
(1973) 03 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 68 of 1970

Badri Parshad Pandey

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 16-03-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 311

Evidence Act, 1872 — Section 115

Himachal Pradesh Panchayat Department (Class III Service, Recruitment and Promotion and Condition of Services) Rules, 1962 — Rule 4, 9

Citation : (1973) 2 ILR HP 171

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; Inder Singh, for the Respondent

Final Decision : Allowed

Judgement

D.B. Lal, J.—This petition under Articles 226 and 227 of the Constitution has been preferred by Badri Parshad Pandey, Senior Clerk in Lieutenant Governor's Secretariat, Himachal Pradesh, Simla, and he has sought the relief of getting quashed his order of reversion passed on 6th April, 1967 whereby he was demoted from the post of Educational Panchayat Officer and was reverted to the post of Senior Clerk for which he submitted a representation before the Lieutenant Governor which remained undecided, at any rate, upto the date of the filing of the writ petition.

2. The contentions of the Petitioner are, that he was appointed Senior Clerk in the Lieutenant Governor's Secretariat on 28th February, 1958 and was confirmed against that post on 1st June, 1961. On 2nd November, 1961 the Deputy Director of Panchayat Department issued a circular letter No. 15-17/60-Panch., inter alia, to all the Heads of Departments, to enable suitable candidates to apply for two specific posts in the Pan-chayat Department, one of Editor-con-Panchayat Information Officer in the grade of Rs. 250-400, and the other of

Educational Panchayat Officer in the grade of Rs. 170-350. For the first post, the prescribed qualification was graduate in Hindi, having good and sufficient knowledge of that language; practical experience in journalism and of having literary taste with good knowledge regarding techniques of publicity. Regarding the second post, the qualification noted down in the circular was a law graduate. Besides that, it was also specified that the candidate must be having good and sufficient knowledge of Hindi. Accordingly the Petitioner submitted two applications, each one for specific post, and, inter alia, specified that he was M.A. in Hindi from the Punjab University. Besides that, he also mentioned that he possessed good and sufficient knowledge of Hindi. Different tests were held by the Panchayat Department. The Petitioner qualified the test for the second post of Educational Panchayat Officer. He was also interviewed and was found sufficiently qualified to hold that post. The Departmental Promotion Committee (hereinafter to be referred as the D.P.C.) held its meeting on 2nd February, 1962 and selected the Petitioner for the second post of Educational Panchayat Officer. Accordingly on 13 February, 1962 the Petitioner was made an offer of the post of Educational Panchayat Officer and in his letter of appointment it was specifically mentioned that in view of his application and "subsequent interview held on 2nd February, 1962" he was selected and was offered a temporary post of Educational Panchayat Officer on the initial pay of Rs. 170. However, the post was purely temporary and could be terminated by giving one month's notice from either side. The Petitioner was also required to furnish educational qualification certificate, obviously in confirmation of the allegation made in his application that he was M.A. in Hindi from Punjab University. After the appointing authority was satisfied as to his educational qualification, the Petitioner was transferred from the post of Senior Clerk in Lieutenant Governor's Secretariat, and joined his new appointment as Educational Panchayat Officer on 15th February, 1962. Upto this date, there were no rules prescribed for recruitment to the post of the Educational Panchayat Officer. However, soon afterwards on 3rd August, 1962 the Panchayat Department issued such rules which are known as Himachal Pradesh Panchayat Department (Class III Service, Recruitment and Promotion and Condition of Services) Rules, 1962. In accordance with these rules, the post of Educational Panchayat Officer was to be filled by promotion and law degree was not prescribed as the essential and minimum qualification for it. The promotion was to be made from specific posts of the Panchayat Department. The other post of the Editor-cum-Panchayat Information Officer was to be filled either by transfer of a person already in service or by direct recruitment. For this post, a graduate in Hindi was the minimum qualification, besides some other experience in journalism etc.

3. The Petitioner continued to work as Educational Panchayat Officer until 16th May, 1967. To his surprise, after more than 5 years having served in the department, he received a notice of termination of his services issued on 6th April, 1967 indicating, that his services were no longer required and that one month's notice was being served upon him so that he could be reverted to his

parent department, as Senior Clerk in the Lieutenant Governor's Secretariat. It was stated that one O.P. Thakur (who was not even personally affected being senior to the Petitioner) made a complaint against the Petitioner that he did not possess the minimum required qualification of being a law graduate, and was therefore unqualified to hold the post of Educational Panchayat Officer. On that ground the Petitioner was reverted to his parent department.

4. The Petitioner made several representations to the authorities including the Lieutenant Governor, but did not get a decision from them. However, after the writ petition was filed, a decision was given on 24th of June, 1970 to the effect that the representation of the Petitioner was rejected.

5. On these facts, the Petitioner contends that a case of estoppel u/s 115, Evidence Act, is made out in his favour and the Respondents who are the State of Himachal Pradesh and the Director of Panchayats are estopped from terminating the services of the Petitioner. It is submitted that no statutory service rules existed and, therefore, whatever executive order of appointment was made by the Government, it was binding upon them. The Petitioner was given a test and was subsequently interviewed by the D.P.C. and was found duly qualified to hold the post. The State Government cannot turn round after 5 years and state that a mistake was committed by the D.P.C. or that the Petitioner was not qualified to hold the post. Besides that, under the new rules which came into operation from 3rd August, 1962 after the appointment of the Petitioner, being law graduate was not the required qualification for holding that post. Therefore, it could not be stated that the Petitioner was really disqualified and could not continue his appointment as Educational Panchayat Officer. Besides this there was a provision for getting relaxation of" essential qualification, in a suitable case, and by the representations made by the Government, the Petitioner could legitimately infer that a relaxation must have been obtained in his case. The Petitioner further contended that Rule 9 provided for the maximum period of probation which is three years. When these rules came into force, the Petitioner was serving against a permanent vacancy. He should be deemed to be on probation, and that the period of three years expired in 1965. Therefore, the Petitioner could be deemed as permanently appointed Government servant and could not be reverted without compliance of Article 311 of the Constitution. The Petitioner was not even informed about the complaint made by Shri O.P. Thakur and so he was not given opportunity to show cause against that complaint. In this manner, there was a violation of the rule of natural justice. According to Petitioner, two of the incumbents joined against this very post on subsequent dates, namely Shri Gopal Singh and Shri N.C. Upreti, and both of them did not possess the required qualification of being a law graduate. One of them held the Bachelor's Degree in Arts, while the other held the Master's Degree in Articles. The Petitioner also holds a Master's Degree in Arts and, therefore, he could not be reverted when a few other incumbents were posted after him without the qualification of being a law graduate. There was a violation of Articles 14 and 16 in the case of the Petitioner, and that is an additional ground why the order of

reversion need be quashed.

6. On these grounds the Petitioner wants the quashing of the reversion order dated 6th April, 1967 and also prays for such other reliefs which the Court may deem just and proper in his case.

7. In reply, the Respondents have contended, that the essential and minimum qualification for the post of Educational Panchayat Officer was a law graduate and the Petitioner did not possess that qualification. It is, however, admitted that his interview was held and he was selected for that post by the D.P.C. It is also admitted that no statutory rules existed for the post on the date of Petitioner's appointment. The services of the Petitioner were purely temporary and he was liable to termination of his service by one month's notice, which was complied with. His appointment was found irregular and, therefore, an advice was sought from the Central Government and the decision was given that the D.P.C. could not relax the qualification. The subsequent rules did not provide for direct recruitment for the disputed post and whatever appointments were made, these were made after promotion of incumbents and they need not have possessed the essential qualification of being a law graduate. There was no violation of Article 311 which did not even apply in the case of the Petitioner. There was no question of violation of any principle of natural justice, because the Petitioner could not have gained, in any manner by answering the complaint submitted by O.P. Thakur. There was no discrimination and Articles 14 and 16 were not attracted. The two incumbents junior to the Petitioner, got the appointment by promotion and in their case the required qualification was not enforced. It was denied that any estoppel arose in favour of the Petitioner. As such, it was pleaded that the writ petition was devoid of any merit and need be dismissed.

8. Before considering the contentions raised by respective parties, it is desirable to set out important annexures which have been appended to the petition.

9. The circular issued by the Panchayat Department in October, 1961 was in the following terms:

"No. 15-17/60- Panch. Himachal Pradesh Admn. Panchayats Department

To

1. All Heads of departments, HYP.
2. The Chief Executive Officer, H.P. Territorial Council, Simla-4.
3. All the Deputy Commissioners in H.P.

Simla-4, the October, 1961/the Kartika, 1883

Subject: Recruitment of staff in Panchayat Department.

Memo: The following posts are proposed to be filled up in this department immediately. It is, therefore, requested that the same be brought to the notice of the staff working under your control. The applications should reach the

undersigned on or before 15th November, 1961. No application will be entertained after that date:

S. No. Name of post Scale Qualifications 1. Editor-com-Panchayat 250-400 Himachali. Graduate- Information Officer. tion in Hindi having good and sufficient knowledge of Hindi. Practical experience of journalism. Must be a man of literary taste. Good knowledge regarding techniques of publicity. 2. Educational Panchayat 170-350 Himachali. Law Officers. Graduate will be an essential minimum qualification. Must be having good and sufficient knowledge of Hindi. R.S. RAI, Deputy Director of Panchayats, Himachal Pradesh."

It has to be noted that "good and sufficient knowledge of Hindi" was also one of the qualifications besides being law graduate for the post of Educational Panchayat Officer. It could, therefore, be stated that the D.P.C. laid emphasis on this qualification, as the Petitioner was M.A. in Hindi and hence did not consider it necessary to enforce the other qualification of being a law graduate.

10. The application submitted by the Petitioner for this post is Annexure "C.2" which is reproduced below:

To

The Director of Panchayats,
Himachal Pradesh, Simla-4.

Through Proper Channel

Subject:--Recruitment of staff in Panchayat Department.

Sir,

In response to your memorandum No. 15-17/60-Panch, dated the 2nd November, 1961, addressed to all Heads of Departments in Himachal Pradesh, I beg to apply as one of the candidates for the post of Educational Panchayat Officer under your kind control.

As regards my qualifications and experience for the post applied for, I beg to state as under:

I have passed M.A. in Hindi from the Punjab University in the year, 1957.

I have a wide and up-to-date knowledge of day to day happenings of National and International affairs. I have very sound knowledge of the Five Year Plans of the country and have got taste in writing books and pamphlets on Panchayat Raj etc.

I have got special aptitude in this line and hence applying for the above stated post.

At present I am employed in the Secretariat of the Lieutenant Governor.

If given a chance, I am confident that would be able to do full justice to this job applied for and be able to satisfy the superiors with my work and conduct.

Yours faithfully, Sd/- (B.P. Pandey), Lieutenant Governor's Secretariat, Raj Niwas, Simla-4.

It is to be noted that the Petitioner did not conceal that he was not a law graduate and hence could not be stated to have misrepresented the facts.

11. The appointment letter issued to the Petitioner is Annexure "D" which is also reproduced below:

15-4/62-Panch. Himachal Pradesh Administration Panchayats Department

To

Shri B.P. Pandey, Lieutenant Governor's Secretariat, Raj Niwas, Simla.

Simla-4, dated the 13th February, 1962

Subject:--Appointment of Educational Panchayat Officer in the Panchayats Department.

With reference to his application and subsequent interview held on 2nd February, 1962, Shri B. P. Pandey is offered a temporary post of Educational Panchayat Officer on an initial pay Rs. 170 p.m. plus usual allowances at Himachal Pradesh Administration rates in the scale of Rs. 170-10-250/10-350 on the following conditions:

- (i) That the post is purely temporary and his appointment is liable to terminate by giving one month's notice from the either side.
- (ii) He should produce certificate of good character from Magistrate 1st Class or a Gazetted Officer known to him for at least 3 years.
- (iii) He should furnish educational qualifications certificate.
- (iv) He should produce a medical certificate of fitness from the Civil Surgeon concerned which will be issued free to him.
- (v) He should furnish a declaration certificate that he has only one living wife and if un-married he shall not be having more than one wife living at any time.
- (vi) He is liable to be posted any where in H.P. (vii) He should produce a certificate to the effect that he is a bonafide Himachali.
- (viii) No travelling allowance is admissible for joining the post and his appointment under H.P. Admn. shall take place from the date he reports for duty at the Headquarters concerned.

If the above terms and conditions are acceptable to Shri B.P. Pandey, he should report to the State Headquarters at Simla-4, before 26th February, 1962, failing which the appointment letter will be treated as cancelled.

Sd/- Director of Panchayats, H.P.

The appointment letter indicates that his application was considered on merit and in the interview held on 2nd February, 1962, questions were put to the Petitioner and the presumption is that he answered these questions correctly and did not suppress the information that he was not a law graduate. Despite all this, the appointment letter was issued and, inter alia, the Petitioner was asked to furnish educational qualification certificate. When the Petitioner furnished his M.A. certificate in Hindi, the department came to know that he was not a law graduate and despite that selected him and posted him.

12. The relevant extract from the rules of the service Annexure "F" is reproduced below:

Extract from rules

Method of recruitment.--6 posts in the service shall be filled either by promotion or by direct appointment in the following manner:

(iv) Educational Panchayat Officer, District Audit Officers and Instructors.-- Appointment to the posts of Educational Panchayat (Mirers, District Audit Officers and Instructors shall be made by promotion from amongst the Panchayats Inspectors/Educational Panchayats Inspectors having at least 4 years experience on the basis of seniority subject to rejection of the unfit.

(iv)(a) Members of the clerical establishment of the Panchayats Department duly recommended by the Director of Panchayats to the Departmental Promotion Committee purely on the basis of merits will also be considered alongwith others for appointment to the posts of Inspectors/Educational Panchayat OiFiccrs/ Instructors/District Audit Officers.

(ix) Editor-cum-Panchayal Information Officer.--By transfer of a person already in the service of the Union or by direct recruitment. The minimum educational qualification for this post shall be graduation in Hindi, having good and sufficient knowledge of Hindi, practical experience of journalism, man of literary taste and having good knowledge regarding techniques of publicity:

Provided that 22.5 percent and 5 per cent of the vacancies shall be filled up from the candidates belonging to scheduled castes and scheduled tribes respectively subject to the minimum qualifications being satisfied by them.

Part II Condition of Service

9. Probation of members of service.--Members of the service, who are appointed against permanent vacancies, shall on appointment to any post in the service, remain on probation for a period of two years in the case of direct recruitment and on trial for a period of one year in the case of promotion.

Explanation.--Approved officiating service shall be taken as a period spent on probation but no member, who is officiating in any appointment shall on the

completion of the probationary period prescribed, be confirmed until he is appointed against a permanent vacancy.

(ii) If the work or conduct of any member during his period of probation is, in the opinion of the appointing authority, not satisfactory, the appointing authority may dispense with his services or revert him to his former post if he has been appointed to that post otherwise than by direct recruitment.

(iii) On the completion of the period of probation of any member, the appointing authority prescribed in Rule 4, may confirm such member in his appointment or if his work or conduct has, in the opinion of the appointing authority, not been satisfactory, may dispense with his service, or revert him to his former post, if he has been appointed otherwise than by direct appointment, or may extend the period of probation and thereafter pass such orders on the expiry of probation as it could have passed on the expiry of the first period of probation:

Provided always that the total period of probation including extension, if any, shall not exceed three years.

13. The foremost contention of the Petitioner was founded on the plea of estoppel. In this connection, the Petitioner relied upon a string of circumstances admitted by the Respondents. It was stated that separate applications were given for the two posts of Editor-cum-Panchayat Information Officer and Educational Panchayat Officer. These are Annexures C.1 and C.2 of the petition. In the application which was submitted for the second post, no misrepresentation as to educational qualification was made. It was at the same time emphasized by the Petitioner that he had a wide and up-to-date knowledge of day to day happenings of national and international affairs. Similarly he had sound knowledge of the Five Year Plans of the country and possessed a taste for writing books and pamphlets on Panchayat Raj. Besides all this, he also mentioned that he had passed M.A. in Hindi from the Punjab University. According to Petitioner, he was very well qualified for the post of Educational Panchayat Officer, meaning thereby that even if he was not a law graduate, that should not have stood in his way. It is admitted case of the Respondents that separate tests and interviews took place and the D.P.C. also considered the case of the Petitioner on merit for the post of Educational Panchayat Officer. It had come to their notice that the Petitioner was not a law graduate, but in view of his other qualifications and in view of the result of the written test and interview, they found him suitable and selected him for the post. The appointment letter Annexure "D" asked the Petitioner to submit his certificate for educational qualification. In this manner, another opportunity was offered to the Respondents to reject the case of the Petitioner in case they did not find him suitable for not being a law graduate. But they chose, nevertheless, to appoint as Educational Panchayat Officer. It is also admitted case of the Respondents that no statutory rules existed for the post of Educational Panchayat Officer, at any rate up to the date of appointment of the Petitioner. Another significant feature is that even the subsequent rules prescribed for the post, did not lay down the minimum qualification of being a

law graduate. The Petitioner served the department for more than 5 years and his record was all along good which fact is not denied by the Respondents. It is also admitted that there was a provision for relaxation of qualification. In the circumstances, the Petitioner could draw a presumption that in his case, a relaxation of qualification might have been obtained.

14. According to the letter received from the Central Government, Annexure "B" of the reply, the D.P.C. was not competent to relax the qualification. It may be true to say so. Nevertheless, the Lieutenant Governor or the Central Government were competent to relax the qualification. The circumstances made out decidedly assured the Petitioner that such a relaxation was obtained in his case. Had there been any doubt in that, he would not have continued in appointment for more than 5 years.

15. Based on all these facts and circumstances, I am called upon to decide if a case of estoppel is made out in favour of the Petitioner. The principles of estoppel embodied in Section 115 of the Evidence Act are so well laid down by the Supreme Court in *Dhyan Singh and Another Vs. Jugal Kishore and Another*, Before an estoppel can arise there must be, first a representation of an existing fact as distinct from a mere promise de futuro made by one party to the other; second, that the other party, believing it, must have been induced to act on the faith of it; and third, that he must have so acted to his detriment. In the instant case, the statutory rule for appointment to the post never existed. Therefore, the Respondents cannot plead that estoppel could not exist against a statute. Besides this, even if the statute was there, the provision for relaxation of educational qualification being available, anything done contrary to the terms of such statute was not ultra vires or void. It could only be irregular and if conditions laid down in Section 115 were satisfied, the Petitioner could successfully plead estoppel against the defence set up by the Respondents. If authority is needed in support of this proposition, reliance can be placed on *University of Delhi v. Ashok Kumar Chopra* AIR 1968 Del 131, It is not merely a positive or active declaration that can be the basis for the plea of estoppel, but also an act or omission can constitute such basis. In the instant case, the State Government held out a representation of an existing fact in favour of the Petitioner, namely, that his offer for the posting was accepted and by their act or omission, it was given out that whatever qualification he possessed was sufficient for holding the post. The entire process of selection, namely the test followed by an interview, resulting in final selection by the D.P.C., especially when no misrepresentation was made by the Petitioner at any stage, decidedly created a belief in the mind of the Petitioner that his qualification was considered sufficient and that the required qualification of being a law graduate was relaxed by the Government. Thus there was a representation of an existing fact and the offer made by the Petitioner which could even be considered a new offer made by him, as his case was not covered by the previous offer made by the Government, was a representation of an existing fact by him which was acceptable to the Government. In this manner, the service contract was completed. The State

Government having once accepted the factual position, cannot turn round after 5 years and say that they would resile their previous decision and would insist for the Petitioner to have possessed the qualification of being a law graduate. Decidedly the Petitioner acted on the faith of the representation made by the State Government. He served the department for 5 years and perhaps lost his chance of posting or promotion elsewhere. In this manner, he also acted to his detriment and his service prospects got highly prejudiced. He could have sought employment elsewhere during this period. Perhaps he would have got promotion in his parent department to which he was held not entitled. In this manner, a case of estoppel is decidedly made out in favour of the Petitioner and the Respondents are debarred from taking up the pleas against him. In the Union of India v. Anglo Afghan Agencies etc. AIR 1968 SC 718, it was held that representations made by the Government, even though executive in character, are binding and the Government shall be bound to any out the promise made under these representations, and in this manner may be held to be estopped from saying otherwise than what they had stated in those representations. When the Petitioner submitted his application and the Government after due selection made the appointment, they held out a promise, may be {executive in character, in favour of the Petitioner. They are bound to carry out the promise and on the principle of estoppel the Petitioner's claim to the post cannot be defeated. In K.K. Vij, Principal, Higher Secondary School v. The Government of Himachal Pradesh 1970 SLR 8, a learned Judge of Delhi High Court was considering the case of Government servants who were appointed on officiating basis but were considered ad hoc appointees after a lapse of sufficient period. The learned Judge held that the Government servants would be entitled to urge that Government is estopped against them from treating them as ad hoc appointees, because they had acted upon the representations made by the Government and altered their service status to their detriment. A similar situation seems to have arisen in the case of the Petitioner.

16. Had the present case been of a bonafide mistake committed by the Government while making the appointment, different considerations might have prevailed. But, as evident, the Government was all along aware that the Petitioner was not a law graduate. They held a separate test for him. He was interviewed and his educational qualification was duly considered by the D.P.C. His certificate for educational qualification was called for and inspected. Thereafter he was given the appointment and he continued for 5 years and worked satisfactorily. Subsequently the impugned qualification was not even prescribed for the post when the rules were framed. In such a state of affairs, it could not be inferred that the Government was under a bonafide mistake when the appointment was made. In fact, they made the appointment fully knowing that the Petitioner was not a law graduate. Nevertheless they held him eligible for the post because he was a postgraduate in Hindi and had other qualifications. The learned Counsel for the Respondents relied on The State of Punjab Vs. Jagdip Singh and Others, With respects to their Lordships, the facts of that case

are distinguishable. In that case, officiating Tehsildars in State of Pepsu were confirmed as Tehsildars after the merger of Pepsu with Punjab. The confirmation was made, although no posts were available for confirmation. Supernumerary posts were created, but no such posts could be legally created. Subsequently the order of confirmation was cancelled. It was held that Article 311(2) was not attracted because the order of confirmation itself was illegal. In the instant case, the order of appointment cannot be considered to be illegal or void. There were no statutory rules. The Petitioner gave his application. His qualification was considered sufficient by the Government and he was appointed. The order of appointment cannot be considered void by any stretch of imagination. The cases *Labh Singh Waryam Singh v. Union of India* through the General Manager, Northern Railway, New Delhi AIR 1967 Del 67, and *Sunder Lal and Ors. v. The State of Punjab* 1970 SLR 59, relied upon by the Respondents, are also based on different footings. In those cases the appointments were made under bonafide mistakes and hence the principle of estoppel was not extended and benefits of confirmation or seniority were not given. In the first case, the reduction in posting was made as a result to normal administrative decision to correct a mistake and it was held that the reduction did not involve any penalty within the meaning of Article 311(2). In the second case, the employees were given benefits reserved for war service candidates. These benefits were subsequently withdrawn because the employees were not war service candidates and a bonafide mistake was committed by the Government while awarding such benefits. It was held that no penalty accrued to the Petitioners and Article 311 was not attracted. In the present case, as I have stated above, the Government did not labour under a mistake at any stage of time. It is a simple case of an offer of appointment made by the Government and accepted by the Petitioner. The Government could not subsequently take action contrary to their previous decision so that the Petitioner has been put to a substantial loss in service. The principle of estoppel can very well be invoked in the circumstances.

17. The learned Counsel for the Respondents referred to my own decision reported in *Rajinder Singh Chahal v. The Chief Engineer, Western Command and Ors.* 1971 2 SLR 673, But that case was again distinguishable because the Petitioner was held unqualified for appointment right from the beginning. There was a rule prescribing a qualification and that rule was disregarded. A bonafide mistake was committed by the Government in making the appointment. The mistake was subsequently corrected and the services of the Petitioner were terminated. These were the distinguishing features of that case. Besides this, a Division Bench of this Hon'ble High Court has set aside that decision, although on entirely a different ground. They have held that the service contract invoked by me in favour of the Petitioner of that case, no longer subsisted and after promotion to another service, according to Division Bench, a new service contract came into operation. Under the new service contract, the services could not be terminated. Therefore, it was held that the order of termination was invalid. So this case too does not help the Respondents.

18. I have, therefore, no hesitation to conclude that on principle of estoppel the Respondents are debarred from setting up the plea that the Petitioner was disqualified and hence his appointment was illegal. He could not be reverted on any such ground. 19. It has also been contended by the Petitioner that he should be deemed confirmed because he was posted against a permanent vacancy and should be deemed to have completed his period of probation long before the date of reversion. In this connection, reference can be made to the service rules annexure "F" The Petitioner got his posting in February, 1962, and the rules came into force in August, 1962. There is an averment in the petition that the Petitioner was posted against a permanent vacancy and continued posted as such until he was reverted. When the rules came into force a few months after the posting of the Petitioner, it could be stated, that under Rule 9 the Petitioner was a member of the service and was appointed against a permanent vacancy on a temporary basis. His service could certainly be considered to be an approved officiating service and the entire period was spent on probation. Under the proviso to Rule 9, the total period of probation including extension, if any, could not exceed three years. The Respondents in their reply admitted that the Petitioner had worked against the permanent post of Educational Panchayat Officer from 15-12-1962 till his reversion was made. Therefore, from 15th December, 1962, the probation period could last upto 15th December, 1965. After that date, the Petitioner could be deemed to have been confirmed. The learned Counsel relied upon a decision of the Supreme Court reported in 1968 SLR 247 The State of Punjab v. Dharam Singh. In that case, the service rules fixed a certain period of time beyond which the probationary period could not be extended. The employee appointed continued in that post after completion of the maximum period of probation without an express order of confirmation. Their Lordships held that he could not be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule itself forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it would be permissible to draw an inference that after completion of the maximum period of probation, the employee has been confirmed against the post by implication. In my opinion, therefore, the Petitioner could be considered to have been confirmed against that post after 1965, as he was a permanent Government servant in 1967 when the order of his reversion was made. He could not be demoted to a lower post and the action of the Government amounted to a penalty as the Petitioner was removed from the post and Article 311 was attracted. Since no compliance was made of this Article, the Petitioner is protected and his removal from the post of Educational Panchayat Officer cannot be held to be correct.

20. The Petitioner has also called in for his aid Articles 14 and 16 of the Constitution. As to Article 14, the case of the Petitioner was distinguishable from the case of other promotees in the department. It is true that Sarvshri Gopal Singh and N.C. Upreti are junior to the Petitioner and they are not law graduates. Nonetheless they belonged to a different category of employees as compared to

the Petitioner who was a direct recruit. Therefore, the classification could not be considered to be irrational and the two categories of the employees could be distinguished from each other on reasonable basis. Therefore, Article 14 cannot be invoked in favour of the Petitioner. It is, of course, true that the qualification of a law graduate was not prescribed for the promotees. From this, the Petitioner can certainly infer that the said qualification was not a necessary qualification for the post. This gave rise to a presumption in the mind of the Petitioner that, firstly, his qualification was relaxed and, secondly, the required qualification of being law graduate was not being enforced, as the same was not held to be necessary qualification under the rules. The Petitioner can certainly invoke in his favour Article 16 of the Constitution. He was denied equality of opportunity in the matter of his employment and his service prospects are adversely affected. The reversion order, in these circumstances, can be quashed.

21. It was also contended on behalf of the Petitioner that before reverting him, a notice to show cause should have been given so that he could give an explanation regarding the complaint filed by Shri O.P. Thakur. The Government was proceeding on the assumption that the Petitioner was not a law graduate and as such his services could be terminated. The complaint of Shri O.P. Thakur, perhaps, invited the attention of the Government to this disqualification supposed to be incurred by the Petitioner. In fact, the Petitioner could not improve his position, in any manner, by giving a reply to the complaint. It is evident he was not a law graduate and, therefore, no purpose would have been served by serving upon the Petitioner a notice to show cause against that complaint. Therefore, in my opinion, no principle of natural justice was violated if such notice was not given to the Petitioner.

22. In view of what I have stated above, the Petitioner is on a firmer ground in contending that Respondents were estopped from making the order of reversion. The Petitioner was a confirmed Educational Panchayat Officer. Article 311 was not complied with and he was removed from the post. Similarly Article 16 was also violated. It is, therefore, concluded that the order of reversion is to be set aside and the Petitioner is to be given all the benefit of higher service from the date of his reversion. He shall also be deemed to be Educational Panchayat Officer during all the relevant period and would be conferred all attendant benefits.

23. The writ petition is allowed and the order dated 6th April, 1967 reverting the Petitioner is set aside. He is deemed permanent Educational Panchayat Officer and shall be given all the benefits of service including benefits of higher pay and allowance for the period beyond the date of his reversion.

24. The Petitioner shall get his costs from the Respondents. Counsel fee to be assessed at Rs. 150.