

(2011) 10 SHI CK 0043
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 8257 of 2008

Amar Nath

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 15-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16

Citation : (2011) 10 SHI CK 0043

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Justice Rajiv Sharma, Judge (Oral)

1. Petitioner was appointed as Ayurvedic Medical Officer in the Respondent-Department in the year 1970. However, the fact of the matter is that in the year 1999, 36 Ayurvedic Medical Officers were promoted on ad hoc basis to the posts of Sub Divisional Ayurvedic Medical Officers. Thereafter, 6 more promotions were made on 3.7.1999 to the posts of Sub Divisional Ayurvedic Medical Officers. Petitioner was in the zone of consideration. He made representation, vide Annexure A-1 on 27.9.2000, which was forwarded by the District Ayurvedic Officer, Bilaspur on 28.9.2000 to the Director of Ayurveda. It has come in the reply that the case of the Petitioner was considered and his name was sent to the Himachal Pradesh Public Service Commissioner for promotion to the post of Sub Divisional Ayurvedic Medical Officer on regular basis. This was done after completing all the codal formalities, like obtaining of vigilance clearance certificate, finalization of seniority list and completion of A.C. Rs for the last five years. Petitioner superannuated on 31.10.2000, without being considered for promotion to the post of Sub Divisional Ayurvedic Medical Officer. The Departmental Promotion Committee was held only after the Petitioner superannuated and Respondent No. 5 was also promoted to the post of Sub Divisional Ayurvedic Medical Officer.

2. The Court is of the considered view that once the posts were lying vacant, Petitioner ought to have been considered for promotion before his superannuation on 31.10.2000. Ad hoc promotions were made to the posts of Sub Divisional Ayurvedic Medical Officers initially by promoting 36 incumbents and thereafter 6 more incumbents were promoted on 3.7.1999. Petitioner cannot be made to suffer due to delay in completion of codal formalities. It is not a case of the Respondent-Department that the vacancies were not available. It is due to administrative lapse that the case of the Petitioner for promotion to the post of Sub Divisional Ayurvedic Medical Officer was not considered before his date of retirement.

3. Their Lordships of the Hon'ble Supreme Court in Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others, have held that legitimate expectation for being considered for promotion cannot be defeated due to inaction on the part of State Government in conducting cadre review in time despite reminders from Central Government. Their Lordships have further held that the delay in that case had deprived employees of their right to be considered fairly under Articles 14 and 16 of the Constitution of India. Their Lordships have further held that the right of an eligible employee to be considered for promotion is virtually a part of his fundamental right under Article 16 of the Constitution of India and guarantee of fair consideration for promotion flows from guarantee of equality under Article 14 of the Constitution of India. Their Lordships have held as under:

35. The Court must keep in mind the constitutional obligation of both the Appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

38. It is, therefore, clear that legitimate expectations of the Respondents of being considered for promotion have been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable inaction on the part of the Government of State of Uttar Pradesh stood in the way of the Respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.

42. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily

mandatory subject to exceptions which may be justified in the facts of a given case. Surely lethargy, inaction, an absence of a sense of responsibility cannot fall within the category of just exceptions.

48. The Court is satisfied that in this case, for the delayed exercise of statutory function the Government has not offered any plausible explanation. The Respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event, this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.

4. In the case in hand also, Petitioner has been deprived of his valuable right to be considered for promotion by the inaction on the part of the Respondent-Department by not completing codal formalities and convening the Departmental Promotion Committee in time.

5. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Respondent-Department is directed to consider the case of the Petitioner for promotion to the post of Sub Divisional Ayurvedic Medical Officer by holding review Departmental Promotion Committee, within a period of 8 weeks from today with all the consequential benefits. No costs.