

**(2012) 08 SHI CK 0019**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 1223 of 2009**

Anjana Mahendroo

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

**Date of Decision :** 13-08-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2012) 3 ShimLC 1437

**Hon'ble Judges :** Surinder Singh, J

**Bench :** Single Bench

**Advocate :** Sanjeev Bhushan, for the Appellant; A.K. Bansal, Additional Advocate General and Mr. P.M. Negi, D.A.G., for the Respondent

## **Judgement**

Surinder Singh, J.—The petitioner, who was an employee of the respondent department, by means of the present petition under Article 226 of the Constitution of India, seeks following reliefs:--

(i) That a writ in the nature of certiorari may be issued and the impugned order Annexure P16 dated 31.3.2006 may kindly be quashed and set aside to the extent whereby petitioner has been ordered to be promoted as Superintendent Grade-IV (now Grade-II) w.e.f. 2.1.1989 on notional basis and further the order dated 4.3.2008 Annexure P18 may also be quashed and set aside to the extent whereby petitioner has been ordered to be promoted as Superintendent Grade-I w.e.f. 19.11.1997 on notional basis.

(ii) That writ in the nature of mandamus may be issued thereby directing the respondents to promote the petitioner as Assistant on regular basis w.e.f. 1983 and further as Superintendent Grade-I w.e.f. September, 1994 on regular basis with all consequential benefits of pay, arrears, seniority etc. and further promotion to the post of Registrar, in the interest of law and justice.

Heard and gone through the record.

2. In short, the facts giving rise to the present petition can be stated thus. The

petitioner was appointed as clerk in the field cadre of the respondent department in the year 1963. She had passed the departmental examination in the year 1967. Thereafter vide annexure P1 dated 23.5.1969 she was transferred to the office of Superintending Engineer 2nd Circle where she joined on 25.5.1969. Further on having passed the departmental examination, the petitioner was again promoted as Sub-Division Clerk (SDC) but petitioner was not interested to join as such, thus vide annexure P2 dated 11.9.1969 an option was sought from her whether she wanted to remain as lower division clerk (LDC) in the head office (office cadre) or opt to go to the circle cadre (field cadre). It was also clarified that if she would opt for the circle cadre, she would be considered for the post of sub division clerk (SDC) and would not be able to come back to the head office cadre and shall have to take her chance for further promotion as accounts clerk/head clerk on the circle cadre. She was also made aware that in the head office, the line of promotion for LDC was (i) LDC 110-180 and 60-175 (ii) UDC 130-300. Accordingly the option was asked on the prescribed proforma attached. Vide annexure P3 dated 12.9.1969; the petitioner opted for being considered for promotion as UDC therefore, vide annexure P4 dated 20.10.1970 she was promoted as UDC in the scale of Rs. 130-5-160-8-200/8-256-8-280/10-300 from the date of her taking over in the Establishment Branch Section-1. But the petitioner, who was earlier promoted as UDC vide annexure P5 on ad hoc basis/temporary, and was reverted back as clerk with immediate effect.

3. The petitioner vide annexure P16 dated 15.2.1972 was asked for the reasons of her reversion and vide annexure P7 dated 10.3.1972 the respondents while forgetting that she had already been promoted as UDC in the office-cadre as aforesaid was informed vide annexure P7 dated 10.3.1972 that she was born on the circle cadre and was eligible for promotion as SDC Accounts clerk etc. in the line meant for incumbents in the circle cadre. Thus, she was not entitled for promotion to the post of UDC.

4. Feeling aggrieved, the petitioner filed appeal before respondent No. 1 mentioning all the details therein. Vide annexure P9, dated 10.3.1972 the entire record maintained in the head office was sent for and her reversion was stayed. On re-consideration of the matter, her appeal was allowed. The said order annexure P10 dated 7.2.1975 is reproduced verbatim as under:--

No. 1-17/72-PWD

Government of Himachal Pradesh Public Works "A" Section

From:

The Commissioner and Secretary (PW) to the government of Himachal Pradesh, Shimla-2.

Subject: Appeal of Ms. Anjna Mohindroo UDC (Ad hoc) against the reversion to the post of LDC-decision regarding.

Sir,

I am directed to refer to your letter No. 348-79-1/68/UDC/71-316, dated the 7th January, 1975 and to say that after careful consideration of the points raised by Miss Mohindroo, in her appeal dated the 1st March, 1972 viz-a-viz the comments contained in your letter No. PWE-79-1/68/UDC/71/V-4413-C, dated the 31st March, 1972 to say that after and subsequent comments contained in your letter dated 7th January, 1975, the following decision has been taken in the matter.

1. The office order No. PWE-79-1/68/UDC-7733-37(A) dated the 14th February, 1972, vide which Miss Anjana Mohindroo was reverted from the post of UDC to the post of clerk (Circle Cadre), is set aside;

"2. Miss Anjana Mohindroo is an employee of the Chief Engineer's Office cadre with effect from 12th September, 1969, the date from which she has opted for headquarter cadre and also for promotion as UDC;

3. Having accepted the option by both the Chief Engineers, she has acquired the status of a clerk of the Chief Engineer's office cadre w.e.f. 12.9.1969 and is entitled to seniority, and promotions to the posts of UDC and Assistant etc. along with others according to the provisions of the rules. Having qualified the Departmental examination due weightage has as has been allowed to others who have qualified the departmental examination, has to accrue to her as well.

2. The receipt of this letter may kindly be acknowledged.

Yours faithfully, Sd/- (S.L. Talwar),

Under Secretary (PW) to the Government of Himachal Pradesh. No. 1-17/72-PWD Shimla the 7th January, 1975.

Copy forwarded to Miss Anjana, Mohindroo, UDC, (ad hoc) of the office of Chief Engineer, HPPWD, Shimla, 1 with reference to her appeal dated the 1st March, 1972. This also disposes of her representation dated 1.1.1975, 7th January, 1975 and 16th January, 1975.

Sd/- (S.L. Talwar),

Under Secretary (PW) to the Government of Himachal Pradesh.

5. Thereafter the petitioner sought implementation of the order aforesaid vide annexure P11 dated 15.5.1972. Vide memorandum dated 29.11.1976 annexure P12, petitioner was informed that she has been given all the benefits as per government orders, she would be considered for promotion to the post of Assistant on her turn after finalization of the seniority list and regularization of her promotion as ad hoc UDC.

6. It is submitted that S/Sh. Phoola Singh Patiyal, Balbir Singh, Desh Raj Sharma, Krishan Singh Verma, Hira Ram Shandil, Kishori Lal Sharma, who were earlier promoted as UDC on ad hoc basis were reverted, they filed O.A. before the Erstwhile Tribunal which was allowed in their favour, accordingly the

respondents issued annexure R1 dated 22.11.1994 whereby in compliance with the judgment dated 28.7.1993 of the learned Tribunal in O.A. No. 306 of 1986 their appointments as Assistants on regular basis in the pre-revised pay scales mentioned therein were protected and were further given promotion as Superintendent Grade-IV (re-designated as Superintendent Grade-II) from the date of their immediate juniors were promoted as such. On recommendation of the DPC, the above named Senior Assistants were found fit for promotion as Superintendent Grade-IV. Accordingly, they were promoted basis w.e.f. 16.9.1983 on ad hoc basis and w.e.f. 30.11.1994 on regular basis and were accordingly assigned their seniority.

7. On the same pattern, petitioner also submitted her representation to the higher authorities to accord similar benefits to her, as having already qualified the departmental examination and she was already promoted as UDC in the year 1970 whereas the aforesaid persons were not even duly qualified thus, she being senior should have also been promoted as such. It is pertinent to mention here that till then the petitioner was Senior Assistant whereas juniors aforesaid had gone up to the level of Superintendent Grade-II.

8. Admittedly, the respondents vide annexure P16 issued the office order dated 31.3.2006 re-endorsed and confirmed her appointment as UDC w.e.f. 20.10.1970 and Superintendent Grade-IV now Grade-II w.e.f. 2.1.1989 but this decision promoting her w.e.f. 2.1.1989 was challenged by the petitioner and claimed it w.e.f. 16.9.1983 on ad hoc and w.e.f. 30.11.1984 on regular basis and seeks for refixation of her pay. However, only the fixation of the pay of the petitioner on notional basis was made as Superintendent Grade-II as well as for the post of Superintendent Grade-I as per annexure P18 dated 4.3.2008. Therefore, feeling aggrieved by these decisions, petitioner filed the present petition for the above relief.

9. The case of the respondents precisely has been that the so called juniors, as named above, were in fact senior to her as they were appointed in the initial cadre as clerk in the respondent department prior to the petitioner. Therefore, the petitioner was not entitled to seek any relief similar to those of Phoola Singh and others. It has been also submitted that the said juniors were not given actual promotion as Superintendent Grade-II but it was only on notional basis but when the record was called for, it revealed that they were, in fact, given actual promotion and now this fact is not disputed.

10. On considering the entire matter, in my view, though Phoola Singh and others named above were appointed as clerks prior to the appointment of the petitioner yet, the petitioner having qualified the departmental examination was promoted earlier to them as UDC w.e.f. 20.10.1970 whereas Phoola Singh and others were promoted as UDC w.e.f. 28.12.1974 as admitted by the respondents. Therefore, the petitioner being senior to them and had duly qualified the departmental examination should have been accorded the same relief as that of her juniors irrespective of their seniority in the initial cadre.

11. Further, the promotion as Superintendent Grade-II was also given to the petitioner on and w.e.f. 2.1.1989 whereas Phoola Singh and others were given ad hoc promotion on 16.9.1983 and on 30.11.1984 on regular basis. Thus, denying promotion to the petitioner on the same analogy that she was junior to them as clerk is wrong and illegal for the reasons aforesaid. Therefore, for further promotion to the post of Superintendent Grade-II, the seniority of the petitioner as UDC which is a feeder cadre could not have been ignored as it is not the date of appointment and seniority in the initial cadre of clerk but the seniority as UDC should have to be seen and preferred for the promotion of Superintendent Grade-II. Therefore, the stand taken by the respondents that the petitioner was initially appointed in the year 1963 as clerk after the appointment of Phoola Singh and others has no basis to deny the similar benefit to her.

12. In result, both the annexures P16 and P18 are hereby quashed and set aside and the petitioner is ordered to be promoted as Superintendent Grade-II w.e.f. 16.9.1983 on ad hoc basis and w.e.f. 30.11.1984 on regular basis and Superintendent Grade-I w.e.f. 21.9.1994 when her juniors Phoola Singh and others were promoted. The respondents are further directed to refix the seniority etc. and to release all the consequential benefits, flowing from it to the petitioner within a period of four months from the date of production of the certified copy of this judgment to the 1st respondent, failing with it shall carry interest @ 12 % per annum from the date it fell due. The petition stands disposed of, so also the pending applications, if any.