

(2011) 04 SHI CK 0355
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9107 of 2008

Ajay Singh and Others	Vs	APPELLANT
The State of H.P. and Others		RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0355

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 7(i) and (ii):

7(i) That the provision of notifications dated 31.5.2001 (Annexure A-12) issued by the Respondent No. 1 vide which the post of Junior Assistants have been declared to be filled up by placement to the extent of 100% out of the Clerks and provisions of notification dated 3-11-2001 (Annexure/A-13) may kindly be declared illegal, ultravirus, arbitrary, unreasonable, discriminatory, unconstitutional and unsustainable in the eyes of law.

(ii) That the corrigendum dated 22-12-2001 (Annexure/A-14) issued by the Respondent No. 2 in pursuance of the notification dated 31-5-2001 (Annexure/A-12), may kindly be quashed.

2. In reply, on behalf of the Respondents, the following stand has been taken by way of preliminary submissions vide para 2:

2. It is submitted that applicants in their petition, amongst others have prayed before this Hon'ble tribunal that the provision of notification dated 31.5.2001 (Annexure A-12) issued by the Respondent No. 1 vide which the post of Junior Assistant have been declared to be filled up by placement to the extent of 100% out of clerks and provision of notification dated 3.11.2001 (Annexure A-13) be declared illegal, ultravirus, arbitrary, unconstitutional, discriminatory,

unconstitutional and unsustainable in the eyes of law.

In this connection, it is respectfully submitted that the pay scales of State Govt. employees are governed by the pay revision of Punjab pattern and in the case of these applicants, orders from time to time has been issued by the Respondent state strictly on Punjab pattern as such the applicants have no right to assail the orders issued in this regard from time to time. The only right they have is regarding recoveries arising out of payment made to them on account of their pay fixation by granting benefit of promotion in view of earlier notification vide which the post of Junior Assistant was made promotional post has been waived off the recoveries up to 30.5.2001 i.e. prior to issuance of impugned notification dated 31.5.2001 (Annexure A-12) and 3.11.2001 (Annexure A-13) as such the present O.A is not maintainable/sustainable in the eyes of law.

It is, further stated that for the purpose of pay scale, the state Govt. follow Punjab pattern. Initially the Govt. Of Punjab issued a notification, where in the cadre of clerk was bifurcated in the ratio of 50:50 i.e. clerks and Junior Assistant and the post of Junior Assistant was made promotional post w.e.f. 1.1.96. Later on the Govt. of Punjab reconsidered the matter and the post of clerk was allowed higher initial start of 3220 in the pay scale of Rs. 3120-5160 instead of 3120 and the pay scale of Rs. 4400-7000 to Jr. Assistant instead of 4020-6200 and mode of appointment to the post of Junior assistant was converted from promotion to placement. Since the State Govt. has to follow the Punjab as such notification dated 31.5.2001 was issued. The government of Punjab had also waived off recoveries in respect of those employees who were earlier promoted to the post of Junior Assistant and benefits of F.R. 22.1(a)(1) was allowed. Accordingly the Respondent state has also waived off the recoveries vide Notification No. FIN(PR)N(7)-1/98-III 3.11.2001 upto 30.5.2001 as would be evident from the Annexure (A-13) appended by the applicant with their petition. The Respondent state is bound to follow the Punjab pattern of Pay scales, in case the same are further revised by the Punjab, similar action will also be taken by the replying Respondent. So far as making fixation under these notification without any notice to the applicants are concerned, it is submitted that since the matter of fixation under the pay revision of Govt. Notification which becomes law is made without any notice to any individual employee as such no notice was required to be issued to the applicants.

In view of the above this Hon''ble Tribunal will kindly appreciate the present application is not maintainable as such the same may kindly be dismissed with costs in the interest of justice.

3. The learned Counsel appearing on behalf of the Petitioners submits at the very outset that the case of the Petitioners is covered under judgment dated 30th November, 2010, rendered by this Court in CWP (T) No. 8451 of 2008, titled Ram Lal Sharma and Ors. v. State of H.P and Anr.

4. In view of the above, if on facts, the case of the Petitioners is covered under

the judgment referred to hereinabove, in CWP (T) No. 8451 of 2008, and they are similarly situate, they shall also be treated similarly without any discrimination and the benefit of the said judgment shall be extended to them within three months from the date of production of copies of this judgment and the judgment referred to hereinabove by the Petitioners, after affording an opportunity of being heard, if so desired.

5. The petition stands disposed of, so also pending CMP(s), if any.