede the statutory rules.

12. Noticeably, in CWP No. 2765 of 2019, petitioners therein had originally impleaded four official respondents and no private person was arrayed as respondent.

During the pendency of the writ petition, private respondents No. 5 to 8 and 9 to 15 were ordered to be impleaded as party respondents on their separate applications. They had sought impleadment on the ground that they were Forest Guards, appointed in the year 2003 and the result of writ petition was likely to affect their interest. In CWP No. 3077 of 2020, only four official respondents were impleaded and till last, no addition was made in the array of respondents. The proceedings in both the writ petitions were being taken together.

13. CWP No. 2765 of 2019 and CWP No. 3077 of 2020 were dismissed by learned Single Judge vide order dated 22.8.2022. The official respondents immediately thereafter made promotions to the post of Deputy Forest Rangers vide office order dated 5.9.2022. Petitioners got benefit of promotion in pursuance to office order dated 5.9.2022.

14. LPA No. 154 of 2022 had already been filed on 1.9.2022 before the issuance of promotion order on

5.9.2022. LPA No. 168 of 2022 came to be filed little later on 19.9.2022. On 9.9.2022, this Court while passing orders in LPA No. 154 of 2022 had directed that the promotions, which were stated to have been made after the passing of impugned judgment dated 22.8.2022 in CWP No. 2765 of 2019, would be subject to final outcome of the appeal.

15. As noticed above, the matter for adjudication in CWP No. 2765 of 2019 was in respect of validity of office communication dated 8.8.2019 on the ground of such communication being *dehors* the rules. Neither was there any further challenge to any seniority list nor to the rights of any specific class of incumbents holding post of Forest Guard. It being so, in our considered view, it was not necessary for petitioners in the writ petitions to have impleaded any private person.

16. The legal position in this regard can be gainfully extracted as under:-

In ***Postgraduate Institute of medical Education and Research & another*** vs. ***A.P. Wasan & others***, **2003 (5) SCC 321**, it has been held as under:-

> *"23. The arguments of the appellants appear plausible but do not bear close scrutiny. It was not necessary for the respondent No. 1 to have impleaded the interveners nor can the High Court's decision be criticized because they were not made parties. The grievance of the respondent No. 1 was against the appellant/ Institute and its alleged policy to promote Technologist Grade-II section-wise. It was for the appellant/Institute to have justified its action. The justification would serve to protect the interests of other employees if it were legally sustainable. If it is not legally sustainable it must be negated and not hearing of employees who may be affected as a result of the rejection of the justification, would not vitiate such negation. See General Manager, S.C. Railway V. Siddhantti: 1974 (4) SCC 335, A. Janardhana V. Union of India and Others : 1983 (3) SCC 601 at 626 and V.P. Shrivastava v. State of M.P. (1996) 7 SCC 759, 763. Furthermore, both K.S. Sharma and R.K. Goel whose stand on the promotional policy of the Appellant Institute coincides with those of the interveners, were partners and had the opportunity of presenting their case. Besides, the Division Bench had merely reiterated the view taken in 1989 by the learned Single Judge when he granted relief to R.K. Sareen holding that promotions should be made cadre wise and not section wise. No protest was made by the interveners at that stage. They were content to allow*

the appellant/Institute to appoint R.K. Sareen on such basis. They cannot now make a grievance that they were not heard before the Division Bench granted the respondent No. 1 the same relief."

In ***V.P. Shrivastava &others*** vs. ***State of M.P. & others***, ***SCC 759,*** it has been held as under:-

"14. The conclusion of the Tribunal that non inclusion of the affected parties is fatal to the appellants case is also unsustainable in law. It is to be stated that the appellants do not challenge the so called ad-hoc appointments of the promotee respondents but they do challenge the position of the said ad-hoc promotee respondents over the appellants in the seniority list. In other words the very principle of 'determination of seniority' made by the State Government is under challenge and for such a case State is the necessary party who has been impleaded. It has been held by this Court in the case of General Manger, South Central Railway Secundrabad and Anr. Etc. v. A.V.R. Siddhanti and Ors. Etc., [1974] 3 S.C.R. 207 :

"As regards the second objection, it is to be noted that the decision of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop departments. The Respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings

are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

In ***A. Janardhana vs. Union of India & others, 1983 (3) SCC, 601***, it has been held as under:-

"36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellants. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellants. By an order made by the High Court, the names of respondents 3 to 418

were deleted since notices could not be served on them on account . Of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of These petitions. However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the directs. Further any application was made to this Court by 9 direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P. R. Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negatived on the short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to General Manager, South Central Railway, Secunderabad & Anr. etc. v. A.V.R. Sidhanti and ors. etc.(l) Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in this case, this Court observed that the respondents

> *(original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating the seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are these against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even . if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived."*

17. In view of the nature of controversy involved before the writ Court and the legal exposition noticed above, there was no need to implead private parties. The reasons are obvious that keeping in view the cascading effect as one of the predictable implication in service jurisprudence, it can never be ascertained as to who would be affected and in what manner, more particularly when challenge simpliciter is to the validity of some administrative action/decision. Nonetheless, the private

persons had come forward to be impleaded as respondents in CWP No. 2765 of 2019. They were also the persons, who claimed themselves to be the appointees of the year 2003 to the post of Forest Guards. The petitioners thus cannot have any possible grievance, as there was sufficient representation.

18. Viewed from another angle, the review petitioners were promoted after the passing of judgment by learned Single Judge. LPA No. 168 of 2022 had already been filed by then. *Vide* order dated 9.9.2022, the promotions of review petitioners were made subject to final outcome of the appeal. At that stage, the review petitioners would have been aware about the challenge already made to the judgment passed by learned Single Judge in LPA No. 168 of 2022 and its possible result. During the course of hearing of the matter, we repeatedly inquired from learned Senior Counsel, representing the review petitioners as to whether the review petitioners were not aware about the proceedings in CWP No. 2765 of 2019 and CWP No. 3077 of 2020, LPA No. 168 of 2022

and LPA No. 154 of 2022. He opted to evade the query by responding to say ***"may be some were aware and may be some were not".***

19. Learned counsel for the respondents has placed on record a list of at least ten persons, who were respondents in LPA No. 154 of 2022 and were also the beneficiary of the promotion order dated 5.9.2022. Hence, it cannot be said that the review petitioners were not aware about the pendency of LPA and interim order dated 9.9.2022, passed in LPA No. 154 of 2022. Even otherwise, the silence maintained by learned counsel for the review petitioners has provided us reasons to believe that review petitioners were well aware about the proceedings before the writ court as also the Appellate bench.

20. Right to seek review is a creation of statute. Section 114 of Code of Civil Procedure (for short 'the Code') reads as under:-

> *"**114. Review.**-Subject as aforesaid, any person considering himself aggrieved—*

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit".

It gives a right to any person considering himself aggrieved by a decree or order from which either no appeal is provided by the Code or if appeal is provided, no such appeal has been preferred.

21. Order 47rule 1 of the Code further clarifies the right to seek review on the restrictive ground as under:-

i) By an aggrieved person, who from discovery of new and important matter or evidence which, after exercise of due diligence was not within his knowledge or could not be produced by him at the time when decree was passed or order made; or

ii) on account of some mistake or/and apparent on the face of record; or

iii) for any other sufficient reason decide to opt review of the decree passed or order against him.

22. Thus, the conjoint reading of Section 114 and Order 47 Rule 1 of the Code provides that though a person may consider himself aggrieved, yet, he can seek review on limited ground, as detailed above. In the case in hand, the review petitioners were throughout aware about the pendency of writ petitions, its judgment and thereafter the filing of LPA No. 154 of 2022 and passing of interim order dated 9.9.2022. They remained silent spectators and can be termed as fence sitters also. In case they had any material with them to apprise the Court, they had every opportunity to seek their impleadment. Having failed to do so, they cannot now come forward to represent that the material aspects of the matter have been missed in the case.

23. Fairness should be the hallmark of every judicial process. It applies not only to adjudicatory fora but to the litigating parties as well. Litigation should not

be used as the game of *hide and seek*. The conduct of petitioners herein has been found lacking in requisite objectivity. Having remained silent spectators during entire process of litigation, the petitioners cannot be now heard on the issues in review jurisdiction which they could have raised at appropriate stage(s).

24. In view of the above discussion, we are of the considered view that in the peculiar facts and circumstances of the case, the review petition on behalf of the review petitioners is not maintainable and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.

(Jyotsna Rewal Dua)
Judge

(Satyen Vaidya)
Judge

31st May, 2023
(kck)