
(2019) 08 SHI CK 0046

In the High Court Of Himachal Pradesh

Case No : Letter Patent Appeal No. 32 Of 2009

B.D. Kashyap

APPELLANT

Vs

H.P. Financial Corporation

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Citation : (2019) 08 SHI CK 0046

Hon'ble Judges : Dharam Chand Chaudhary, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Sameer Thakur, Ashwani Sharma, Mayank Sharma

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The writ petition was dismissed by the learned Single Judge, vide judgment dated 25.2.2009, hence, feeling aggrieved, instant appeal has been preferred by the writ petitioner.

For the sake of convenience, parties are being referred to hereinafter as they were before the learned writ Court.

2. The facts of this matter dates back to year 1991 and onwards. We discuss them hereinafter in seriatim:-

2(i). Respondent-Financial Corporation, adopted a policy for recruitment and promotion for its various categories of posts, in terms of resolution passed by its Board of Directors, in a meeting held on 5.9.1972. Under this policy, following mode was adopted, for recruitment and promotion to the indicated posts:-

Manager

(Scale of Rs. 1350-1850)

Post of Manager was to be filled by promotion of Assistant Manager on the basis

of merit-cum-seniority, failing which by direct recruitment.

Senior Manager

(Scale of Rs.1580-2000)

Post of Senior Manager was to be filled by promotion of manager, on the basis of merit-cum-seniority, failing which by direct recruitment.

Deputy General Manager/Secretary

(Scale of Rs.1775-2300) P

Post of Deputy General Manager/Secretary, to be filled by promotion of Senior Manager, on the basis of merit-cum-seniority failing which by direct recruitment.

Employees had to have three years of service in the feeder post for becoming eligible for promotion to the next higher grade.

Thus, in terms of afore-policy for recruitment, Senior Manager in the scale of (Rs.1580-2000), after completing three of service as such, was eligible for promotion to the post of Deputy General Manager/Secretary in the pay scale of (Rs.1775-2300).

2(ii). 1991 Rules and Promotion of petitioner as Senior Manager:

2(ii)a) The petitioner was appointed as a Manager in the Respondent-corporation on 15.6.1981.

2(ii)b) For revising the pay-scales of its employees w.e.f. 1.1.1986 and for complying with the directions issued in this regard by the State Government, the Board of Director of Corporation on 25.10.1991, revised the pay-scale of three (3) posts of Deputy General Manager and one (1) post of Secretary from existing (Rs.1775-2300) to (Rs.3000-5600) as a measure personnel to them with new designation of Additional General Managers.

2(ii)c) Senior Managers and Senior Technical Officers, in the existing scale of (Rs.1580-2000) were to be placed in revised scale of (Rs.3000-5300). Senior Managers, after completion of five years of service as such, were to be designated as Deputy General Manager, but, in the pay scale of Senior Managers. Those Senior Managers, who were in-charge of Divisions in the Corporation, could be given the designation of Executive Deputy General Manager, but, without any change in the scale of pay.

Under these re-framed 1991 rules of pay-scales and promotions, the petitioner was promoted as Senior Manager, on 15.7.1992, in the scale of (Rs. 3000-5300).

2(ii)d) On 29.10.1992, the petitioner was authorized by corporation to exercise the powers under Regulation 3(j), of H.P.F.C. Staff Regulations 1961.

2(iii) Designation of petitioner as Secretary:

2(iii)a) Petitioner who was promoted as Senior Manager on 15.7.1992, was re-designated on 4.1.1994, as Secretary in his own pay-scale of (Rs.3000-5300). The order clearly stated that for future promotion, the post of Secretary held by petitioner is equated with that of Senior Manager. This order was perhaps issued as the petitioner was exercising powers under Regulation 3(j) of H.P.F.C. Staff Regulations. Be that as it may.

2(iii)b) The seniority list of Class-A officers of the corporation, as on 1.10.1992, was issued, wherein, name of petitioner figures at serial No.2 under the category 'Deputy General Manager/Senior Manager (Rs.3000-5300)'. There was no category of Secretary in this seniority list.

2(iii)c) The corporation on 8.8.1994, revised the pay-scales of certain categories of posts w.e.f. 1.1.1986. The pay scale of Senior Manager (Rs.3000-5300) was revised to (Rs.3700- 5000). The Senior Managers were now designated as Assistant General Managers. Accordingly, the petitioner, who was working as Senior Manager in the pay-scale of (Rs.3000-5300) was given the revised pay-scale of (Rs.3700-5000) and got the new designation of Assistant General Manager. The old pay-scale of Deputy General Manager (Rs.3000-5300) was revised to (Rs.4125-5500).

3. Grievance of the petitioner:

3(i) The petitioner was aggrieved to the effect that he was Senior Manager in the pay-scale of (Rs.3000-5300) re-designated as Secretary, but, on revision of pay-scale, he was treated as a Senior Manager and his pay-scale was revised to (Rs.3700-5000), instead of (Rs.4125-5000) revised in case of Deputy General Manager. Hence, he submitted his representation for grant of due designation as well as scale of Deputy General Manager/Secretary.

3(ii) The said representation was turned down by the Managing Director of Corporation on 27.6.1995. Appeal against this decision was rejected by Board of Directors on 01.01.1996, on counts that (a) the petitioner was promoted as Senior Manager on 15.7.1992, in the scale of (Rs.3000-5300). He was only re-designated as Secretary on 4.1.1994, but, with specific rider that his re-designation was in the pay-scale of Senior Manager and for future promotion, his post of Secretary was to be equated with that of Senior Manager. Therefore, he cannot compare his post to the post of Deputy General Manager in the pay-scale of (Rs.3000-5300) and therefore cannot claim the revised pay- scale of (Rs.4125-5500) accorded to the post of Deputy General Manager. b) petitioner even otherwise had not completed five years of service required for a Senior Manager to become eligible for promotion to the post of Deputy General Manager.

For the above reasons, the Board of Directors, rejected the representation/appeal preferred by the petitioner.

3(iii). Filing of OA No.100 of 1996:

Aggrieved against the rejection of his representation, the petitioner preferred OA

No.100/1996 in erstwhile H.P. Administrative Tribunal, which was transferred to this Court as CWP(T) No.2973/2008.

The petitioner has prayed following reliefs in the original application:-

"(i) That Annexure A-9 dated 27.6.95 and Annexure A-13 dated 1.1.196 whereby the claim of the applicant has been rejected by the respondent-corporation be kindly quashed/set aside.

(ii) That the appointment of the applicant by way of redesignation on recommendation of the Promotion Committees and approval of the Board be held regular for all intents and purpose.

(iii) That the applicant be held entitled to the designation and pay scale of the post of secretary at par with his counter part in the Punjab Financial Corporation.

(iv) That the respondent be directed to pay to the applicant all consequential benefits accruing from the above three reliefs, such as, arrears of pay etc. within a time bound period.

(v) That in alternative to above, the revision of the post of applicant in the scale of Rs. 3700-5000 be kindly held analogous qua the other technical categories who were earlier in the lower scale and have been allowed revision in the higher scale of Rs.4125- 5500 and the applicant be held entitled to revision in the same scale of Rs.4125-5500 if not higher with all consequential benefits thereof, such as, arrears of pay etc.

(vi) That office Orders, Annexure A-7 dated 26.11.94 and Annexure A-12 dated 21.6.95 be kindly held illegal and quashed/set-aside. The applicant be held lawfully competent to exercise the powers of the post of secretary.

(vii) That the respondent be directed to allow to the applicant revision of pay scale of Rs.4125-5500 from the due date with all consequential benefits thereof."

Writ petition was dismissed on 25.02.2009, hence, instant appeal has been preferred.

4. Developments during pendency of litigation:

1996 (revision of pay-scale) & time scale promotions:

4(i) Vide office order dated 8.7.1998, the corporation revised pay- scale of its various categories of posts w.e.f. 1.1.1996. Pay-scale of Assistant General Manager/Secretary in the existing scale of (Rs.3700-5000) i.e. post held by the petitioner was revised to (Rs.12000-15500), whereas, the post of Deputy General Manager in the existing scale of (Rs.4125-5500) was revised to (Rs.13500-16800).

4(ii) On 3.11.1999, an office order was issued by the corporation, revising its policy for recruitment and promotion. Concept of time-scale promotion, for various categories of posts was introduced w.e.f. 1.4.1993. In terms of this

policy, time-scale promotion was to be available for Assistant General Manager to the post of Deputy General Manager, after a service of five years as Assistant General Manager. This was subject to terms and conditions of eligibility stipulated therein.

4(iii) The benefit of time-scale promotion was allowed to the petitioner, vide order dated 19.10.2001. He was granted time-scale promotion to the post of Deputy General Manager in the pay-scale of (Rs.13500-16800). Thus, the petitioner by virtue of grant of time-scale promotion became Deputy General Manager and got the scale of Deputy General Manager on 19.10.2001. This benefit of time-scale promotion to the post of Deputy General Manager has been granted to the petitioner notionally w.e.f. 1.8.1997, after completion of five years of service by him as Senior Manager re-designated as Assistant General Manager.

5. We have heard learned counsel for the parties and carefully gone through the records.

5(i) Petitioner's claim to the post and scale of Secretary:

5(i)a) Case of the petitioner is that he having been re-designated as Secretary on 4.1.1994, was required to be given the pay-scale of the post of Secretary/Deputy General Manager. Therefore, keeping him in pay-scale of (Rs.3000-5300), i.e. scale of Senior Manager and not giving him the scale of (Rs.3000-5600), and thereafter (Rs.4125-5500), which was granted to Deputy General Manager/Secretary was illegal on the part of respondent-corporation.

5(i)b) The above contention is without any merit. Senior Managers/Senior Technical Officers in the existing scale of (Rs.1580-2000) were given the revised scale of (Rs.3000-5300), in terms of corporation's decision dated 21.10.1991/25.10.1991, while implementing the revised pay-scale w.e.f. 1.1.1986. It is under this revision of pay-scale carried out by the respondent-corporation in 1991, that the petitioner came to be promoted from the post of Manager to the post of Senior Manager on 15.7.1992 and was thus rightly placed in the pay-scale of (Rs.3000-5300). In terms of decision of the corporation, Senior Manager with five years of service was to be designated as Deputy General Manager, but in the same scale of Senior Manager. In the instant case, petitioner at the time of his re-designation as Secretary, on 4.1.1994, had not completed even five years of service as Senior Manager, which was required for this promotion as Deputy General Manager. Mere re-designation as Secretary, which perhaps was on account of administrative exigencies will not give the petitioner right to claim the revised pay-scale of (Rs.3000-5600) & (Rs.4125-5500) given to the post of Deputy General Manager/Secretary in the old pay-scales of (Rs.1775-2300). More so, when the petitioner as on 4.1.1994, did not even have requisite five years of service as such. Contention is thus rejected.

5(i)c) Another contention of petitioner is that corporation had upgraded the then existing post of Secretary as General Manager in 1991, with the condition that

after vacation of upgraded post by the then incumbent, 'status quo' will prevail.

This contention will not give any benefit to the petitioner as he was promoted as Senior Manager w.e.f. 15.7.1992, against vacant post of Senior Manager and not against the post of Secretary. Though subsequently post of Senior Manager held by the petitioner was re-designated as Secretary on 4.1.1994, but, in his own pay-scale of Senior Manager & for future promotion his designation was to remain as Senior Manager. Petitioner was not holding any substantive post of Secretary.

The judgments in (2017) 9 SCC 332 titled Prakash Soni Vs. Deepak Kumar and another & in (2017) 9 SCC 395, titled State of Punjab and another Vs. Dharam Pal, cited by learned counsel, dealing with the issues of undertaking, given by the petitioner therein as well as the rule position existing in those cases is not applicable to the instant case.

5(ii) Petitioner's claim to the post of Deputy General Manager, in the pay-scale of (Rs.4125-5500), w.e.f. 15.7.1995:

The petitioner contends that he having completed three years of service as Senior Manager on 15.7.1995, was entitled to the post of Deputy General Manager/Secretary in the scale of (Rs.4125-5500), further revised to (Rs.13500-16800), w.e.f. 1.1.1996.

We are afraid this contention is again without any merit, as for regular promotion from the post of Senior Manager to the post of Deputy General Manager, five years of service was required, in terms of decision taken by the respondent-corporation on 21.10.1991/25.10.1991. The petitioner who was promoted as Senior Manager on 15.7.1992 had not completed requisite five years of service as on 15.7.1995, therefore, relief as prayed for, cannot be granted to the petitioner.

5(iii) Grant of actual financial benefit on the basis of time-scale promotions:

Though, we have specifically rejected the contentions raised by the writ petitioner in the earlier paragraphs, however, it can be noticed that various developments having taken place during the pendency of the writ petition, whereunder the concept of grant of time - scales/promotions has been introduced by the respondent-corporation. Petitioner has been granted time-scale promotion to the post of Deputy General Manager in the scale of Deputy General Manager vide order dated 19.10.2001. Though his pay has been fixed accordingly from 1.8.1997 onwards, but, the promotion however has been effected notionally w.e.f. 1.8.1997. The contention of the petitioner is that he deserves to be granted actual promotion and actual monetary benefit and not notional w.e.f. due date of promotion to the post of Deputy General Manager.

It is seen from the order dated 19.10.2001, (Annexure-A), that similar notional promotions have been given not just to the petitioner, but, to various other employees. There might be many other employees, who have been granted such

notional benefits.

Regarding the issue of time-scale promotions, the H.P.F.C. Officers Association has instituted OA No.1334 of 2007, in the erstwhile H.P. Administrative Tribunal, transferred to this Court as CWP(T) No.15135 of 2008, wherein, following relief has been prayed for:-

"i) to direct the respondent-corporation to allow all consequential financial benefits to the concerned members of the applicant-Association from the respective dates of their promotions on so-called notional basis as mentioned in their respective promotion letters mentioned in Annexure A-4 to A-8 with interest at the rate of 12% per annum from the date the same became due till payment thereof."

No such relief has been prayed for by the petitioner in the instant original application, which was filed in 1996. The developments in respect of retrospective time scale promotions are subsequent to the filing of the original application. It is not in-dispute that petitioner is member of the H.P.F.C. Officers Association, which has collectively filed OA 1334/2007 (CWP-T 15135/2008) praying for grant of actual monetary benefits and not notional benefits on account of such retrospective time scale promotions. The decision in this OA 1334/2007 will be applicable on the petitioner also. Therefore, we refrain from making any observations in this regard. This was also the observation of learned Single Bench.

In view of the above discussions, no fault can be found in the judgment passed by the learned Single Judge of this Court. Accordingly, the appeal is dismissed. Pending application(s), if any, also stand disposed of accordingly.