
(2012) 07 SHI CK 0159

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 7046 of 2010-H

Krishan Lal

APPELLANT

Vs

State Of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2012) 3 ShimLC 1279

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

Bench : Single Bench

Advocate : Dalip K. Sharma, for the Appellant; J.S. Guleria, Assistant Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—The petitioner was appointed as a Cleaner on daily wage basis in the year 1988. The allegations made by the petitioner are that he had been performing the duties as a Driver since 1995 and, therefore, he should be promoted to the post of a Driver. The post of a Driver is not a promotional post from the post of a Cleaner. A Driver is to be recruited after there is a vacancy for the post of a Driver and he passes the requisite driving test and only then he can be appointed as a Driver by the Department. No benefit can be taken by the petitioner from the entries in the log book which may be showing that he had driven a vehicle in the Department since there is no order placed on record passed by any Head of the Department in writing directing the petitioner to work as a Driver. Until and unless the petitioner was appointed as a Driver, he was not entitled to the pay or claim that he be promoted as a Driver.

2. The submissions made by the learned Counsel for the petitioner, during the course of arguments, were that the respondents have admitted in para 2 of the reply that the petitioner had been working as a Driver and, therefore, he is entitled to the pay of a Driver. A perusal of para 2 of the reply filed by the respondents shows that they have only admitted that the petitioner was working as a Cleaner from 1988 till 1995 and thereafter he had been performing the

duties of a Air Compressor Operator on daily wage basis from August 1995 onwards. The posts of an Air Compressor Operator and a Driver are two distinct posts and in case the scale of Air Compressor Operator is different than that of a Cleaner, the petitioner will be entitled to pay against the post of an Air Compressor Operator for the period he worked accordingly, but he is not entitled to be appointed against the post of a Driver.

3. The respondents have pleaded that as and when the post of a Driver will be available, the petitioner will be considered for the said post keeping in view his experience, if any. However, the petitioner has to qualify the test for recruitment to the post of a Driver and only then he could be entitled to the relief claimed by him. There is no order in writing that the petitioner was ever asked to work as a Driver and as such the petitioner is not entitled to the relief claimed by him.

4. During the course of arguments, the learned Counsel for the petitioner, has placed reliance upon Rule 49(3) of FRSR, which reads as under:

Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the higher post, if he holds charge of more than two posts, in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 45 days but not exceeding 3 months.

5. There is nothing to show that the petitioner has been working as a Driver and there is no admission by the respondents in this regard. Therefore, this Rule does not apply in the case of the petitioner. In view of the above discussion, the writ petition is dismissed, so also the pending application(s), if any.