

(2011) 03 SHI CK 0164
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 6969 of 2008

Hari Dutt Sharma

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Contract Act, 1872 — Section 23

Citation : (2011) 03 SHI CK 0164

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Initially, the Petitioner was appointed in the Transport department on 1st October, 1963. Thereafter, in sequel to the decision of the State Government, the department was converted into Himachal Road Transport Corporation on 2nd October, 1974.

He became employee of the Respondent-Corporation. He was promoted to the post of Traffic Manager on adhoc basis on 22nd September, 1998. He joined his duties on 23rd September, 1998.

On promotion to the post of Traffic Manager, his pay was fixed in the pay scale of Rs. 6400-10640/- at Rs. 7660/- under F.R.-22-1(a)(i) w.e.f. 23rd September, 1998. The next date of increment was fixed as 1st September, 1999. He retired on 31st May, 2000. His basic pay was Rs. 7880/- on the date of retirement.

2. Mr. M.C. Verma, learned Counsel for the Petitioner has strenuously argued that his client should have been given an opportunity to opt for the old date of increment, i.e., 1st February, 1999 instead of 1st September, 1999. He further argued that his client has suffered monetary loss, which has adversely affected his pensionary benefits, including gratuity etc.. He lastly contended that his pay was to be treated at Rs. 8100/- instead of Rs. 7880/- on the date of his

retirement.

3. Mr. Adarsh Sharma, learned Counsel for the Respondent has vehemently argued that since the Petitioner had been promoted on adhoc basis, his option was not required. He lastly contended that once the Petitioner has opted for promotion vide letter dated 22nd September, 1998, he is precluded from seeking change of date of increment from September to February.

4. I have heard the learned Counsel for the parties and gone through the pleadings.

5. The posts of Station Supervisor and Chief Inspector are in feeder category for promotion to the post of Traffic Manager in the pay scale of Rs. 6400-10640/-. Petitioner had already worked for a period of ten years as Chief Inspector and was fully eligible to be considered for promotion on regular basis as per the Service Recruitment, Promotion and Certain Conditions of Service Regulations-1996 framed by the Respondent-Corporation.

6. Mr. M.C. Verma, learned Counsel for the Petitioner has also brought to the notice of the Court that 7 posts of Traffic Inspectors were lying vacant at the time when the Respondent-Corporation has promoted the Petitioner on adhoc basis instead of on regular basis. In these circumstances, the Respondent Corporation should have considered the case of the Petitioner for regular promotion instead of adhoc promotion. It has come in the reply that the Petitioner has been promoted on adhoc basis as per the Recruitment and Promotion Rules. It is not the case of the Respondent-Corporation at all that the Petitioner was not either eligible or qualified to be considered for promotion to the post of Traffic Manager. Petitioner was at the verge of retirement when he was promoted as Traffic Manager on 22nd September, 1998 on adhoc basis. It was incumbent upon the Respondent-Corporation to consider the case of the Petitioner for promotion on regular basis. It was not the fault of the Petitioner that though the vacancies were lying vacant, he was promoted on adhoc basis.

Petitioner is not estopped from seeking promotion on regular basis, only on the basis of terms and conditions incorporated in Annexure A-1, dated 22nd September, 1998 that the adhoc promotion will not, in any manner, confer any right on him for regularization or seniority etc..

7. Their Lordships of the Hon"ble Supreme Court in Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others, have held as under:

"35. The Court must keep in mind the constitutional obligation of both the Appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution.

The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

8. Their Lordships of the Hon^{ble} Supreme Court in Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, have held that an agreement that if a person is promoted to the higher posts or put to officiate on that post or, as in the instant case, a stopgap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. Their Lordships have further held that it would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872. Their Lordships have held as under:

"8. Learned Counsel for the Appellant attempted to contend that when the Respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the Appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The Respondent being an employee of the Appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872."

9. Petitioner's pay was fixed in the pay scale of Rs. 6400-10640/- at Rs. 7660/-. He was drawing the salary at Rs. 7880/- on 31.05.2000 instead of Rs. 8100/-. This anomaly has arisen due to the simple reason that the next date of increment of the Petitioner has been fixed as per Annexure A-2 as 1st September, 1999. His earlier date of increment was February, 1999.

10. The Respondents ought to have considered the case of Petitioner for regular promotion instead of adhoc promotion or alternatively to mitigate the hardship to be faced by him, his option was required to be sought for fixing the date of increment in the month of February, 1999 instead of September, 1999.

11. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Petitioner shall be deemed to have been regularly promoted to the post of Traffic Inspector instead of adhoc basis w.e.f. 22nd September, 1998. Respondents are further directed to fix the date of increment of the Petitioner w.e.f. February, 1999 instead of September, 1999. Respondents are also directed to fix pension etc. of the Petitioner on the basic pay of Rs.

8100/-. No costs.