

(2014) 07 SHI CK 0174
In the High Court Of Himachal Pradesh
Case No : CWP No. 11173 of 2011

Gopal Singh

APPELLANT

Vs

H.R.T.C.

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 07 SHI CK 0174

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : Subhash Sharma, Advocate for the Appellant; Vijay Verma, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Sharma, J.—The grievance raised by the petitioner in this writ petition under Articles 226/227 of the Constitution of India is with regard to his claim for seniority vis-?-vis private respondents No. 3 and 4.

2. The petition has been filed on the following substantive prayers:

1. That a writ in the nature of certiorari may kindly be issued and Annexure P-15 dated 7.5.2011 may kindly be quashed and set aside.

2. That a writ in the nature of mandamus may kindly be issued directing the respondent Corporation to assign the seniority position to the petitioner over and above the private respondents No. 3 and 4 with consequential benefits.

3. The petitioner was initially engaged on the establishment of respondent No. 1-Corporation on daily wages with effect from 15.10.1985 under kith and kin policy and was later on regularly appointed as such in the pay scale of Rs. 400-600 + usual allowances thereon as admissible from time to time with effect from 12.6.1986. To this effect is the office order brought on record by the petitioner as Annexure P-1. It appears that in the meanwhile some conductors became surplus

in the Corporation which required their absorption against the posts of Clerks/Booking Clerks/PPA (Petrol Pump Attendant). Accordingly, a policy in that regard was framed vide Annexure P-2, dated 10.9.1984, relevant clauses whereof for the purpose of disposal of the present petition are (iii) and (iv), which are extracted below for ready reference:

(iii) The past service as conductor on absorption as Clerk/B.C/P.P.A. will be counted for all intents and purposes save to the extent indicated in the next succeeding clauses.

(iv) Inter se seniority on absorption in a particular category will be kept intact. However, they will figure below the existing employees in the posts/category of their absorption/transfer.

4. A bare perusal of the table given at the end of page-1 of the office order dated 7.5.2011, Annexure P-15, would go to show that the petitioner Sh. Gopal Dass, who figures at serial No. 11 and was directly recruited as Booking Clerk, was appointed as such on 12.6.1986. The same very table shows that private respondents No. 3 Sh. Pritam Chand and 4 Sh. Balram Puri (Sr. Nos. 2 and 3), who were initially appointed as conductors on 15.7.1977 and were later on rendered surplus, were absorbed against vacant posts of Booking Clerks in terms of the aforesaid absorption policy of surplus conductors issued vide Annexure P-2, dated 10.9.1984, on 14.11.1986, that is, when the petitioner was already borne on the cadre of Booking Clerks with effect from 12.6.1986. Thus both the private respondents No. 3 and 4, who were absorbed in the cadre of Booking Clerks only on 14.11.1986 would certainly figure below the existing employees in the posts/category of their absorption/transfer including the petitioner. Thus, when the petitioner ranked senior to private respondents No. 3 and 4 in the entry level cadre of Booking Clerks, he would also rank senior to them in the promotional posts/cadres. However, instead, as per office order dated 7.5.2011, Annexure P-15, he has been assigned seniority at serial No. 49 much below private respondents No. 3 and 4, who figure therein at serial Nos. 37-A-1 and 37A as is apparent from the last column of the table given below para 4 of office order dated 7th May, 2011, Annexure P-15, in utter disregard to clauses (iii) and (iv) of the Policy of absorption issued vide Annexure P-2, dated 10.9.1984.

5. In view of the above, office order dated 7.5.2011, Annexure P-15, cannot be sustained and is accordingly quashed and set aside, with a direction to respondents No. 1 and 2/competent authority to assign seniority to the petitioner right from the entry level cadre of Booking Clerks and thereafter in the promotional cadres over and above private respondents No. 3 and 4 along with consequential benefits, if any, within three months from the date of production of copy of this judgment by the petitioner before respondents No. 1 and 2/competent authority, failing which interest @ 9% shall also be payable on the financial component of consequential benefits, if any.

6. The petition as also pending application(s), if any, stands disposed of in the

above terms.