
(2010) 11 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 4029 of 2008

Jagdish Chand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Himachal Pradesh Kanungo Service Rules, 1951 — Rule 12, 5

Citation : (2010) 11 SHI CK 0064

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

Bench : Single Bench

Judgement

V.K. Sharma, J.—Since identical questions of law and facts are involved in these petitions, the same are being disposed of by a common judgment.

2. The grievance raised by the Petitioners precisely is that they and the private Respondents were initially appointed as Patwari. The next promotional post is that of Kanungo. A person working as Patwari is promoted as Kanungo only after he appears and qualifies the requisite examination prescribed in Chapter-2 of the Land Records Manual (commonly known as Kanungo Examination), as provided under Rule 5 of the Himachal Pradesh Kanungo's Service Rules, 1951 (in short "the Rules"), Annexure R-II, which is as under:

Educational and other qualifications of persons appointed to the service.

5.(i) No person other than a patwari shall be appointed to the service unless he has passed the matriculation Examination of a recognized university, or the Senior Oxford or Senior Cambridge Local Examination or such examination as are treated by the recognized universities of the Union of India as equivalent to its Matriculation Examination. Provided that preference shall be given to the candidates possessing the best educational qualifications.

(ii) No Patwari shall be appointed to the service unless he has passed the examination prescribed in Chapter 2 of the Land Records Manual and has three years permanent field service as such, including officiating service provided that

the periods of officiating service of less than two months duration will not be counted towards the completion of this period of three years. No other person shall be appointed to the service unless he has qualified himself by passing the examination and undergoing the training prescribed in Chapter 2 of the Land Records Manual.

(iii) Deleted.

Provided that the Financial Commissioner may, for special reasons, to be recorded in writing waive any of the provisions of this rule.

Note: Any recommendation, that any of the provisions of rule 5 be waived shall be made by the Collector to the Financial Commissioner through the Director of Land Records or direct to the Financial Commissioner by the Director of Land Records.

3. According to the Petitioners, they had qualified the Kanungo Examination held in June 1982, as below:

Sr. No. Case number Name of the Petitioner Month and year of passing the examination

1. CWP(T) No. 4029 of 2008 (O.A. No. 187 of 1997) Shri Jagdish Chand June, 1982, Annexure A-2.

2. CWP(T) No. 4030 of 2008 (O.A. No. 189 of 1997 Shri Dulo Ram April, 1980

3. CWP(T) No. 6394 of 2008 (O.A. No. 71 of 1999) Shri Prem Lal May, 1984, Annexure A-1.

4. It is further averred that as the petitioners had qualified the Kanungo Examination, they were promoted as such on different dates, as follows:

Sr. No. Case number Name of the Petitioner Date of promotion

1. CWP(T) No. 4029 of 2008 (O.A. No. 187 of 1997) Shri Jagdish Chand 26.11.1986, Annexure A-4.

2. CWP(T) No. 4030 of 2008 (O.A. No. 189 of 1997 Shri Dulo Ram 05.01.1989, Annexure A-2.

3. CWP(T) No. 6394 of 2008 (O.A. No. 71 of 1999) Shri Prem Lal 18.03.1991, Annexure A-2.

5. The further case of the Petitioners is that the private Respondents in all the three petitions qualified the Kanungo Examination much later than the Petitioners and were promoted as Kanungo subsequent to them on different dates during the years 1986 to 1996. However, in the joint seniority list of Kanungos circulated finally on 30.6.1997, Annexure A-8, they have been shown senior to the Petitioners on the basis of their seniority in the lower cadre of Patwari, in utter disregard of Rule 12 of the Rules, which is extracted below:

Seniority of members of the service. 5.(i) 12. The seniority of the members of the service shall be determined by the date of their substantive appointment provided that if two or more members are appointed substantively on the same date their seniority shall be determined according to the orders in which their names are entered by the Director of Land Records in the list of Kanungos candidate maintained in his office.

6. On these averments the petitions have been filed on the following identical prayers:

i) That the impugned final seniority list of Settlement Kanungo's issued on 30.6.1997 vide Annexure A-8, may kindly be quashed and set-aside.

ii) That the Respondents may be directed to quash the seniority assigned to the Respondents 5 to 20, over and above the applicant in the final seniority list dated 30.6.1997 (A-8) respectively.

iii) That the Respondents may be directed to re-draw the final seniority list of Settlement Kanungo's, on the basis of the date of joining/length of service as Kanungo's, forthwith.

7. In the identical replies on behalf of Respondents No. 1 to 4, the following stand has been taken:

All these Respondents were appointed as Patwaris later than the Petitioner without taking into consideration their qualifying of Patwari Examination. The appointments of all these persons who were not eligible for appointment as Patwaris were appointed as such by ignoring the qualified and eligible persons. Thus in the appeals preferred by these Respondents before the Divisional Commissioner, the said seniority lists were quashed and were ordered to be re-determined strictly in accordance with the provisions of Recruitment and Promotion Rules for the posts of Patwaris. The Respondents who qualified the Patwari Examination prior to the Petitioner were given proper placement in the seniority list of Patwaris. Further their case for fixation of seniority and promotion to the post of Kanungos were reviewed keeping in view the Kanungo Service Rules, 1951 (Annexure-R/II). As a result of the review of the seniority list of Kanungos the Respondents No. 5 to 20 were placed senior to the Petitioner without disturbing their date of appointments as Kanungos. 6(xviii) It is true that the Respondents No. 5 to 20 were promoted to the posts of Kanungos later than the Petitioner, but their claims for promotion from the date earlier than the date of promotion of the Petitioner has not been conceded as already submitted in the Preliminary Submissions, although their names appear higher the seniority list.

8. In view of the pleadings on behalf of the parties and the case law relied upon on behalf of the Petitioners referred to here-in-below, it will be open to Petitioners to approach first Respondent by filing representations along with copy of this judgment within one month from today and the said Respondent shall look into the matter and take appropriate decision in accordance with law and justice,

particularly, taking into consideration Rules 5 and 12 of the Rules, within next three months, .

9. While deciding the representations Respondent No. 1 shall also take into consideration the law laid down by the Hon''ble Supreme Court in the following judgments:

1. Yashbir Singh and Others Vs. Union of India (UOI) and Others, relevant portion whereof is extracted below:

Seniority ordinarily reflects length of service in a particular cadre or grade. It is generally regulated by service rules or in the absence of rules by executive instructions. By and large, such rules provide for determining seniority with reference to the date of appointment but there are instances where rules provide for determining seniority with reference to date of confirmation. Normally, when a person is promoted or placed in a higher grade his seniority is determined with reference to the date of such promotion or placement unless the relevant rules provide to the contrary. Seniority in the lower grade has no meaning for determining seniority in the higher grade except for determining inter se seniority of promotees.

2. R. Prabha Devi and Others Vs. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others, relevant portion whereof is as under:

The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade-I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post.

10. Needless to say that consequential benefits, if any, shall ensue the decision on the representations. In order to enable Respondent No. 1 to consider the matter properly, it is directed that the Petitioners shall supply copies of the aforesaid judgments along with their representations.

11. The writ petitions are disposed of in the above terms, so also the pending

application(s), if any.