

(2010) 11 SHI CK 0225
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 2711 of 2008

Om Parkash Lakhanpal

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0225

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

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed for grant of the following substantive reliefs vide para 7(i), (ii) and (iii):

"7(i) That the impugned orders dated 9.2.1995 at Annexure A-10 dated 25.9.1995 at Annexure A-12 may be quashed and set aside.

(ii) That Respondents may be directed to consider the applicant for regular promotion in accordance with law from due date with all consequential benefits.

Whether reporters of Local Papers may be allowed to see the judgment? No.

(iii) That if during the pendency of present application, any disruption occurs in the service of applicant as Kanungo, in that event, he may be deemed to have been continued in the said post with all consequential benefits including arrears of difference of salary."

2. In the reply, filed on behalf of Respondents No. 1 and 2, the following stand has been taken vide para 6(v), (vii), (vii), (viii), (xi), (xiv) and (xvi):

"6(v) Admitted to the extent that as per Cahudhari's compilation of the CSR, volume-III 13th Edition, page 557, the panel drawn by the departmental promotion committee is normally valid for one year and ceases to be in force on the expiry of a period of one year and six months or when a fresh panel is prepared, which ever is earlier. Rest of para is denied. However, it is pertinent to

mention here that the panel of this category is not valid for the whole year because the departmental examination of Kanungo are being held twice in a year and when a candidate (patwari) passes the said departmental examination and stands in seniority, he has to be considered for the promotion.

(vi) Not admitted. The applicant was promoted as Kanungo on adhoc basis where it was clearly mentioned that he will not be given any benefit of seniority. Moreover, adhoc promotion is no promotion and is only to look after the work of higher post as a stop gap arrangement. Therefore in the meeting of departmental promotion committee dated 30.1.95 for the post of regular Kanungo all the eligible candidates who fulfilled all the eligibility criteria for the post of regular kanungo and also come in the zone of consideration as per their seniority have been considered for promotion and promoted. But due to the criteria of seniority-cum-merit the applicant could not be promoted being very junior. Therefore, he was reverted to the post of patwari.

(vii) Admitted. However, it is pertinent to mention here that these 16 patwaris were promoted according to old recruitment and promotion rules, where passing of departmental examination of kanungo was not a pre-requisite for promotion.

The kanungo so promoted were required to pass the departmental examination of kanungo within three years of appointment, as such there is no provision in the old rules to revert those kanungo who have not passed the departmental examination. (Annexure R-I) enclosed. Under these rules the said 16 kanungos could not be reverted. It is also mentioned here that the new rules come into force w.e.f. 8.6.92 and the promotions are required to be done in view of these provisions for the vacancies arising after these rules came into force.

(viii) Admitted to the extent that before 1994, 12 patwaris including the applicant were promoted on adhoc basis. But the following adhoc kanungos along with applicant who do not fulfill all the eligibility criteria for the post of regular kanungo and also do not come in the zone of consideration as per their seniority have been reverted to the post of patwaris vide this office order No. - Rev.(CH)B(34)/93-(iii)-772-811 dated 9.2.1995:

Sr. Name Father's name Reason No. 1. S/Sh. Roop Singh S/Sh. Surat Singh Facing departmental enquiry and bad track record. 2. Krishan Chand Kharku Not passed the Deptt. exam of kanungo and adverse AC Rs. 3. Rattan Chand Yog Raj Adverse AC Rs. 4. Mast Ram Ganga Ram -do- 5. Jagat Paul Garib Dass Not passed the Kgo. exam. 6. Narain Singh Mani Ram Does not fall in the zone of consideration in the seniority. 7. Om Parkash Som Dutt -do-

The above said patwaris were not found fit for the regular post of kanungo in the departmental promotion committee held on 30.1.95.

(xi) Admitted to the extent that all the six persons figures at Sr. No. -25, 49, 51, 18, 33 and 35 respectively in the petards annexed at A-2 with O.A. were not brought on the panel by the D.P.C. held during Nov., 1993 due to non-suitability

on account of service record and not passing the Deptt. examination of kanungos. They were promoted for the first time in February, 1995 because of the fact that in the departmental promotion committee held on 30.1.95 the year wise break up of vacancies have been worked out at the instance of Humble Administrative Tribunal in OA No. 2913 of 1994 order dated 21.11.94 who directed the department in this very case viz. Om Parkash Lakhanpal v. State of Hiamachal Pradesh in OA No. 2913/94 to promote the petards on the basis of year wise vacancies and the panel for the year 1995 was accordingly prepared and all the eligible candidates who fulfilled all the eligibility criteria for the post of kanungo and also came in the zone of consideration as per their seniority have been considered for promotion and the above six petards were promoted rightly. It is pertinent to mention here that the applicant is claiming seniority from the date of his adhoc promotion whereas it was clearly mentioned in his promotion orders dated 19.2.94 (Annexure A-4 with O.A.) that he will not be given any benefit of seniority and he was promoted on the leave gap arrangement. As there was no regular post of kanungo at that time. Moreover, adhoc promotion is no promotion and it is only to look after the work of higher post as a stop gap arrangement.

(xiv) Admitted to the extent that it is a settled proposition of law that when a panel is preparedly the DPC it remains operative for a period of one year and ceases to be operative after the expiry of period of one year and six months or when a fresh panel is drawn by the DPC, whichever is earlier. The department always followed the above procedure. But in this case applicant was promoted on adhoc basis as a stop gap arrangement. And now the Departmental Promotion Committee held on 30.1.95 all the eligible candidates senior to the applicant who were in the field of choice have been considered for promotion. In the DPC held on 30.1.95 the year wise break up of vacancies have been worked out at the instance of Humble Administrative Tribunal who directed the department in this very case viz. Om Parkash Lakhanpal v. state of H.p. in OA No. 2913/94 ordered dated 21.11.94 to promote the patwarison the basis of year wise vacancies and the panel for the year 1995 was accordingly prepared but the panel of this category is not valid for the whole year because the departmental exam is being held twice a year and when a candidate passed the said departmental examination and stands in seniority has to be considered for the promotion. Hence the reversion of the applicant is legal and under the rules and the question of quashing the orders does not arise.

(xvi) Not admitted. The applicant is claiming seniority from the date of this adhoc promotion whereas it was clearly mentioned in his promotion orders dated 19.2.94 (Annexure A-4 with O.A.) that he will not be given any benefit of seniority. Moreover, adhoc promotion is no promotion and is only to look after the work of higher post as a stop gap arrangement. Therefore, in the meeting of DPC dated 30.1.95 for the post of regular kanungo all the eligible candidates who fulfilled all the eligibility criteria for the post of regular kanungo and also come in the zone of consideration as per their seniority have been considered for

promotion and 6 petards at (Annexure A-9 with OA) were promoted and the applicant alongwith other (detailed in sub-para viii of this para) were reverted as they were not found fit for the post ofkanungo."

3. Supplementary affidavit has also been filed by the Petitioner and reply thereto on behalf of Respondents No. 1 and 2.

4. The learned Counsel for the Petitioner submits at the very outset that during the pendency of the petition, the Petitioner has since been promoted as Kanungo on regular basis. The only surviving claim that remains is with regard to counting of the adhoc service rendered by Petitioner as Kanungo for the purpose of seniority and pay fixation. It being so, it shall be expedient and in the interest of justice to dispose of the petition with a direction to Respondent No. 1 to consider the matter with regard to the surviving claim, as aforesaid, subject to the Petitioner filing a representation alongwith a copy of this judgment within six weeks from the date of supply of a copy thereof to the Petitioner, which shall be considered and finally decided by the said Respondent within the next three months after affording an opportunity of being heard to the Petitioner, if so advised. In the meantime, interim order dated February 28, 1995, passed in O.A. No. 182/95 and as extended vide order dated 29.9.1995 in O.A. No. 1933/95 (now CWP(T) No. 2711 of 2008) shall continue till disposal of the representation.

5. In view of the above, the petition stands disposed of, so also the pending CMP(s), if any.