
(1998) 06 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 507 of 1997

Chaman Lal

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 03-06-1998

Acts Referred:

Citation : (1999) 3 ShimLC 119

Hon'ble Judges : Kamlesh Sharma, Acting C.J.; Surinder Sarup, J

Bench : Division Bench

Advocate : Shrawan Dogra, for the Appellant; B.P. Sharma, A.A.G. for Respondent No. 1 and Harish Behal, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, A.C.J.

1. The Petitioner is aggrieved by order dated 5.12.1997 passed by Himachal Pradesh Administrative Tribunal, Shimla whereby his Original Application No. 2260/97 has been dismissed. In his Original Application the Petitioner had challenged that mode of appointment to the post of Clerk in Himachal Pradesh State Legal Services Authority-Respondent No. 2 (hereinafter called the Authority) should not be by direct recruitment, for which advertisement was published in Jansatta on 24.11.1997. According to the Petitioner, the mode of appointment to the post of Clerk should be by promotion from amongst Class IV officials who are matriculates and who passess five years regular service, as provided in the Himachal Pradesh State Legal Services Authority, Clerk (Class III, Non-Gazetted) Recruitment and Promotion Rules, 1997 (hereinafter called the Rules).

2. The Petitioner is matriculate in 2nd Division. He was engaged on daily wage in February, 1989 by the Authority. Thereafter he was appointed as Peon on regular basis by Office Order dated 31.7.1992 (Annexure P-2). He was further appointed as Clerk on ad-hoc basis by Office Order dated 28.2.1997 (Annexure P-3) and

has been working as such since then.

3. The Rules came into force on 27.9.1997. It is not in dispute that under the Rules the Petitioner is eligible for promotion to the post of Clerk being matriculate and having five years' regular service. He is also likely to be promoted being the only eligible candidate in the feeder category if the Authority adopts the method of appointment by promotion and he is found fit, the post being non-selection post. But the Authority has adopted the method of appointment by direct recruitment, which gave cause of grievance to the Petitioner.

4. In these facts the point for consideration is whether the action of the Authority is consistent with the Rules, if not, whether it will be legal, proper and in the interest of justice and fair play to give direction to the Authority to make appointment to the post by adopting method of promotion. The method of appointment is given in Rules 10 and 11 of the Rules.

Rule 10 is:

Method of recruitment, whether (i) 10% by promotion; and by direct recruitment or by (ii) 90% by direct recruitment, promotion, deputation, transfer in place of 90% by direct recruit- and the percentage of vacancies ment failing which by deputation to be filled in by various from any Government/Semi Government methods : nment/Courts of Himachal Pradesh.

The relevant extracts of Rule 11 are : In case of recruitment by By promotion from amongst the promotion/deputation/transfer Class IV officials who have passed /grades from which promotion/ Matric or Hindi (Rattan) with Matric deputation/transfer is to be (English as one of the subjects) made : and also possess 5 years regular service or regular combined with continuous ad hoc (rendered upto 31.3.1991) service, if any; failing which by deputation from amongst the clerks working in the Government/Semi Government Departments/Courts of Himachal Pradesh.

Notwithstanding anything contained contrary supra, the incumbent who is on deputation will be given an option for absorption in the Himachal Pradesh State Legal Services Authority. In case the deputationist does not exercise his option for absorption, he shall be reverted to his parent Deptt. on the completion of deputation period:

Provided that the incumbents of the post of Class IV officials so promoted shall not be considered to be eligible for their next promotion for the post of Senior Assistants until they possess the minimum educational qualifications prescribed for direct recruitment in Column 7 above.

Note : 1.

In all cases of promotion, the ad hoc service rendered in the feeder upto 31.3.1991, if any, prior to the regular appointment to the post shall be taken

into account towards the length of service as prescribed in these Rules for promotion subject to the conditions :

.... Note : 2.

Provisions of Rules 10 and 11 are to be revised by the State Legal Services Authority as and when the number of posts under Rule 2 are increased.

5. The first submission of the learned Counsel for the Petitioner that since the mode of appointment by promotion is mentioned first in the Rule, first post should be filled in by promotion, though appears to be attractive, yet without any substance. Firstly, in the vernacular version of the Rules the mode of appointment by direct recruitment is given first and secondly, Rule 10 only provides quota i.e. 10% by promotion and 90% by direct recruitment, failing which by deputation from any Government/Semi Government/Courts of Himachal Pradesh and does not provide any rotation which is left to the appointing authority, which may decide as per its requirement keeping in view the purpose for which the quota has been provided. Under this Rule the only obligation upon the appointing authority is to maintain quota during one year or reasonable period fixed for working out quota i.e. rotation of direct recruits and promotees. While interpreting quota rule learned Judges of the Division Bench of Karnataka High Court in V.B. Badami and Ors. v. State of Mysore and Ors. 1975 (2) SLR 295, have observed in para 16 of the judgment:

Where however, there is no such clear identification between the vacancies possible under the rules and the rules merely prescribe a certain proportion between the promotional vacancies and the direct recruitment vacancies, the situation places upon the Government the duty of classifying the vacancies and filling them up in such a way as to see that the proportion laid down by the rules is maintained. While doing so one should bear in mind the administrative discretion which undoubtedly vests in the Government of deciding whether it will proceed first to make promotions and then resort to direct recruitment or vice versa....

(Also see observations of learned Judges made in paragraph 45 of judgment in State of Karnataka v. Chikkabasavaiah and Ors. 1981 (2) SLR 168).

6. The next point urged by the learned Counsel for the Petitioner is that the appointing authority should start rotation by filling in the first post by promotion by giving purposive construction to Rule 10. According to him from the quota prescribed for promotion the intention of rule making authority is clear that it wants not only raw hands from the open market by way of direct recruitment but also experienced hands from the Department, may be in small ratio of 10%. It is further clear that quota for promotion has been prescribed to provide chances of promotions to Class IV employees to avoid their stagnation. The learned Counsel has further argued that if the first post is not filled in by promotion, the Petitioner will never get a chance of promotion during his career, as his turn for consideration for promotion will only come after nine appointments are made to

the post by direct recruitment in view of quota of 90% for direct recruits and 10% for promotees. In order to substantiate his submission he has referred to the observations of learned Judges of the Supreme Court in AIR 1988 1033 (SC) that:

Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly.

7. Learned Counsel for the Petitioner has also drawn our attention to the various rules of interpretation of statute referred to and explained in various judgments of the Supreme Court to emphasise that in order to give purposive interpretation this Court should hold that the first appointment to the post will be made by promotion and not by direct recruitment, for which the process has been started by the Respondent authority. According to the learned Counsel, even if it is not provided in Rule 10 as to how the quota of 10% by promotion and 90% by direct recruitment will be worked out, looking to the intention of rule making authority that 10% Clerks should be from the Department in order to give avenue of promotion to Class IV employees, Rule 10 may be interpreted that the first post will be filled in by promotion.

8. The learned Counsel for the Petitioner has referred to the observations of Lord Denning in his book *The Closing Chapter* at page 98 that besides giving literary meaning to the words used in a statute the Judges should also look to the spirit behind them. These observations are:

ii Look to the spirit

During the last 50 years the "golden rule has been abandoned. The Judges always say that they look for the "intention" of the Legislature. That is the same thing as looking for its "purpose". They do it in this way: they go by the words of the section. If they are clear and cover the situation in hand, there is no need to go further. But, if they are unclear or ambiguous or doubtful, the Judges do not stop at the words of the section. They call for help in every direction open to them. They look at the statute as a whole. They look at the social conditions which gave rise to it. They look at the mischief which it was passed to remedy. They look at the "factual matrix". They use every legitimate aid. By this means they clear up many things which would be unclear or ambiguous or doubtful.

9. Learned Counsel for the Petitioner has also referred to the judgment of the Supreme Court in *Sultana Begum Vs. Prem Chand Jain*, wherein in para 15 the following principles of interpretation of statute are culled out from number of earlier judgments quoted in para 13:

(1) It is the duty of the Courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each

other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the Court, inspite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the Courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "Harmonious Construction."

(4) The Courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "unless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.

10. Another judgment of the Supreme Court in *Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others*, has also been cited by the learned Counsel for the Petitioner to draw our attention to the observations made in the end of para 15 of the judgment that:

...a construction which would advance the object and purpose of the legislation should be followed and a construction which would result in reducing a provision of the Act to a dead letter or to defeat the object and purpose of the statute should be avoided without doing any violence to the language....

11. So far these rules of interpretation of statute are concerned, there cannot be any dispute but their application will depend upon the words used by the legislature and the rule making authority in the statute/rule under interpretation. If they are clear and cover the situation in hand, the Judges should stop at the words used in the statute/rule, if not, the Judges would look to the spirit behind those words and try to reach at the intention or purpose for which the provision under interpretation is promulgated by looking at the statute/rule as a whole, the aims and objects with which the statute/rule is made, the mischief which it intends to remedy, the historical and social background which necessitated its promulgation etc. etc. So far Rule 10 in the present case is concerned, its wording is very clear and we do not find any ambiguity and doubt in it. By not providing as to how the quota will be worked out, the intention of the rule making authority is clear that it is for the appointing authority to decide whether the post in question should be filled in by adopting the method of promotion or by direct recruitment. By providing 90% quota for direct recruitment in a cadre of two posts the intention of the rule making authority is very clear that it wants to make recruitments mainly from the open market. Since the promotion is from Class IV employees of the Respondent authority to the post of Clerk, their experience may not be of much help to them to the promotional post and the only intention to provide 10% quota for them is to provide promotional avenues to them. If by working out the quota a particular employee does not have a fair

chance of promotion, as in the present case, it cannot be said that quota rule should be worked out in such a manner as to ensure that promotee must find a place at all points of time. We may reiterate that an employee has a right of consideration for promotion at his turn in accordance with rules applicable to him but he does not have a right of fair chance of promotion. It is true that if the post in question is filled in by direct recruitment, the Petitioner may not get chance of promotion as his turn for consideration for promotion will come after eight more appointments by direct recruitment but this is for the appointing authority to consider looking to the requirement of the services and this Court should not interfere.

12. Moreover, we find that out of two posts of Clerks, one post has already been filled in by absorption of the deputationist, as provided in the proviso to Rule 11 that notwithstanding anything contained contrary in Rule 11, the incumbent who is on deputation will be given an option for absorption. In this view of the matter, we do not find any infirmity in the impugned order dated 5.12.1997 passed by the Himachal Pradesh Administrative Tribunal.

13. In the result, the writ petition has no merit and it is dismissed. No costs.