
(2011) 03 SHI CK 0065
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 12130 of 2008

Kameshwar Singh Dhaulta and Others	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Himachal Pradesh Administrative Service Rules, 1973 — Rule 7, 7(1)

Citation : (2011) 3 ShimLC 404

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This petition has been filed by the three Petitioners all of whom at the time of filing of the petition were working as Deputy and Joint Registrars in the Department of Cooperation in the State. Their grievance is that they have wrongly not being considered for appointment to the duty post in the H.P. Administrative Service (HAS). The stand of the Respondent is that the Petitioners do not fall in the feeder category of posts which have to be taken into consideration for appointment to the HAS.

2. To understand the controversy, it would be apposite to refer to Rule 7 of the Himachal Pradesh Administrative Service Rules, which reads as follows:

(1) Appointment to the duty posts in the service (Himachal Pradesh Administrative Service) shall be made in the following manner:

(a) 50% by direct recruitment;

(b) 22% from Tehsildars who are substantively borne on the cadre of Tehsildars of Revenue Department and have two years continuous service in the grade both officiating and substantive;

(c) 28% from the substantive holders of the following categories of posts who have two years continuous service in the grade both officiating and substantive;-

- (1) Block Development Officer.
- (2) District Panchayat Officer.
- (3) District Industries Officer.
- (4) Section Officers of Himachal Pradesh Secretariat.
- (5) District Welfare-cum-Probation Officers.
- (6) Assistant Registrar, Cooperative Societies.
- (7) Excise and Taxation officer of the Departmental cadre.
- (8) Assistant Chief Electoral Officers/Electoral Officers.
- (9) District Employment Officers.
- (10) District Treasury Officers.
- (11) District Food and Supplies Controller.
- (12) Assistant Controller Weights and Measures.
- (13) Principal, Panchayati Raj Training Institutes; Provided that the incumbents of the posts of Assistant District Industries Officer, Superintendent of the Subordinate Offices, Superintendents of the High Court and the Courts subordinate thereto, Assistant Director of Welfare, Assistant Development Commissioner, Private Secretary to Governor, H.P. and Superintendents (New Section Officers) Governor's Secretariat, H.P. holding such posts substantively immediately before the commencement of these rules and have two years continuous service in the grade both officiating and substantive, shall also be eligible for appointment to the service.

3. According to the State since the present Petitioners are not holding the post of Assistant Registrar Cooperative Societies and have already been promoted to higher posts they are not eligible for being considered for appointment to the HAS.

4. Shri Ajay Mohan Goel, learned Counsel for the Petitioners, has made a three fold argument. His first submission is that the rule refers to the categories of posts and not to the actual post themselves and therefore, when the category referred to is Assistant Registrar Cooperative Societies it would include the post(s) higher to it. His second submission is that the State is estopped from taking such a plea since in the previous years the State has made appointments to the HAS by selecting officers not covered in the categories mentioned in Rule 7(1)(c) but has appointed to the HAS officers holding ranks higher than those reflected in this rule. The third submission of Shri Ajay Mohan Goel, Advocate, is that the State should have sought an option from the Petitioners and other persons before they were promoted in the hierarchy in the department and in case the persons had opted to hold promotion in their own departments it could

have been said that they have exercised their options not to be appointed in the HAS. His last contention is that if the interpretation given by the State is accepted then it will lead to an anomalous situation and the persons who are less competent or are juniors would be appointed to the HAS and the persons holding higher posts and more competent would be denied appointment to the HAS.

5. On the other hand, Shri Vivek Thakur, learned Additional Advocate General appearing on behalf of the State submits that the rule is specific and only the persons manning the posts mentioned in Rule 7 are eligible for appointment to the HAS and no other person can be considered for such appointment. His next contention is that the persons who were promoted in their own departments and willingly accepted such promotions must be deemed to have exercised an option that they may not be considered for appointment to the HAS. He also urges that no option is required to be taken from an officer in view of the fact that under the Rules an officer is only appointed to the HAS and there is no promotion to the HAS. He also submits that the question of any post being higher or lower does not arise. Lastly Shri Vivek Thakur, learned Addl. Advocate General contends that there can be no estoppel against the statute and even if the past practice was erroneous or against the Rules the State Government cannot be debarred from correcting an erroneous practice.

6. As far as the rule itself is concerned, it is apparent that appointment to the administrative service is not a promotion. It is an appointment to a service. The person appointed to such a service is, however, asked to man post(s) which are generally posts in the higher category and this factor will have to be kept in mind while deciding the petition. The rule contemplates that 50% posts shall be filled in by direct recruitment; 22% from Tehsildars and 28% from various categories of posts where the persons to be appointed must have two years service in the post. Clause (c) of sub Rule 1 refers to the post of Assistant Registrar, Cooperative Societies. It is not disputed that the Petitioners at one time or the other held such post. They were, however, promoted to the higher post(s) of Deputy Registrar and Joint Registrar over a period of time. Then came the issue of appointment of persons from the Cooperation department to the HAS. The Petitioners' claim is that they should have been considered and their claim has been negatived on the ground that since they are no longer holding the post of Assistant Registrar Cooperative Societies they are not eligible for being considered for the said post. It is also not disputed before me that prior to this exercise, which is under challenge in this petition, persons who had been appointed to higher posts were considered for HAS. It has, however, been urged on behalf of the State that such persons were considered erroneously and the State is now correcting the bad old practice. It has secondly been urged that instructions were issued in the year 2000 that persons who completed their period of probation in the higher post shall cease to hold lien on the substantive post and therefore persons like the Petitioners who had successfully completed the period of probation on the higher post could not be considered to be substantive holders of the post in the lower categories.

7. In my considered view the instruction of 2000 does not in any way further the cause of the State. It is a settled position of service jurisprudence that when a person successfully completes probation on a higher post he loses his lien on the lower post. No clarificatory instructions can change this very basic principle of service jurisprudence. A person can hold lien on a post on a lower post only till the time when he is holding a higher or another post in an officiating or temporary capacity. As soon as his appointment is formalized in the higher or other equivalent post, which obviously include completion of probation, he will cease to hold lien on the lower post.

8. It is obvious that prior to the impugned action the State was always considering the officials holding higher ranks for appointment to the HAS. There is strength in the argument of Shri Ajay Mohan Goel, Advocate, that in case any other interpretation is given it would lead to anomalous situation. For example, we can take the case of two persons appointed as Assistant Registrars Cooperative Societies on the same date. Person (A) is senior and (B) is junior. Person (A) is also more meritorious and is promoted to the next higher post of Dy. Registrar whereas person (B) gets left behind. If the argument of the State is accepted then when the post in the HAS is to be filled in from Assistant Registrars (B) will be appointed and (A) will have no chance to be appointed to the HAS. Resultantly, (B) who was otherwise less meritorious will effectively become senior to (A). It may be true that when persons are recruited to the HAS they are not promoted but are appointed but as observed earlier the fact remains that after such appointment the said person will man a post which is much senior to that of a Deputy Registrar or Joint Registrar. It is for this reason alone that persons who have been promoted in their own department are still willing to join the administrative service. It would be a travesty of justice if persons who are junior or who are less competent and have been left behind are appointed to the administrative service whereas persons who are more senior, more meritorious and have gained promotion in their own departments on merit are denied this opportunity.

9. The aforesaid reasoning also takes care of the contention raised on behalf of the State that no option was required. If the State wants that persons who are promoted in their own department should forgo their claim to be appointed to the HAS then they must seek an option from such persons and must make clear to them that in case they choose to seek appointment in their own department they will forgo their right to be considered for promotion in the HAS in terms of Rule 7 thereof. It is only if such an option is given and an employee agrees to be promoted in his department then it can be said that he has forgone his right to be considered for appointment to the HAS.

10. In view of the above discussion, I am of the considered view that the Petitioners were required to be considered for promotion to the HAS at the relevant time. Therefore, the Respondents are directed to reconstitute a fresh Departmental Promotion Committee wherein names of the Petitioners, if they are

otherwise eligible, shall also be taken into consideration for appointment to the HAS.

11. The petition is allowed in the aforesaid terms. No costs.