(1977) 06 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 20 of 1974

K.L. Beakta and Another APPELLANT

Vs

The State of H.P. etc. RESPONDENT

Date of Decision : 30-06-1977

Acts Referred:
Constitution of India, 1950 — Article 320(3)
Himachal Pradesh Tehsildari Rules, 1953 — Rule 5

Citation : (1977) 6 ILR HP 294

Hon'ble Judges : R.S. Pathak, C.J;C.R. Thakur, J

Bench : Division Bench

Advocate : P. Malhotra, H.S. Thakur and H.K. Bharadwaj, for the Appellant; A.G. and R.K. Gupta and B. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Thakur, J.—This Letters Patent appeal has been filed by K.L. Beakta and Mohan Lal, Naib Tehsildars, against the judgment and order of a learned single Judge rendered on April 22, 1974 whereby the writ petition filed by the Appellants was dismissed.

2. In the writ petition, the Petitioners challenged an order dated the 8th June, 1971 (Annexure C to the writ petition) under which 14 persons impleaded as Respondents in the writ petition, were exempted from the requirement of passing the departmental examination of Tehsildars, and an order of the same date (Annexure D to the writ petition) whereby 12 persons were promoted as officiating Tehsildars by way of a stop-gap arrangement. The Petitioners also prayed for a direction to the State of Himachal Pradesh, the Financial Commissioner and the Deputy Secretary (Revenue) to consider their cases for promotion to the posts of Tehsildar.

3. According to the Petitioners, they are Class A candidated Naib Tehsildars and were recruited on July 13, 1964. They plead that they had qualified in the examination of Tehilders, but Respondents Nos. 4 to 16 did not pass that

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kl-beakta-and-another-appellant-...

examination and, it is said, they were therefore not qualified to be promoted as Tehsildars in view of Rule 5(ii) of the Himachal Pradesh Tehsildari Rules, 1953 (hereinafter) called the Rules). It is pointed out that the Financial Commissioner could waive the qualification under the proviso to Rule 5(ii) but he had to record in writing the special reasons for doing so. It was also stated that the departmental promotion committee (shortly referred to as the D.P.C.) was constituted in 1959 by the Lt. Governor, the Union territory of Himachal Pradesh. In June, 1971, several vacancies to the posts of Tehsil-dar fell vacant and the Financial Commissioner, as the appointing authority, was to make promotions thereto. He exempted Respondents Nos.4 to 16 from qualifying in the departmental examination and their cases were considered in the D.P.C. It is alleged that D.P.C. was invalidly constituted, inasmuch as the Commissioner, who was intended to be a member of the D.P.C, did not participate and instead the Assistant Commissioner Shri K.N. Sharma, the Deputy Secretary Shri S.R. Mahantan, and the Under Secretary Shri K.C. Chauhan took part in the deliberations of the DPC. It is urged that the Financial Commissioner was influenced by the opinion of the invalidly constituted DPC, when the Rules require that he should form an independent opinion of his own. The Petitioners say that they had a right to be considered for promotion by a validly constituted DPC. It is also stated that the Financial Commissioner did not give any reasons for exempting Respondents Nos. 4 to 16 from appearing in the qualifying examination and that no special reasons existed for granting such exemption. It is also contended that the State Public Service Commission was not consulted, and therefore the order appointing the Respondents as Tehsildars was vitiated.

4. The Respondents Nos. 1 to 3 assert that the composition of the D.P.C. was valid. According to them, the D.P.C. consisted, in accordance with the Rules, of the Secretary Revenue (the Financial Commissioner) as Chairman, and one member as Head of Office. Shri K.N. Sharma was Assistant Commissioner and had been declared Head of Office. It is contended that exemption was granted by the Financial Commissioner on his own independent opinion. And that was also the case when he effected the promotions of Respondents Nos. 4 to 16. The special circumstances in which he granted exemption were recorded in writing in the proceedings of the D.P.C. over which the Financial Commissioner presided. It was necessary, it is said, to grant exemption in order to widen the field of choice to include officers of requisite experience and maturity. The proceedings of the D.P.C. did not materially influence the independent judgment of the Financial Commission. It was also stated that the promotions had to be made as a stop-gap arrangement, and these promotions would be regularised in consultation with the Public Service Commission, whose approval was being obtained in the matter. It was asserted that the Petitioners were considered for promotion, but their merit was found to be of inferior quality in comparison to the Respondents who, it is said, were all senior to the Petitioners and possessed a better record of service.

5. Some of the private Respondents filed their returns to the writ petition and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kl-beakta-and-another-appellant-…

substantially set out the same case as was contained in the return filed by the Respondents Nos. 1 to 3.

6. The learned single Judge dismissed the writ petition. He held that the Financial Commissioner had validly exempted the Respondents from appearing in the qualifying examination. He observed that 13 vacancies had to be filled up and only 14 qualified Naib-Tehsildars existed on the roster. In order to make an effective choice, the Financial Commissioner considered it necessary in the interest of public service to grant exemption to the Respondents taking into account their length of service, qualifications and experience. This power was exercised within the proviso to Rule 5(ii) of the Rules. On examining the report of the D.P.C. the learned single Judge concluded that the Financial Commissioner had merely taken the assistance of the members of the D.P.C. in sorting out the names of the officials and in making an assessment of their previous record, and applying his own mind to the matter he came to an independent decision on the question as to who should be promoted. The learned single Judge also observed that it was open to the Financial Commissioner to seek the assistance of an advisory body but when making the promotions it was his judgment which prevailed. On the point whether the D.P.C. was validly constituted, the learned single Judge took the view that as no provision had been made under Rule 5 for recruitment through a D.P.C., the point lost all relevance. It was also held that non-compliance with Article 320(3)(b) of the Constitution did not affect the validity of the appointments made by the Financial Commissioner. In dismissing the writ petition, the learned single Judge also observed that it was open to the Petitioners to prefer an appeal against the impugned orders, and not having done so they were not entitled to relief on the writ petition.

7. In this appeal, Learned Counsel for the Appellants has confined herself to four points only:

(a) The order granting exemption is not a speaking order as no reasons have been given, and therefore it is vitiated;

(b) The D.P.C. was not validly constituted and therefore the order of promotions was bad;

(c) The approval of the Public Service Commission

was not obtained, and therefore also the order of promotions was invalid and

(d) The learned single Judge erred in holding that the Appellants had an alternative remedy by way of appeal.

8. In respect of the first point, it is necessary to refer to Rule 5 of the Rules. Rule 5 deals with the conditions of eligibility for promotion for appointment to the post of Tehsildar. Clause (ii) of Rule 5 lays down that no person shall be appointed directly or by transfer to the service or promoted from the post of Naib-Tehsildar to that of Tehsildar unless he has qualified by passing the examination and undergoing the training prescribed from time to time in the Standing Orders of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kl-beakta-and-another-appellant-…

the Financial Commissioner. The proviso to this clause reads:

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

Admittedly, the Petitioners are graduates and they have qualified in the departmental examination as prescribed. It is also not disputed that Respondents Nos.4 to 16 are all unqualified persons, who have been considered for promotion primarily because of the waiver granted by the Financial Commissioner under the proviso to Rule 5(ii). The reasons, or special circumstances, for granting exemption to the Respondents have been recorded. From the record before us, it appears that the persons to whom exemption has been accorded had made representation for such exemption. Some of them were already appointed on officiating basis as Tehsildars, and were 45 years or more of age. A perusal of the reasons indicates that all the relevant circumstances were considered for grant of exemption in the case of the Respondents. The special reasons are set out in writing in the file entitled "Exemption from appearing in the Departmental Examination of Tehsildars [File No. I-25/71-(Rev. A) Vol. II]". The first contention of the Appellants is, therefore, rejected. It may be pointed out in this connection that reference was made by Learned Counsel for the Appellants to Shri Surjit Singh v. Shri Som Dutt 1973 (1) S.L.R. 452, T.C. Sreedharan Pillai v. The State of Kerala 1973 (1) S.L.R. 478, and Shri Hari Sharma Prem v. Union of India 1973 (2) S.L.R. 557, After carefully perusing these cases, it does not seem to me that they are relevant at all. In Surjit Singh (supra) all that has been said by the Punjab and Haryana High Court is that the power given to relax the operation of a rule is not ubridled or unguided. In T.C. Sreedharan Pillai (supra) the Kerala High Court laid down that the mere hardship of an employee was no ground for exercising the power of exemption. In Hari Sharma (supra) this Court merely declared that the exercise of power to relax a provision of the rule was a matter falling within the subjective discretion of the Government.

9. The next point urged is that the D.P.C. was not validly constituted. It seems to me that the contention is of no materiality. No. D.P.C. is contemplated under the Rules. Even if it was constituted to advise the Financial Commissioner, its opinion was of art advisory character only. When there is evidence that the Financial Commissioner applied his independent judgment in grating the exemption and making the promotions, the role played by the D.P.C. losses all significance.

10. The further contention that the Public Service Commission was not consulted may be noticed. It is now settled law that the absence of consultation with the Public Service Commission or any irregularity in the consultation does not afford to a Government servant a cause of action in a court of law: Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, In my opinion, the point has no substance.

11. Finally, the contention of the Appellants is that the learned single Judge erred in holding that the writ petition was liable to be dismissed because the Appellants

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kl-beakta-and-another-appellant-…

had not exhausted the remedy by way of appeal. This contention has substance, for I have been unable to find any provision in the Rules providing for an appeal against the order of the Financial Commissioner granting exemption to the Naib-Tehsildars from the requirement of passing the departmental examination. Nor has it been brought to my notice that an appeal lies against an order promoting the Respondents.

12. No other point was raised before us. The appeal is without merit and is accordingly dismissed. In the circumstances, there is no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kl-beakta-and-another-appellant-…