
(1986) 05 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 226 of 1986

Lal Chand

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 07-05-1986

Acts Referred:

Citation : (1986) 15 ILR HP 315

Hon'ble Judges : P.D. Desai, J;H.S. Thakur, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; P.N. Nag, General, for Respondent No. 1. and Bhawani Singh, for Respondent No. 2., for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C.J.—The petitioner, who is holding the Post of Deputy Registrar, Co-operative Societies, Himathal Pradesh, has been compelled to come to the Court once again to seek relief in regard to the much delayed service benefits admittedly due to him. He had earlier instituted Civil Writ Petition No. 370 of 1983 (Lal Chand Kapoor v. Union of India and Ors.), on November 11, 1983 seeking the reliefs, inter alia, relating to the regularisation of his promotion as District Co-operative and Supplies Officer on and with effect from September 24, 1960 and for preparation of the tentative integrated seniority list as on November 1, 1966, keeping in view of the date of such regularisation and other consequential benefits/reliefs. The writ petition was dismissed as withdrawn by an order passed on March 20, 1984, pursuant to a statement made by the learned Advocate General which indicated that the grievances of the Petitioner were being redressed at the departmental level. While dismissing the petition, however, a direction was given to the State Government to arrive at an appropriate decision in regard to the matter within a period of fifteen days since the genesis of the dispute went back far into the past. The time accordingly granted for taking the decision was extended from time to time and it ultimately expired on August 14, 1984. On August 16, 1984, the learned Advocate General

made a statement that the State Government had arrived at the decision to regularise the ad hoc services of the Petitioner as District Co-operative and Supplies Officer on and with effect from October 5, 1965, and that necessary further action would be taken in consultation with the Integration Department and the Himachal Pradesh Public Service Commission. The Court thereupon restored the original petition to file with a direction, inter alia, to add the Himachal Pradesh Public Service Commission as party-Respondent and to issue notice to the said newly added Respondent. On August 30, 1984, the State Government issued formal orders promoting the Petitioner as District Co-operative and Supplies Officer, on and with effect from October 5, 1965. The Petitioner thereupon sought leave to amend the petition so as to challenge his regularisation made as aforesaid with effect from October 5, 1965, since his claim was not granted in full. The permission was duly granted by an order made on September 27, 1984. Meanwhile, on September 22, 1984, the State Government had circulated the tentative integrated seniority list (revised) as it stood on November 1, 1966, in view of the promotion of the Petitioner as District Co-operative and Supplies Officer on and with effect from October 5, 1965. After the return to the amended petition was filed, the Petitioner once again sought permission for amendment of the petition which was granted on December 10, 1984. On March 19, 1985, Rule Nisi was issued on the petition, which is still pending.

2. On April 2, 1985, the Petitioner filed a Civil Misc. Petition (CMP No. 874 of 1985) in the pending case, seeking certain interim directions so as to enable him to claim service benefits flowing out of his regularisation on and with effect from October 5, 1965. On June 21, 1985, the Court issued interim directions to the effect that the final integrated seniority list of District Co-operative and Supplies Officer as on November 1, 1966, which had been tentatively revised as aforesaid, should be forwarded to the Union Government on or before June 30, 1985, and that the said Government should arrive at an appropriate decision thereon and convey the same to the State Government on or before August 15, 1985. On September 6, 1985, a statement was made to the Court on behalf of the State Government that the tentative revised integrated seniority list had since been approved by the Union Government and that the said seniority list would require to be finalised and circulated amongst the officers concerned. In view of the said development, the State Government was directed to finalise the said seniority list within a period of three weeks and to circulate the same amongst the officers within a period of one week thereafter. The State Government was also directed to spell out the consequential steps to be taken in order to grant just and equitable relief to the Petitioner and to specify the time limits within which such steps would be taken. After the State Government furnished the said information, an order was passed on September 27, 1985, directing it to complete the various steps, except the consideration of the case of the Petitioner for promotion to the HPAS cadre, on or before March 31, 1986.

3. Now, one of the consequential steps which was required to be taken by the

State Government was the consideration of the case of the Petitioner for promotion as Deputy Registrar, Co-operative Societies, from a date earlier to the one from which he actually stood promoted. For the aforesaid purpose, a Review Departmental Promotion Committee was set up in order to review the proceedings of the meetings of the Departmental Promotion Committees held in 1976 and 1977. The Confidential Reports of the petitioner for the relevant periods, which were required to be placed before the Review Departmental Promotion Committee, were, however, not found to be complete. On December 20, 1985, the Deputy Secretary, Co-operation, addressed a letter to the Chairman, Himachal Pradesh Board of School Education, who had functioned as Director, Food and Supplies, Himachal Pradesh, during the periods 1973-74 and 1974-75 and under whom the petitioner had mostly worked, requesting him to send a special report indicating the work then done by the petitioner and his observations thereon. It appears that the said officer gave the requisite report which was placed on the Confidential Reports Dossier of the petitioner. Besides, the Confidential Reports Dossier of the petitioner also contained a report in respect of the work and conduct of the petitioner for the periods 1975-76 and 1976-77, given on or about April 6, 1983, by the Minister of State for Panchayats and Welfare, who was earlier Minister of State for Welfare in independent charge of the Department of Co-operation during 1975-76 and 1976-77 and who had thus seen the work of the petitioner. Be it stated that the concerned Minister of State had ceased to be a Minister during the intervening period, that is, sometime between 1976-77 and 1983. It is not in dispute, however, that when his report was placed on the Confidential Reports Dossier of the petitioner, he was holding the post of Minister of State for Panchayats and Welfare.

4. The Himachal Pradesh Public Service Commission, which was apprised of the proposal of the State Government to hold a meeting of the Review Departmental Promotion Committee and was requested to convene the same, addressed a letter to the Secretary, Co-operation, on February 1, 1986, seeking clarifications in regard to the materials aforementioned found to have been placed on the Confidential Reports Dossier of the petitioner. The clarification was sought on the following points :

(i) Whether the special report of the Chairman, Himachal Pradesh Board of School Education, for the period from April 1973 to September 1973, together with the self-appraisal (resume) attached thereto, was recorded and placed on the Confidential Reports Dossier of the petitioner in accordance with the relevant Government instructions;

(ii) Whether the report on the work and conduct of the petitioner for the years 1975-76 and 1976-77 could have been validly recorded in the month of April, 1983 by the then Minister of State for Panchayats and Welfare in accordance with the relevant instructions in view of the fact that the Minister had demitted office after 1976-77 and had not held any such office during the intervening period; and

(iii) Whether the aforesaid materials, which did not find place in the Confidential Reports Dossier of the petitioner when the Departmental Promotion Committees met in 1976 and 1977, and were not considered by those Committees, could be considered by the Review Committee.

5. The Secretary, Co-operation, wrote back to the Himachal Pradesh Public Service Commission on February 28, 1986, stating that so far as the special report of the then Director, Food and Supplies; Himachal Pradesh, was concerned, the same; was obtained and placed on the Confidential Reports Dossier of the petitioner for the sake of proper assessment of his work as a whole during the relevant period and that so far as the report of the Minister of State was concerned, the same was also placed on the said Dossier in light of the instructions contained in the Department of Personnel letter No. 8-3/63-DP (Apptt.-II) Vol. V, dated December 29, 1982, and the clarification received under letter of even number dated April 26, 1983.

6. After the receipt of the aforesaid clarifications, the Secretary of the Himachal Pradesh Public Service Commission addressed yet Anr. letter dated March 13, 1986, to the Secretary (Personnel) seeking clarifications once again on the same points (See: Annexure R-2/I). The Joint Secretary (Personnel) gave the clarifications vide his letter dated April 21, 1986, (Annexure R-2/2), the material part of which reads as under:

(i) Unless there is an order of the Government/competent authority that he should report to the Director, Food and Supplies, he (the Director, Food and Supplies) cannot write any portion.

(ii) The spirit behind the instructions dated 29-12-1982 and subsequent clarification to the Co-operative Department in regard thereto, is that a Minister who although not holding charge of a particular Department but still working as Minister under the Government can record his remarks in the A.C. Rs with regard to the performance of a particular officer working under him in the Department, the charge of which he held previously. In case of a Minister who demitted office and after a considerable period he again started holding office though with a different Department, he cannot report upon the working of a particular officer during the period he held office in the past.

(iii) Subsequent additional writing of reports concerning A.C. Rs cannot be considered by the review D.P.C. in view of the position discussed at (ii) above. However, no instructions stand issued by the Department of Personnel on this point.

7. The petitioner instituted the present petition on April 24, 1986, seeking a writ, order or direction against the State Government and the Himachal Pradesh Public Service Commission requiring them not to ignore the special report of the then Director, Food and Supplies and the report of the Minister of State for Panchayats and Welfare while considering his case for promotion to the post of Deputy/Joint Registrar, Co-operative Societies at the meeting(s) of the Review Departmental

Promotion Committees. The petition reached preliminary hearing on May 1, 1986 and the case was adjourned to May 6, 1986, in order to enable the Himachal Pradesh Public Service Commission (second Respondent) to file an affidavit-in-reply setting out the up-to-date position in regard to the case of the petitioner and, more particularly, to place on record the information whether or not, as a result of the exchange of the correspondence aforesaid, the additional reports/materials placed on his Confidential Reports Dossier were taken into consideration. The affidavit-in-reply dated May 3, 1986, filed by the Secretary of the second Respondent furnishes the information that the Review Departmental Promotion Committees, which met on April 25, 1986, considered afresh the case of the petitioner for promotion to the post(s) in question and that in light of the clarification given by the Joint Secretary (Personnel) in his communication dated April 21, 1986 (Annexure R-2/2), while reviewing the proceedings of the Departmental Promotion Committee meeting(s) held in 1976-77, the 'special reports' were not taken into consideration by the Review Departmental Promotion Committee.

8. The question which arises against the aforesaid background is whether there is any valid justification for not taking into consideration the aforesaid materials which are found placed on the Confidential Reports Dossier of the petitioner on the basis of the view expressed by the Joint Secretary, Department of Personnel, in Annexure R-2/2. In order to answer this question, it would be necessary to refer first to the relevant instructions issued by the State Government.

9. At annexure PD is the copy of the clarificatory communication dated December 29, 1982, issued by the Department of Personnel, which is relevant and the material portion thereof is reproduced here in below:

The undersigned is directed to invite attention to this Department office Memorandum No. 8-3/63-DP (Apptt. II), dated 4-2-1977, vide which it was intimated that the Annual Confidential Reports of the Officers/Officials will not be written in any capacity by the retired Officers/Ministers not holding any office after their retirement/demitting office. In order, however, that there may not be any confusion in the interpretation of these instructions, it is clarified for information of all concerned that like Officers who are transferred, the Ministers who hold office though with different portfolio from the one to which the A.C. As can review/accept the Annual Confidential Reports for the relevant period when they held office and had seen the work of the officers/officials concerned.

10. At Annexure PE is a copy of one more clarificatory letter dated April 26, 1983, addressed by the Under Secretary (Personnel) to the Secretary (Co-operation), in reply to a query apparently raised in connection with the report dated April 6, 1983, made by the Minister of State for Panchayats and Welfare in regard to the work and conduct of the petitioner 1 or the period 1975-76 and 1976-77. The material portion of the said communication reads as under:

I am directed to refer to this Department Office memorandum of even No. dated

the 29th December, 1982 on the subject mentioned above vide which clarification about the intention of these instructions have been sought for by you verbally. In this connection, it is informed that these instructions clearly intend to allow such cases to go to the authorities now holding office and who had seen the work of the officer at the relevant time for review/acceptance irrespective of break in the intervening period.

11. Turning now to the clarifications given by the Joint Secretary (Personnel) in the communication, Annexure R-2/2, the first clarification is that unless there was an order of the Government/Competent Authority issued to the Director of Food and Supplies, it was not competent to him to write any portion of the Annual Confidential Report of the petitioner. The relevant Government instructions, if any, on the subject have not been annexed to the said letter nor have they been placed before the Court. The clarification, therefore, is apparently no more than the opinion of the Joint Secretary. It is pertinent to note in this connection that in the letter, Annexure R-2/I, addressed by the Secretary of the second Respondent to the Secretary (Personnel), the clarification on this issue was sought on the basis of the instructions of the Government in force at the relevant time and that a request was also made to furnish a copy of such instructions, if any. The reply of the Joint Secretary (Personnel), Annexure R-2/2, is, however, significantly silent on this issue. Assuming, however, that the query has been replied on the basis of the relevant instructions and that the Director of Food and Supplies could not have written any portion of the Annual Confidential Report except under the orders of the Government/Competent Authority, such orders must be regarded as having been issued to him vide Annexure PC, which is a copy of the D.O. letter dated December 20, 1985, from the Deputy Secretary (Co-operation) to the said officer. It cannot be lost sight of that the petitioner is an employee under the State Government in the Co-operation Department. Any direction in connection with the entries to be made in his Annual Confidential Reports must necessarily emanate from the concerned Administrative Department, which in the instant case is the Co-operation Department. Under the circumstances, the communication, Annexure PC, must be treated as a directive issued by the Government/Competent Authority to the concerned officer for the completion of the Annual Confidential Reports of the petitioner for the relevant period. Apart from the foregoing, the Government instructions, Annexure PD, which have been extracted hereinabove, give a clear indication in the direction that officers who are transferred can review/accept the Annual Confidential Reports for the period during which they had seen the work of the officers/ officials concerned prior to their transfer. If such transferred officers can review/accept the Annual Confidential Reports, there can be no legitimate objection against their writing such reports as Reporting Officers if they had seen the work for a sufficiently long period. There is no reason, therefore, why the special report for the relevant period duly written and submitted by the then Director of Food and Supplies and placed on the Confidential Reports Dossier of the petitioner should have been excluded from consideration by the Review

Departmental Promotion Committee.

12. The second clarification pertains to the query whether, according to the relevant Government instructions, the Minister of State in independent charge of the Co-operation Department in 1975-76 and 1976-77 could have made a report in April 1983, while holding the office of the Minister of State for Welfare, in regard to the work and conduct of the petitioner observed by him during the period 1975-76 and 1976-77, and whether such report could have been validly placed on the Confidential Reports Dossier of the petitioner. The query was replied in the following words:

The spirit behind the instructions dated 29-12-1982 and subsequent clarification to the Co-operative Department in regard thereto, is that a Minister who although not holding charge of a particular Department but still working as Minister under the Government can record his remarks in the A.C. Rs. with regard, to the performance of a particular officer working under him in the Department, the charge of which he held previously. In case of a Minister who demitted office and after a considerable period he again started holding office through with a different Department, he cannot report upon the working of a particular officer during the period he held office in the past.

At the very out-set, it must be stated that the clarification given by the Joint Secretary (Personnel) vide Annexure R-2/2 is at variance with the clarification earlier given by the Under Secretary (Personnel) to the Secretary (Co-operation) vide Annexure PE. The clarification, Annexure PE, appears to have been given on a query raised by the Co-operation Department in connection with this very Report made by the Minister of State since the Secretary (Co-operation) has specifically referred to the same in his reply dated February 28, 1986, Annexure PG, given to the second Respondent. The said clarification states in no uncertain terms that in view of the Government instructions dated December 29, 1982, Annexure PD, the Minister of State, who was holding ministerial office at the time when he wrote the Report, was competent to review/ accept the Annual Confidential Report of the officer whose work and conduct he had an opportunity to observe at the relevant time, ?irrespective of break in the intervening period?. No apparent reason is manifest for the change of opinion as reflected in the letter of the Joint Secretary (Personnel), Annexure R-2/2, and one is left guessing as to why upon a second thought a diametrically opposite view was expressed by Anr. officer of the same Department. Apart from this, in our opinion, the observations in Annexure PE correctly comprehend the true meaning and intent of the Government instructions dated December 29, 1982, Annexure PD, and the contrary view subsequently expressed in Annexure R-2/2 is apparently not in accord with the letter and spirit of those instructions. The Government instructions, Annexure PD, refer to an earlier Memorandum issued on February 4, 1977, which had directed that ?the Annual Confidential Reports of the officers/officials will not be written in any capacity by the retired officers/ Ministers not holding any office after their retirement/demitting office? and

proceed to clarify that ?like officers who are transferred, the Ministers who hold office though with different portfolio from the one to which the Annual Confidential Reports pertain, can review/accept the Annual Confidential Reports for the relevant period when they held office and had seen the work of the officers/officials concerned?. It will be seen thus that on a correct reading of Annexure PD, a person who holds the office of Minister is competent to review/accept the Annual Confidential Reports of officers/officials who had worked under him and whose work and conduct he had seen while earlier holding the charge of a different Department, even if in the intervening period he had ceased to be a Minister. The requirement of the instructions at Annexure PD is that at the point of time when the Annual Confidential Reports are to be reviewed/accepted, the person concerned should be holding the office of Minister (even in charge of a different portfolio) and that he should have had an opportunity during the relevant . period of seeing the work and conduct of the officers/officials whose Annual Confidential Reports are to be reviewed/accepted by him. The rationale behind these instructions is not difficult to comprehend. The Annual Confidential Report, which is an official document, can be written/accepted/reviewed only by a person who, at the material time, holds a public office, whether as a Minister or an Officer. An Ex-Minister or an Ex-Officer, who has ceased to hold a public office, cannot write/accept/ review the Annual Confidential Report of an officer/official who had once upon a time worked under him, even if he had an ample opportunity of observing the conduct and performance of such officer/official. If, therefore, the Minister or Officer is occupying a public office, when he is required to write/accept/ review the Annual Confidential Report, even though his field or sphere of activity might have undergone a change on account of his having been entrusted with Anr. portfolio or because of transfer (as the case may be), there is no bar against his performing any of the above-mentioned functions on the basis of his previous opportunity to observe the work and conduct of the officer/official concerned at the material time. The fact that the concerned Minister had ceased to hold office for an interval of time, which cannot be regarded as unreasonably long, during the intervening period, is, however, a matter of no consequence or relevance, if the true purpose and intent behind the aforesaid instructions are borne in mind. The reinduction in office of the Minister removes the disqualification, if any, in the matter of writing/accepting/reviewing the Annual Confidential Report, which attached to him during the period he ceased to hold office in the intervening period provided of course, the intervening break has not been of an unreasonably long duration. The intervening period during which he had ?ceased to hold the office cannot be regarded as having affected his memory or as having otherwise disqualified him thereby and, in our opinion, it introduces no relevant consideration or factor which makes him incompetent to write/accept/ review the Annual Confidential Report. For the aforesaid reasons, in our opinion, the view expressed by the Personnel Department in Annexure-PE is the correct view. The contrary view expressed in Annexure R-2/2 is unacceptable. On the facts and in the circumstances of the present case, the intervening period during which the concerned Minister of State had ceased to hold office cannot be

regarded as unreasonably long. For the foregoing reasons, the Report made by the Minister of State for Welfare on or about April 6, 1983 in respect of the work and conduct of the petitioner for the periods 1975-76 and 1976-77 and validly placed on the Confidential Reports Dossier of the petitioner should not have been excluded from consideration by the Review Departmental Promotion Committee.

13. The third clarification relates to the query whether the subsequent reports placed on the Confidential Reports Dossier of the petitioner could be considered by the Review Departmental Promotion Committee when they were not available to the Departmental Promotion Committee who had originally considered, his case. The query was answered by stating that "the subsequent additional writing of reports concerning Annual Confidential Reports cannot be considered by the review D.P.C." in view of the opinion expressed on the second query. The view which has been taken as regards the second query having been found to be incorrect, this clarification must fall to the ground. That apart, it is clear that the opinion expressed by the Personnel Department is not based admittedly on any Government instructions. Under the circumstances, the Review Departmental Promotion Committee was not debarred from taking into consideration the additional material placed on the Confidential Reports Dossier of the petitioner pertaining to the relevant periods.

14. For the foregoing reasons, the writ Petition succeeds and it is allowed. The Review Departmental promotion Committee(s) will meet again and review the case in accordance with law and in light of the decision recorded hereinabove with the utmost expedition but not later than four weeks so that the interim directions issued by this Court in Civil Misc. Petition No. 874 of 1985 in Civil Writ Petition No. 370 of 1983 are implemented as directed.

15. Rule made absolute accordingly with no order as to costs.

16. Dasti copy on usual terms.