
(2010) 06 SHI CK 0043
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 5011 of 2008

Joginder Singh Rana

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 2 ShimLC 527

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Material facts necessary for adjudication of this petition are that the Petitioner was appointed as Clerk by the Management of National College, Amb on 1.8.1972. He was promoted as Head Clerk with effect from 1.4.1977. The post of Head Clerk was re-designated as Superintendent Grade-II on the revision of pay-scales on 1.1.1986. Petitioner was granted the pay-scale of Rs. 2000-3500 and the same stood approved by the Director of Education on 5.11.1992. The State Government took a decision to take over National College, Amb vide Notification dated 27.6.1997 with effect from 18.6.1997. The services of the Lecturers and ministerial staff were to be taken over as per Rules notified on 25.8.1994. The College was renamed as Maharana Pratap Government Degree College, Amb. The Petitioner and similarly situate persons continued to discharge their duties in the Government College. The Respondent/ State constituted a Committee comprising of Joint Secretary (Education), Joint Director, Administrator of National College, Amb and Joint Controller (Finance) Department of Education to complete all the codal formalities required for smooth functioning of the College and also for taking over the services of the staff of privately managed College. The Committee visited the college from 21.10.1997 to 23.10.1997. The Administrator of National College, Amb sought option from the Petitioner to be absorbed in Government College vide Annexure A-8, dated 22.10.1997. The Petitioner gave his willingness. The State Government created 20 posts of various categories of staff for Maharana Pratap

Government Degree College, Amb including one post of Superintendent Grade-II in the pay-scale of Rs. 2000-3500. However, vide Notification dated 23.3.1998 the services of the Petitioner were taken over as Senior Assistant instead of Superintendent Grade-II.

2. Mr. D.P. Gupta, appearing vice Mr. K.D. Shreedhar, learned Counsel for the Petitioner has strenuously argued that the action of the Respondents of taking over the services of the Petitioner as Senior Assistant instead of Superintendent Grade-II is illegal and arbitrary, thus violative of Articles 14 and 16 of the Constitution of India. He then contended that the services of the Petitioner were required to be taken over as Superintendent Grade-II since he started discharging the duties of this posts with effect from 1.1.1986. Mr. P.M. Negi, learned Deputy Advocate General has supported the decision taken by the State Government, i.e. Annexure A-10, dated 23.3.1998.

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

4. The Petitioner was appointed on 1.8.1972 as Clerk. He was promoted as Head Clerk on 1.4.1977. The post of Head Clerk was re-designated as Superintendent Grade-II in the pay-scale of Rs. 2000-3500. This pay-scale was approved by the Director of Education on 5.11.1992. The private College was taken over by the State Government vide Notification dated 27.6.1997 with effect from 18.6.1997. It will be apt at this stage to extract para 9(1) of the Notification, dated 25.8.1994. It reads thus:

(9) All members (including Principal) of the staff will be treated as fresh entrants and they will be placed at the bottom of the seniority list, maintained in respect of Government employees in their respective cadre from the date of taking over, provided, in the case of Ministerial staff:

(i) a person with 25 years experience may be absorbed as Superintendent Grade-II.

(ii) a person with 17 years of service as clerk may be absorbed as Senior Assistant.

(iii) a person with 10 years experience as clerk may be absorbed as junior assistant.

(iv) and having 5 years experience may be absorbed as senior clerk and less than 5 years, as clerk.

5. It is evident from Annexure A-7, the list handed over by the Administrator of National College, Amb to the State Government that the Petitioner's designation has been shown as Superintendent Grade-II. There is also a remark in Annexure A-7 that the Petitioner had completed more than 25 years service in the college at the time when the inspection was carried out by the Committee constituted by the State Government. The Committee visited the college from 21.10.1997 to

23.10.1997. His option was sought vide Annexure A-8 for being absorbed against the post of Superintendent Grade-II. However, he has been absorbed as Senior Assistant instead of Superintendent Grade-II.

6. The stand of the Respondent-State in reply is that the post of Superintendent Grade-II is a promotional post and the Petitioner could not be absorbed directly as Superintendent Grade-II. There is no merit in this ground. The Petitioner had been working for all intents and purposes as Superintendent Grade-II with effect from 1.1.1986 in the pay-scale of Rs. 2000-3500 which was also approved by the Director of Education on 5.11.1992. His name was also reflected in the prospectus and the nomenclature shown was Superintendent Grade-II. The other ground taken by the Respondent-State to deny the Petitioner absorption as Superintendent Grade-II is that he does not have 25 years experience in the private college. The Petitioner was appointed as Clerk on 1.8.1972 and had completed 24 years 10 months and 17 days on the date of taking over the college, i.e. 18.6.1997. However, when the Committee visited the college to complete the codal formalities from 21.10.1997 to 23.10.1997, the Petitioner had already completed 25 years of service. This remark finds mention against his name in Annexure A-7. The Court is of the considered view that an incumbent who has worked for more than 24 years 10 months and 17 days, his case was required to be dealt with sympathetically, even if the cut off date is hypothetically treated to be as 18.6.1997. There is arbitrariness in Clause 9 of the Notification dated 25.8.1994, i.e. Annexure A-6 so far as the manner in which the services of the ministerial staff are to be taken over. According to Clause 9, a person with 25 years service as Clerk is to be absorbed as Superintendent Grade-II, a person with 17 years service as Clerk was to be absorbed as Senior Assistant, a person with 10 years service as Clerk was to be absorbed as Junior Assistant, a person with 5 years service as Clerk was to be absorbed as Senior Clerk and a person with less than 5 years services as Clerk. The Respondent-State could not obliterate the service of 14 years, the Petitioner has rendered on a higher post of Superintendent Grade-II. Rather Clause 9 has worked to the disadvantage of the Petitioner. There are different tiers of ministerial staff. A person is initially appointed as Clerk, thereafter as Junior Assistant, Senior Assistant, Superintendent Grade-II and Superintendent Grade-I.

7. Now as per Clause 9 of the Notification, a person who has worked only as Clerk for 25 years is likely to be absorbed as Superintendent Grade-II and a person like Petitioner who has worked for more than 14 years as Superintendent Grade-II is not to be absorbed as Superintendent Grade-II. The Respondent-State has failed to take into consideration the hierarchy of the posts as noticed above while framing Clause 9 of the Notification dated 25.8.1994. The Notification should have been framed on the basis of the experience gained by an incumbent either as Clerk, Junior Assistant, Senior Assistant, Superintendent Grade-II and Superintendent Grade-I and these persons are required to be considered against the corresponding post(s) instead of treating all the persons as Clerks.

8. In view of the observations made hereinabove, the petition is allowed. Annexure A-10 dated 23.3.1998 is quashed and set aside to the extent whereby the Petitioner has been absorbed as Senior Assistant instead of Superintendent Grade-II. It is declared that the Petitioner will be deemed to have been absorbed as Superintendent Grade-II with all consequential benefits including pensionary benefits. There will be no order as to costs.