
(2020) 10 SHI CK 0171
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 3696 Of 2020

Inder Singh

APPELLANT

Vs

State Of H.P And Ors

RESPONDENT

Date of Decision : 16-10-2020

Acts Referred:

Citation : (2020) 10 SHI CK 0171

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : A.K. Gupta, Ashwani Sharma, J.S.Guleria

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The writ petitioner, became uncontestedly, promoted, on 25.11.2010, to, the promotional post, of, the Senior Assistant, from the, hitherto, feeder, post of Clerk. However, through, Annexure P-2, the writ petitioner, was, reverted to the hitherto, post, of, Junior Assistant. The afore reversion, as made, through, the impugned Annexure, occurred on the ground, vis-à-vis, the apposite certificate, as became issued, by the Educational Institution(s) concerned, rather being, not recognized, by the State of H.P. The test, for, determining the validity of making, of, the impugned Annexure, becomes, embodied, in the apposite R & P Rules, which were brought into force, on, 03.08.2011. Consequently, since the, apposite promotion of the writ petitioner, occurred, much prior thereto, or occurred, when the apposite R & P Rules, were not into force, (i) thereupon, any prescription in the apposite R & P Rules, vis-à-vis, the necessity, of, any aspirant holding, hence any of, the contemplated therein, educational qualification, inasmuch as, his possessing the certificate appertaining, to, his/her, hence qualifying 10+2 examination, was neither an indispensable requirement, nor, a, prerequisite for the petitioner being, promoted, to the promotional post, of, a, Senior Assistant from the hitherto, post, of a Clerk. Moreover, conspicuously, since the afore, R &

P Rules, became notified, in the month of August, 2011, and, became not assigned, any, retrospectively, so as to cover, the, phase of promotion of the writ petitioner, from the hitherto post, of, a Clerk, (ii) to, that of, a, Senior Assistant, (iii) thereupon, also there, was thereat, no necessity, for the petitioner, to hold the, apposite enshrined therein educational qualification. As a natural corollary, any post or subsequent(s), to, the occurrence, of, promotion, to, the writ petitioner, hence insurances made, upon him, vis-à-vis, his possessing 10+2 qualification, was wholly unnecessary, and uncalled for, (iv) nor also any purported objections, raised by the respondents, inasmuch as, the afore qualification becoming acquired, by the writ petitioner, from, a, Board, not recognized, by the State of Himachal Pradesh, could not work, as, a, valid ground, with the respondents, to make the impugned Annexure, upon, the writ petitioner.

2. Even, the R & P Rules, as came into force subsequent, to the promotion, of, the writ petitioner, from hitherto post, of, Clerk, to, that of a Senior Assistant, do not also prescribe, the necessity, of, the desired, 10+2 qualification, being obtained, from, a, Board, or, an Institution, recognized by the Government of Himachal Pradesh, (a) rather there is, a, simplicitor echoing, borne therein, vis-à-vis, the possession(s), by the aspirants concerned, of, 10+2 educational qualification. Even though, there is, a, reticence, vis-à-vis, the afore, facet, in the apposite, R & P Rules, (b) however, the afore, reticence though does facilitate the respondents, to, make, instructions, for, therethrough(s), apposite educational qualifications, becoming enjoined to be held by the aspirants concerned, for hence theirs staking, a, valid claim, hence for their promotion(s), being made, to, the promotional post(s), (c) yet, the afore facilitation cannot, be applied arbitrarily, merely upon anchor, of, recognition, being granted, to the educational institution(s), or board(s) concerned, vis-à-vis, the courses, or, qualification(s), run by them, (d) unless, there exists on record, cogent categorical material, in display, vis-à-vis, the educational qualification, as, acquired by the aspirant(s) concerned, emanating from, any, Board, or, an, Institution, rather, any holding, any, validly assigned affiliation, through a valid order, made by the authorized affiliating body(ies) or upon evidence surging(s), forth, vis-à-vis, the educational qualification, being forged or fictitious, or, it being granted despite the petitioner not undertaking the course. However, none of the afore blemishes are evidently demonstrated, to ingrain, the educational qualification, hence held by the writ petitioner. Consequently, for the mere insurances by the respondents concerned, vis-à-vis, the desired educational qualification(s), only flowing, from an Institution or a Board, recognized by the Government of Himachal Pradesh, not working, as, an, impediment, rather it being an oppressive condition, for, therethrough, the petitioner being untenably demoted. Significantly, also any insurances, as made qua thereof, from any aspirant(s), hence by the respondents, would militate against, the, valid possessions, of, the requisite educational qualification, upon, it emanating from, any, valid Institution, Board or University concerned, rather holding a valid

affiliation, from, the valid affiliating agency concerned, unless, the certificate(s) concerned, are demonstrated, to be forged or fictitious.

3. Consequently, there, is, merit, in, the extant writ petition, the same, is, allowed, and, the impugned order, is, set aside. No order as to costs. All pending applications are disposed of.