
(1994) 01 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 343 of 1990

Kanshi Ram Verma

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 14-01-1994

Acts Referred:

High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1975 — Rule 10(1), 12
High Court of Himachal Pradesh, Officers and Servants (Premature Retirement) Rules, 1978 — Rule 3(2)

Citation : (1994) 2 ShimLC 7

Hon'ble Judges : Kamlesh Sharma, J; Davinder Gupta, J

Bench : Division Bench

Advocate : Shrawan Dogra, for the Appellant; G.D. Verma, A.A.G. for Respondent No. 1, S.S. Kanwar, for Respondent No. 2, M.S. Chandel and A.K. Goel, for Respondents No. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—In this writ petition, the Petitioner has assailed his confirmation as Reader with effect from 1-4-1987 which was ordered by notification dated 14-5-1987 (Annexure P-2). His case, in nut shell, is that he stood confirmed on the equivalent post of Superintendent-cum-Leave Reserve Reader with effect from 19-7-1983 by office order dated 10-12-1985 (Annexure P-I), as such, he had a right to be considered for promotion to the next post of Assistant Registrar with effect from 2-4-1990 when Respondent No. 4, Sh. G.L. Arora was promoted to the post of Assistant Registrar. He has also asked for all the consequential benefits of the post of Assistant Registrar with effect from 2-4-1990. It may be pointed out that presently the Petitioner is not in the service of the High Court as he had been permitted to retire prematurely under Sub-Rule (2) of Rule 3 of the High Court of Himachal Pradesh, Officers and Servants (Premature Retirement) Rules, 1978, with effect from 31-10-19(sic)3 vide notification issued in August, 1993.

2. Originally the petition was filed against Respondents No. 1 to 3 on 11-5-1990. Lateron, by our order dated 27-11-1992, it was permitted to be amended to meet the subsequent developments and Respondents No. 4 and 5 were also permitted to be added. Thereafter, the parties have exchanged reply-affidavit(s) and rejoinder(s).

3. We have heard the learned Counsel for the parties and gone through the record of the case produced by Respondent No. 2 (High Court). The facts, in brief, which emerge from the pleadings of the parties are that the post of Superintendent-cum-Leave Reserve Reader was created temporarily vide notification dated 20-6-1972 (Annexure R-1). Lateron, it was converted into a permanent post vide notification dated 25-9-1978 (Annexure R-1/A). The first incumbent to man this post was Sh. Mehar Singh. On his appointment as Reader, this post fell vacant and Sh. Padam Chand, Officiating Assistant, was promoted and posted against the post vide notification dated 9-3-1977 (Annexure R-2). He was confirmed against the post with effect from 4-9-1979 vide notification dated 10-9-1979 (Annexure R-2/A). Thereafter, on his being selected for appointment as Reader on deputation with Jindra Lal Commission of Enquiry, he was relieved on 18-11-1978 vide office order dated 18-11-1978 (Annexure R-3). Thereafter, Sh. Madan Lal Gupta was promoted and appointed as Superintendent-cum-Leave Reserve Reader vide office order dated 30-11-1978 and he continued working in the post till 16-5-1979 when he was appointed as Reader on which post he was lateron confirmed on 19-7-1983. It seems thereafter, in his place, Sh. Ram Lal Sharma was appointed as Superintendent-cum-Leave Reserve Reader on 10-5-1979 on the recommendations of the D.P.C.

4. The Petitioner, who joined the service of the High Court as Assistant on 4-9-1971 was posted as Personal Assistant to the Registrar on ad-hoc basis vide order dated 20-11-1978. He was promoted to the post of Private Secretary vide order dated 15-1-1979 (Annexure R-4) in which post he worked upto 30-11-1979 and during this period availed commuted leave of seventy-five days. On his joining after availing the leave, he filed a representation dated 10-9-1979 (Annexure R-5) that due to his ill-health it was not possible for him to perform the duties of Private Secretary effectively, therefore, he submitted that he might be adjusted against the post of either Reader or Superintendent. He also undertook that on reversion of Sh. Padam Chand, he would revert to his substantive post of Assistant. The prayer of the Petitioner was accepted and vide office order dated 22-11-1979 (Annexure R-6), the Hon"ble the Chief Justice, in exercise of the powers under Rule 12 of the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct) Rules, 1975 (hereinafter called "the Rules") ordered the inter-se transfers of the Petitioner and Sh. Ram Lal Sharma with effect from 1-12-1979. It was made clear in the office order that the transfers were subject to the condition that in case Sh. Padam Chand, substantive holder of the post of Superintendent-cum-Leave Reserve Reader, who was on deputation with Jindra Lal Commission, reverts to his parent post, the posting of Sh. Ram Lal Sharma as Private Secretary will not be effected,

meaning thereby that the Petitioner was to revert to his substantive post of Selection Grade Assistant.

5. Lateron, the High Court decided to fill in the post of Seperinten-dent-cum-Leave Reserve Reader from the open market and issued office order dated 9-5-1980 whereby the appointment of the Petitioner as Superintendent-cum-Leave Reserve Reader was termed as ad-hoc for three months and the post was advertised for making recruitment. The Petitioner again represented on 15-5-1980 (Annexure R-7) requesting that the post may not be filled in by direct recruitment. This representation of the Petitioner was considered and accepted on 4-9-1980 by the then Hon"ble the Chief Justice. The order is as under:

(b) Sh. Kanshi Ram Verma, may be permitted to continue as Superintendent-cum-Leave Reserve Reader without any break "A" in his service as such and appointment through mode (B) may be resorted to for the next vacancy that may fall vacant.

Submitted for orders, please.

Sd /-Registrar 3-9-1980.

Hon"ble the Chief Justice.

As at "A" final decision about the mode of filling the next vacancy when it occurs will be taken at that time.

Sd /- Chief Justice 4-9-1980.

6. Thereafter, the Petitioner continued working as Superintendent-cum-Leave Reserve Reader till he was appointed temporarily as Reader vide office order dated 5-8-1982 (Annexure R-10) against the post which had fallen vacant consequent upon the compulsory retirement of Sh. Mehar Singh. In place of the Petitioner, Respondent No. 4, Sh. G.L. Arora, was promoted as Superintendent-cum-Leave Reserve Reader vide notification dated 8-11-1992 (Annexure R-4/C). In these circumstances, on his reversion from Jindra Lal Commission, Sh. Padam Chand was posted as Reader. He alongwith Sh. Madan Lal Gupta, was confirmed against the vacant post of Reader with effect from 19-7-1983 vide notification dated 23-7-1983 (Annexure R-8). By anOrs. notification of the same day, the Petitioner was put on probation against the vacant post of Reader with effect from 19-7-1983 whereas by third order of the same date, Respondent No. 4, Sh. G.L. Arora, who was officiating as Superintendent-cum-Leave Reserve Reader, was appointed as Superintendent on probation with effect from 19-7-1983. This again gave cause of action to the Petitioner to make a representation on 10-10-1983 (Annexure P-II) requesting that as he had put in 4 years 6 months in the joint cadre of Private Secretary, Reader, Superintendent-cum-Leave Reserve Reader and Superintendent, he might be confirmed as Superintendent-cum-Leave Reserve Reader with effect from 19-7-1983 when this post had fallen vacant on the confirmation of Sh. Padam Chand as Reader. He also prayed that he be assigned seniority in the joint cadre of Readers, Private Secretaries and

Superintendents. This representation was rejected by the then Hon"ble the Chief Justice on 15-6-1984 (Annexure R-14) and the Petitioner was conveyed the decision on 19-6-1984 (Annexure R-14/A).

7. On the acceptance of the appeal of Sh. Mehar Singh Reader and his re-instatement by order dated 16-8-1985, a show cause notice (Annexure R-16) was given to the Petitioner to revise the order putting him on probation against the post of Reader and treat his appointment as Reader against a temporal y post. The Petitioner showed cause on 22-11-1985 (Annexure R-17), again repeating his request that he might be confirmed as Superintendent-cum-Leave Reserve Reader with effect from 19-7-1983 when this post had fallen vacant. Ultimately, it seems the request of the Petitioner found favour and he was ordered to be confirmed against the post of Superintendent-cum-Leave Reserve Reader with effect from 19-7-1985 by the then Hon"ble the Chief Justice on 8-12-1985. The office order of his confirmation is dated 10-12-1985 (Annexure R-II). By the same order, Respondent No. 3, Sh. K.S. Kanwar was confirmed as Deputy Superintendent with effect from 7-5-1983.

8. Thereafter, on his request, the Petitioner was sent on deputation to the H.P. State Administrative Tribunal vide office order dated 11-11-1986 (Annexure R-12). While he was on deputation, he was confirmed as Reader with effect from 1-4-1987 vide office order dated 14-5-1987 (Annexure P-2). By the same order, Respondent No. 3, Sh. K.S. Kanwar was confirmed as Superintendent-cum-Leave Reserve Reader with effect from 1-4-1987. The Petitioner challenged this office order by his representation dated 18-5-1987 (Annexure P-3) requesting for withdrawal of the said order in view of his earlier confirmation as Superintendent-cum-Leave Reserve Reader with effect from 19-7-1983. In reply dated 28-4-1989 (Annexure P-4) the Petitioner was asked to explain:

- (a) What disadvantage that he gets from the order of his confirmation as Reader?
- (b) What is the advantage if he is not so confirmed on the post of Reader?

9. The Petitioner sent his explanation on 2-5-1989 (Annexure P-5) stating that the scale of both the posts of Superintendent-cum-Leave Reserve Reader and Reader is the same and these posts are inter-change-able and inter-transferable, as such, his subsequent confirmation as Reader with effect from 1-4-1987 will make him junior to all those who had been confirmed after his earlier confirmation against the post of Superintendent-cum-Leave Reserve Reader on 19-7-1983. Having failed to get any reply to his representation, the Petitioner filed the present writ petition on 1-5-1990.

10. In the meantime, Respondent No. 4, Sh. G.L. Arora who promoted as Assistant Registrar vide office order dated 2-4-1990 (Annexure P-17) purely on ad-hoc basis. It was made clear in the notification that such appointment will not confer any right on him to claim the post which may be filled in subsequently in accordance with the Rules. Similarly, Respondent No. 3, Sh. K.S. Kanwar was also appointed as Assistant Registrar on purely ad-hoc basis with effect from

1-8-1990 till 30-9-1990 vide notification dated 31-7-1990 (Annexure P-18), though it was subject to the result of the present writ petition. His appointment was further extended till he was appointed on temporary basis vide office order dated 4-12-1990 (Annexure P-18/2) but subject to the condition initially put. Both Respondent No. 3 and Respondent No. 4, S/Sh. K.S. Kanwar and G.L. Arora have now been confirmed as Assistant Registrars vide office order dated 5-1-1994, but subject to the decision of the present writ petition.

11. From the above stated facts, it is clear that on the post of Super-intendent-cum-Leave Reserve Reader/Superintendent, Respondent No. 4 and Respondent No. 3 were appointed much later than the Petitioner. The Petitioner started working against the post of Superintendent-cum-Leave Reserve Reader on 1-12-1979, on his posting as such vide office order dated 22-11-1979 (Annexure R-6) and confirmed against the post with effect from 19-7-1983 vide office order dated 14-5-1987 (Annexure P-2). Respondent No. 4, Sh. G.L. Arora was promoted to the post of Superintendent-cum-Leave Reserve Reader with effect from 18-10-1982 (Annexure R-4/C), put on probation against the post of Superintendent with effect from 19-7-1983 (Annexure R-4/D) and confirmed as Superintendent with effect from 19-7-1985 (Annexure R-4/E). Respondent No. 3, Sh. K.S. Kanwar was confirmed as Deputy Superintendent with effect from 7-5-1983 and promoted to the post of Superintendent-cum-Leave Reserve Reader with effect from 12-10-1983 and confirmed as such with effect from 1-4-1987.

12. It is not in dispute that the post of Superintendent-cum-Leave Reserve Reader is a solitary and stray post which was created on 28-6-1972 and thereafter made permanent on 29-9-1978. Before this post was put in the cadre, there was no specific mode and method to fill it in. By practice appointment used to be made from amongst the Senior Assistants. When the Petitioner was appointed by transfer under Rule 12 of the Rules, it became clear that the post of Superintendent-cum-Leave Reserve Reader was considered equivalent as well as inter-changeable and inter-transferable with the post of Private Secretary, Reader and Superintendent, being of same scale. However, the appointment of the Petitioner by way of transfer was made regular when the then Hon"ble the Chief Justice by his order dated 3-9-1980 permitted him to continue without any break in his service and the decision on the mode of appointment to the post was deferred till the next vacancy occurred. By this order of the Hon"ble the Chief Justice efforts to fill up the post by direct recruitment were also shelved. Thereafter, on 24-8-1982, again the then Hon"ble the Chief Justice took the decision that the method for appointment to the post of Superintendent-cum-Leave Reserve Reader should be that of Superintendent and not Reader.

13. Despite the post of Superintendent-cum-Leave Reserve Reader being in the same scale, inter-changeable inter-transferable, it has been considered to be distinct from the cadre of Readers and Private Secretaries and seniority of each cadre has been maintained separately. The mode of appointment to this post is

that of Superintendent and its seniority is maintained in the cadre of Superintendents, apparently for the reason that its incumbent is required to discharge the functions and duties of the post of Superintendent for a longer period than of the post of Reader, which he discharges only when a Reader proceeds on leave.

14. The above stated position finds support from the order dated 15-6-1984 of the then Hon"ble the Chief Justice (Annexure R-14). The relevant portion of the said decision is as under:

The cadre of Reader, Superintendent and Private Secretary are being treated as distinct and seniority in each cadre is being separately maintained. A specific order was passed by the then Hon"ble the Chief Justice on July 1, 1978 that the cadres of Reader, Superintendent and Private Secretary should be treated as distinct and seniority should be decided accordingly. Apart from the directions of the then Hon"ble the Chief Justice in the aforesaid terms, Rule 10(b)(1) of the Himachal Pradesh High Court (Recruitment, Conditions of Service and Conduct) Rules, 1975 lays down that seniority shall be determined separately for each category of posts carrying the same grade of pay. In view of the aforesaid position, seniority is being determined separately in the cadres of Reader, Superintendent and Private Secretary. Separate seniority lists for the said cadres have been prepared and circulated vide letter dated March 26/28, 1980. It would thus appear that though the three posts carry the same pay-scale and are interchangeable that is to say, an official holding a post in one cadre is liable to be transferred and posted in a post borne in anOrs. cadre for administrative convenience, each cadre is treated as distinct and separate and seniority is computed on cadre basis. An official belonging to one cadre, even though he is discharging duties and functions in a post belonging to anOrs. cadre, continues to be treated as belonging to the cadre to which he originally belongs and his seniority is maintained in the original cadre. The pay and allowances also continue to be drawn by him as if he is occupying the post in his own cadre.

The post of Superintendent-cum-Leave Reserve Reader is an isolated post. The Himachal Pradesh High Court (Recruitment, Conditions of Service and Conduct) Rules, 1975 do not lay down the mode and conditions of recruitment to the said post which appears to have been created after the Rules were first enacted. However, under an Order made on August 24, 1982 by the then Hon"ble the Chief Justice, it was directed that the method for appointment should be that of Superintendent and not of Reader. When Mr. Verma was appointed as Reader on August 5, 1982, the vacancy in the post of Superintendent-cum- Leave Reserve Reader was filled in by adopting the method indicated in the above order of the then Hon"ble the Chief Justice. As the designation of the post as well as the practical experience shows, the person appointed to the post of Superintendent-cum-Leave Reserve Reader is required to discharge functions and duties in the post of Superintendent for a longer period then in the post of Reader. The incumbent will be required to perform the functions and duties of Reader only

when a Reader proceeds on leave and leave arrangement is required to be made. Under the circumstances, it would be just, fair and proper to maintain the seniority of the incumbent of the post of Superintendent-cum-Leave Reserve Reader in the cadre of Superintendent.

15. By this order, the representation of the Petitioner was rejected to the extent that, "... the period of service rendered in the post of Superintendent-cum-Leave Reserve Reader can be taken into account for the purposes of determining seniority in the cadre of Reader..." and not that he was required to be confirmed against the post of Superintendent-cum-Leave Reserve Reader, which was later on ordered by the then Hon'ble the Chief Justice on 8-12-1985.

16. From the above stated factual and legal position, it is clear that once the Petitioner was confirmed as Superintendent-cum-Leave Reserve Reader with effect from 19-7-1983, he could not be again confirmed in an Ors. cadre of Readers and that too against his wish as well as objection by way of persistent representations. His seniority as Superintendent-cum-Leave Reserve Reader was required to be maintained in the cadre of Superintendents. As already explained above, there is no substance in the submissions made on behalf of Respondent No. 2, Respondent No. 3 and Respondent No. 4 that the Petitioner was not regularly appointed to the post of Superintendent-cum-Leave Reserve Reader and was only posted to it. The then Hon'ble the Chief Justice though appointed him on the post by transfer in exercise of the powers under Rule 12 of the Rules, yet, regularised his appointment by his order dated 3-9-1980 and put an end to the controversy by allowing him to continue on the post. In the order dated 22-11-1979 (Annexure R-6) by which the appointment/posting was effected, it was made clear that he had abandoned his right of promotion to the post of Private Secretary to which he was initially appointed by office order dated 15-1-1979 (Annexure R-4). To the said post of Private Secretary, in place of the Petitioner, Sh. Ram Lal Sharma was appointed who continued working against the post till 20-6-1991 when he was promoted as Secretary. The appointment of the Petitioner to the post of Reader vide office order dated 23-7-1983 (Annexure R-10) when he had already put in 2 years and 8 months service as Superintendent-cum-Leave Reserve Reader was on temporary basis but when he was put on probation against the said post with effect from 19-7-1983 vide notification dated 23-7-1983 (Annexure R-10/A) he did protest against it. Though he continued working against the post of Reader, yet, his claim against the post of Superintendent-cum-Leave Reserve Reader was accepted and he was confirmed against the post with effect from 19-7-1983 by office order dated 10-12-1985 (Annexure R-II). Thereafter, the dispute arose when he was again confirmed as Reader with effect from a much later date, that is, 1-4-1987, to which he had objected to by filing representations and having failed to get relief from Respondent No. 2, he has filed the present writ petition.

17. In this backdrop, we have no hesitation to hold that despite the Petitioner having worked against the post of Reader, he was a lien holder of the post of

Superintendent-cum-Leave Reserve Reader and he could not be confirmed as a Reader without his consent which was neither asked nor given by volition. Therefore, the order dated 14-5-1987 confirming the Petitioner as Reader with effect from 1-4-1987 is bad and deserves to be quashed.

We do not find any substance in the arguments raised on behalf of Respondents No. 2 to 4 that there was a set practice that officials who were appointed and confirmed against the post of Superintendent-cum-Leave Reserve Reader were again appointed and confirmed against the post of Reader, as such, the confirmation of the Petitioner as Reader is justified. In this connection, they have given the examples of S/Shri Mehar Singh, Padam Chand, M.L. Gupta and Salig Ram Chauhan. A practice howsoever old and consistent cannot take the place of legal position, which is well settled that without the consent of an incumbent of a post in one cadre, his transfer and confirmation in Ors. cadre cannot be made. So far the present case is concerned, because of Rule 12 of the Rules, transfer/posting can be made inter-se the cadres of Superintendent Reader and Private Secretary but confirmation in one cadre creates a right in favour of the incumbent which cannot be taken away by practice.

18. The conclusion of the above discussion is that the Petitioner, despite his posting as Reader and retirement as such, continued to be lien holder of the post of Superintendent-cum-Leave Reserve Reader. Being senior to Respondents No. 3 and 4, as stated above, he had a right to be considered for promotion to the post of Assistant Registrar when Respondent No. 4, Sh. G.L. Arora, was promoted on 2-4-1990. It cannot be disputed that under the Rules amended from time to time, for the post of Assistant Registrar, the feeder category has been that of Superintendents, including the Superintendent-cum-Leave Reserve Reader. The educational qualifications were Graduation till the latest Rules of 1992 wherein this qualification has also been dispensed with. It is correct that the Petitioner is not a graduate but the educational qualification can be relaxed under the powers of relaxation which the competent authority, that is, the Hon'ble the Chief Justice does have under the Rules. The qualification for the post of Superintendent and Reader has also been Graduate and if the Petitioner could be appointed and confirmed as Superintendent-cum-Leave Reserve Reader/Reader, by relaxation of educational qualifications, he can be appointed as Assistant Registrar by giving such relaxation. There are a number of examples when relaxation in respect of educational qualifications has been given in order to remove the hardship to employees already in service. Even the appointment of Sh. K.S. Kanwar to the post of Superintendent-cum-Leave Reserve Reader as well as to the post of Assistant Registrar is in relaxation of the Rules besides earlier appointments of S/Shri Mehar Singh, M.L. Gupta and Salig Ram Chauhan to the posts of Superintendent-cum-Leave Reserve Reader as well as Reader. Therefore, we hold that being senior to Respondent No. 4, Sh. G.L. Arora, the Petitioner had a right to be considered for appointment to the post of Assistant Registrar when Respondent No. 4 was promoted on 2-4-1990 and thereafter on 1-8-1990 when Respondent No. 3, Sh. K.S. Kanwar was appointed as Assistant

Registrar. Since there is nothing adverse in the service record of the Petitioner, we are of the opinion that had his case been considered on 2-4-1990 he would have been promoted as Assistant Registrar and thereafter retired as such. But in view of the Petitioner retiring prematurely on 31-10-1993, he is only entitled to difference of salary of the post of Reader and that of Assistant Registrar from 2-4-1990 till he retired on 31-10-1993 and thereafter to difference of pensionary benefits of the post of Reader and that of Assistant Registrar.

19. In the facts and circumstances of this case, we do not consider it proper to disturb the appointment and confirmation of Respondents No. 4 and 3 to the post of Superintendent/Superintendent-cum-Leave Reserve Reader and thereafter promotion to the post of Assistant Registrar and direct Respondents No. 1 and 2 that for giving due promotion to the Petitioner to the post of Assistant Registrar and consequential benefits thereof, a supernumerary post of Assistant Registrar may be created for the period 2-4-1990 to 31-10-1993. We further direct Respondent No. 2 to consider the case of the Petitioner for his promotion to the said post and give all consequential benefits thereof to him within a period of four months. The writ petition is accordingly allowed. No order as to costs.