

(2010) 07 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 2547 of 2009

Kushmayudh Kumar Sharma and others	APPELLANT
Vs	
State of Himachal Pradesh and another	RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 309

Citation : (2011) 1 ShimLC 269

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that petitioners were appointed as Manager-cum-Chemists, Quality Control Inspector and Fruit Preservation Assistants with effect from 23.3.1981, 15.3.1986, 30.10.1987 and 26.2.1990, respectively. Petitioners were recruited as per Himachal Pradesh Horticulture Class 3 (Executive Section) Service (Recruitment and Promotion and Certain Conditions of Service) Rules, 1973. Respondent-State issued notification dated 24.4.1993 whereby the pay scale of Class 3, 2 and 1 officers/services were revised on Punjab Pattern with effect from 1.1.1991. The State Government has adopted three tier pay scales, Rs. 2200-4000 at the time of entry into service, Rs. 3000-4500 after completion of 8 years service and Rs. 3700-5300 after 18 years of service. Certain posts in Class 3 and (Gazetted) were notified as Class-I vide notification dated 31.1.1994. Vide notification dated 2.3.1995 posts at Sr. Nos. 6 to 11 were added after Sr. No. 5 below "Class-3 Gazetted Services" notified vide notification dated 24.4.1993. State Government has taken a conscious decision vide notification dated 6.11.1996 regarding placement of posts in common cadre of Class-I (Gazetted) (Non-Ministerial Service) in the Department of Horticulture. The pay scales were further revised in the respondent-department of various categories with effect from 1.1.1996 vide notification 31.5.2001. However, in supersession of this

notification, new notification was issued on 8.2.2005 whereby pay scales were revised with effect from 1.1.1996 and posts, including the posts held by the petitioners, were merged into a single Class-I cadre. Thereafter State Government framed Recruitment and Promotion Rules (Annexure P-24) called "Himachal Pradesh Horticultural Services Class-1 (Gazetted) Recruitment and Promotion Rules, 2007". Petitioners filed CWP No. 2093/2008 for the redressal of their grievance, which was disposed of with a direction to the petitioners to make representation to the competent authority. Petitioners made representation; however, the same was rejected by the Principal Secretary (Horticulture) on 29.11.2008. Thereafter petitioners approached this Court by way of CWP No. 3048/2008, which was permitted to be withdrawn on 15.6.2009 with liberty reserved to the petitioners to file fresh petition.

2. Mr. S.R. Sharma has strenuously argued that the posts held by his clients were included in the notification dated 24.4.1993 and his clients are entitled to all the benefits on the basis of same. He then contended that after constituting single Class-1 cadre on the basis of the Himachal Pradesh Horticultural Services Class-1 (Gazetted) Recruitment and Promotion Rules, 2007, the promotional avenues of his clients have been blocked by changing the minimum essential qualifications. He lastly contended that his clients are entitled to benefits of seniority etc. with effect from their initial date of appointment and the respondents may be directed to finalize the tentative seniority list issued on 16.1.2006.

3. Mr. P.M. Negi, learned Deputy Advocate General has vehemently argued that the categories of the petitioners were never included in Annexure P-4 dated 24.4.1993. According to him, petitioners were placed, as per Annexure P-7 dated 2.3.1995, in Class-III Gazetted Services. He then contended that it is the prerogative of the State Government to frame Recruitment and Promotion Rules and prescribe minimum essential qualifications etc. According to him, the seniority to the petitioners is in accordance with law after the decision was taken to constitute one single Class-I cadre.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. It is not in dispute that the petitioners were recruited initially as per the per Himachal Pradesh Horticulture Class 3 (Executive Section) Service (Recruitment and Promotion and Certain Conditions of Service) Rules, 1973 notified on 6.8.1973. The decision has been taken, as noticed above, vide notification dated 24.4.1993 by the State Government whereby new pay scales were sanctioned of the Officers of the Department of Horticulture on Punjab pattern with effect from 1.1.1991. There are three broad classes, i.e. Class-3, Class-2 and Class-1. Certain Class 3 and 2 posts (Gazetted) in the Department of Horticulture were also placed in Class-1 (Gazetted) services vide notification dated 31.1.1995. The categories of the petitioners were not included therein. The categories to which the petitioners belong were added below Class-3 Gazetted Services as per

notification dated 2.3.1995. In view of this, there is no merit in the submission of Mr. S.R. Sharma that his clients were included in the notification Annexure P-4 dated 24.4.1993.

6. The Government vide notification dated 8.2.2005 under Article 309 of the Constitution of India has amended the Himachal Pradesh Civil Services (Revised Pay) Rules, 1998 and has substituted the Himachal Pradesh Horticulture Services (Class-1) in the pay scale of Rs. 7220-11660, Rs. 10025-15100 and Rs. 12000-16350. The categories of the petitioners have been mentioned in Annexures alongwith notification dated 8.2.2005. Thereafter, State Government has framed the Himachal Pradesh Horticultural Services Class-1 (Gazetted) Recruitment and Promotion Rules, 2007. The minimum qualification prescribed for filling up the post of Himachal Pradesh Horticulture Services Class-1 (Gazetted), as per Rule 7, is M.Sc. Horticulture/Agriculture in any of the discipline mentioned therein and by way of promotion, the minimum qualification, as per Rule 11 is B.Sc. Horticulture/Agriculture with ten years regular service or regular combined with continuous ad hoc service. Rule 18 prescribes that in the matter of posting, the senior most incumbents shall be posted against the post of Deputy Director of Horticulture/Senior Subject Matter Specialist (PP)/Project Co-ordinator etc. followed by the next senior being posted as District Horticulture Officer etc. and so on provided they acquire requisite professional qualification prescribed in rule 7/11. The grievance of the petitioner, in a nutshell, is that their further posting to the higher post has been blocked permanently on the basis of qualification prescribed under Rules 7 and 11. A bare perusal of rules notified on 18.8.2007 reveals that the earlier rules called "Himachal Pradesh Horticulture Class 3 (Executive Section) Service (Recruitment and Promotion and Certain Conditions of Service) Rules, 1973" stood repealed. It is the prerogative of the State Government to frame Recruitment and Promotion Rules under Article 309 of the Constitution of India and to prescribe the mode and manner of filling up the posts and also for prescribing educational qualifications etc. The scope of judicial review as far as prescribing of educational qualification is concerned is very limited. It is in those cases where the qualification is unreasonable and arbitrary, Court can interfere. In the instant case, petitioners have failed to point out that prescription of qualification is either unreasonable or arbitrary.

7. There is no merit in the contention of Mr. S.R. Sharma that the higher posts to which the petitioners are entitled to be considered for promotion as per the old Recruitment and Promotion Rules should not have been clubbed by the respondent-State. It is for the State Government to prescribe which posts are to be kept as promotional posts from the feeder category. It is a policy matter. The Court has very limited jurisdiction as far as policy matter is concerned. The petitioners have definitely been benefitted on the basis of Annexure P-9 dated 8.2.2005 whereby they have been granted pay scale of Rs. 2200-4000, Rs. 3000-4500 after completion of 8 years service and Rs. 3700-5300 after 18 years of service. The petitioners, who were not earlier placed in Class-I cadre, have

now been put in Horticulture Services (Gazetted).

8. Mr. S.R. Sharma has also argued that the petitioners were to be granted seniority from the date of their initial appointment. There is no merit in this contention. It has come in the reply that the seniority is to be counted, as per Rule 18 of the Himachal Pradesh, Horticultural Services Class-1 (Gazetted) Recruitment and Promotion Rules, 2007 notified on 18.8.2007. The persons, who were in Class-1E and 2 posts and were senior to the petitioners, cannot be put below them.

9. The representation of the petitioners dated 29.11.2008 (Annexure P-3) has been decided by the Principal Secretary (Horticulture) in accordance with law. The Principal Secretary (Horticulture) while rejecting the representation has taken into consideration various notifications issued from time to time, including minimum essential qualifications and the nature of duties. However, having said so, Court cannot be oblivious to the fact that the petitioners are stagnating on the same post for more than two decades.

10. It is settled law by now that promotions remove the stagnation and improve the public services. There should at least be two to three promotional avenues in every wing of the organization like Himachal Pradesh Electricity Board to remove the stagnation and to improve efficiency.

11. It is also true that the Court cannot direct for framing of a particular set of Recruitment and Promotion Rules. It falls within the realm of policy matter. However, as laid down by their Lordships of the Hon'ble Supreme Court in Food Corporation of India and Others Vs. Parashotam Das Bansal and Others, , the higher Courts can issue directions to the State/employer to frame a scheme for providing promotional avenues to those categories who have been deprived of this privilege. Their Lordships of the Hon'ble Supreme Court in Food Corporation of India and Others Vs. Parashotam Das Bansal and Others, have made the following observations:

The appellant is "State" within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefore. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service. This Court in O.Z. Hussain (Dr.) v. Union of India opined: (SCC pp. 691-92, para 7)

7. This Court, has on more than one occasion; pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical "A" Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council

and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the "A" category scientists in the non-medical wing of the Directorate.

The question also came up for consideration in *Ujagar Prints (3) v. Union of India* and *Council of Scientific and Industrial Research v. K.G.S. Bhatt*. In the latter decision, this Court held: (SCC pp.638-39, para 9)

9....It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See *Principles of Personnel Management* by Flipo Edwin B., 4th Edn., p. 246.) Every management must provide realistic opportunities for promising employees to move upward. The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." (See *Personnel Management* by Dr. Udai Pareek, p. 277.) There cannot be any modern management much less any career planning, manpower development, management development, etc. which is not related to a system of promotions.

When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior Court will have the jurisdiction to issue necessary direction. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior Court of the country.

12. The Apex Court in *A. Satyanarayana and Others Vs. S. Purushotham and Others*, have held that the purpose of promotion is to remove stagnation and avoid frustration amongst the employees.

13. Accordingly, in view of the definitive law laid down by their Lordships in *Food Corporation of India and Others Vs. Parashotam Das Bansal and Others*, the petition is partly allowed. The respondents are directed to frame a scheme within a period of ten weeks from today to provide promotional avenues to the category of the petitioners.