
(1992) 03 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 194 of 1978

O.P. Chauhan

APPELLANT

Vs

H.P. University and Others

RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Himachal Pradesh University Ministerial and Administrative Service (Recruitment, Promotion and Certain Conditions of Service) Rules, 1973 — Rule 12, 14, 2, 6, 7

Citation : (1992) 2 ShimLC 331

Hon'ble Judges : V.K. Mehrotra, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; D.C. Jishtu, for the Respondent

Judgement

V.K. Mehrotra, J.—Petitioner, O.P. Chauhan, who was at that time an Assistant Registrar in the Himachal Pradesh University, filed this writ petition in September 1978 Apart from the University and its Executive Council, impleaded as the first two Respondents, certain other officers were arrayed in the petition as Respondents. They are five in number. The petition remained pending for a few years and was heard for a few days. In the year 1990. On a prayer made by the learned Counsel for the Petitioner on November 22, 1990, permission was accorded for amendment of the petition in certain respects. The amended writ petition was filed on December 4, 1990.

2. The Petitioner was appointed as Deputy Registrar on ad hoc basis with effect from April 1, 1985 and so was the third Respondent, Banke Ram Sharma. The 6th Respondent K.K. Bajaj was recruited directly as Deputy Registrar in the University in the month of December 1977 after facing an interview for the purpose in the month of November that year. These are the only two Respondents who are likely to be affected by a decision in favour of the Petitioner in this writ petition. There is no dispute between the Petitioner and the learned Counsel appearing for the first two Respondents about it.

3. The Himachal Pradesh University framed the Himachal Pradesh University

Ministerial and Administrative Service (Recruitment, Promotion and Certain Conditions of Service) Rules, 1973 which were notified on February 6, 1973 with effect from which date they became effective. The post of Deputy Registrar is mentioned as one of the posts in Appendix to these rules and is thus governed by these provisions.

4. Rule 6(a), providing for the method of appointment, says that as a general rule, all appointments will be made 75% by promotion and 25% by recruitment, with some exceptions. Rule 6(d) says that 23% and 5% of the vacancies shall be filled from the candidates belonging to Scheduled Castes and Scheduled Tribes respectively, subject to the minimum qualifications being satisfied by them. Rule 7 enables the Vice-Chancellor, notwithstanding anything contained in the rules, to make appointment on ad hoc basis against any post covered by the rules for a period not exceeding one year.

5. Rule 14, which deals with promotions, mentions at item No. 15 that Deputy Registrars are to be promoted from amongst Assistant Registrars, including Secretary to the Vice-Chancellor, but he must have three years of approved service and should either have three gradations of "Very Good" or "Outstanding" in the Confidential reports within the preceding three years or five gradations of "Good" or above in the Confidential reports within the preceding five years.

6. "Approved Service" has been defined in Rule 2(i) to mean "the service rendered in the field of choice for promotion by an employee appointed by the competent authority on regular basis and includes service of the University on deputation."

7. On April 26, 1974 the Executive Council of the University resolved that where specific provision for any matter did not exist in its Statutes and the Ordinances, the General rules, regulations and procedure of the Government be followed in all such matters, *mutatis mutandis*. A copy of this decision has been appended as Annexure BB to the petition.

8. Annexure Z-1 to the petition is a copy of a letter (No. 1-12/73-DP Apptt. II) of the Department of Personnel dated December 31, 1974 containing an Office Memorandum issued by the Chief Secretary to the Government of Himachal Pradesh, saying, *inter alia*, that:

...it has.....been decided by the Government that Recruitment and Promotion Rules which require an individual to have put in regular service in a grade for purpose of promotion....be amended....so that service put in in ad hoc capacity is taken into account for purposes of promotion....

The memorandum also says that employees who had already been considered and found unfit by the Departmental Promotion Committees shall not be given any benefit under these instructions which would come into force with immediate effect, nor would the instructions be used to reopen cases already settled or to disturb seniority lists.

9. Prior to this office memorandum the Government of India had issued office memorandum No. 10/41/73-Estt (SCT) dated July 20, 1974 whereunder it was provided that a select list was to be prepared containing, inter alia, the names of officers belonging to Scheduled Castes arranged in the order of seniority and for determining the number of vacancies to be reserved for Scheduled Castes in the select list and separate roster, on the lines of the roster prescribed in Annexure I to Office Memorandum dated April 22, 1970 (in which points 1, 8, 14, 22, 28 and 36 are reserved for Scheduled Castes...), should be followed. The instructions contained in this office memorandum, it is common ground, are being followed in the State of Himachal Pradesh even after the formation of Himachal Pradesh as a full fledged State with effect from January 25 1971, This is re-inforced by a later communication dated August 20, 1977 issued by the Secretary (Personnel) to the Government of Himachal Pradesh to all the Secretaries etc, of the various departments in the state. That communication reiterates that rosters are to be maintained in respect of Scheduled Castes and Scheduled Tribes in service The reservation for Scheduled Castes has been provided for even in respect of purely temporary (ad hoc promotion) and even while filling short term vacancies. Various orders have been issued from time to time by the State of Himachal Pradesh in this behalf.

10. The case of the Petitioner, as presented before us, is that as a candidate belonging to Scheduled Caste he was entitled to be promoted as Deputy Registrar in the year 1977 when two persons, namely, K.K. Bajaj (Respondent No. 6) and M.M. Sharma (Respondent No. 7) were appointed Deputy Registrars, the first by direct recruitment and the second by promotion from the post of Assistant Registrar. This claim is founded upon the requirement contained in Rule 6(d) of the 1973 Rules.

11. What has been urged by Shri D.C. Jishtu, appearing for the H.P. University before us, is that the aforesaid provision was being applied by the University in respect of all the categories of posts contemplated by the 1973 Rules only for direct recruitment and that there was no case in which it was applied to an appointment by promotion until a decision to apply it to promotion also was taken by the Executive Council of the University in its meeting of January 30, 1989 by approving an amendment to Rule 12 of the 1973 Rules to the effect that "reservation and other concessions required to be provided for Scheduled Castes and Scheduled Tribes shall be in accordance with the orders issued by the Himachal Pradesh Government from time to time." It was made applicable with effect from December 27, 1986 under the same resolution No. 29 of the Executive Council.

12. It was also urged that a general meeting of the employees, officers and the representatives of the University was held on January 14, 1988 wherein the Petitioner also participated, and it was decided that a 40 point roster in the categories of Deputy Registrars and assistant Registrars be prepared with effect from July 1970. It was also decided in that meeting that the roster thus prepared

will not have any effect on the seniority of the existing officers/employees in the various categories.

13. What was emphasised by Shri Jishtu was that, inasmuch as, the decision to provide for reservation for the Scheduled Castes in accordance with the orders issued by the Himachal Pradesh Government with effect from December 27, 1986 was taken by the University in the year 1989, no claim could be made by the Petitioner for being extended the benefit of reservation in the post of Deputy Registrar on the basis that he was a candidate belonging to the Scheduled Castes for any period prior to December 27, 1986. The submission is sought to be strengthened by a decision of the Supreme Court in *Namdeo Pundlik Kamble v. Nagpur Improvement Trust and Ors.*, 1990 (Supp) SCC 31. In that case the view taken was that the Improvement Trust being an autonomous body had adopted the reservation policy on May 24, 1979 and, therefore, no employee thereof was entitled to avail of the benefit of reservation policy prior to that date.

14. As noticed by us earlier, the University framed the Recruitment and Promotion Rules in the year 1973 which became effective on the date of notification of the rules on February 6, 1973. Rule 6(a) read with Rule 6(d) of these rules contemplates that 23% of the vacancies are to be filled in from amongst candidates belonging to Scheduled Castes. There is no distinction made in the matter in regard to filling in of 75% posts by promotion or 25% by direct recruitment. If as urged by Shri Jishtu, the University was of the opinion that the provision for filling in certain percentage of vacancies by candidates belonging to Scheduled Castes was applicable only to those vacancies which were to be filled in by direct recruitment, it was clearly on a mistaken interpretation of the rules. The word "recruitment" has been given a definite meaning in Rule 2(d) to the effect that it meant "an appointment made otherwise than by promotion". This is clear not only from the words used in Rule 6(a) but also from what is contained in Rule 6(c) which says that a post for which a suitable candidate is not available in the promotion quota shall be thrown open to and filled by recruitment. Rule 6(d) does not confine filling in of the vacancies to the extent of 23% and 5% from the candidates belonging to Scheduled Castes and Scheduled Tribes only in appointment by direct recruitment. We are of opinion that Rule 6(d) applies both to vacancies to be filled in by promotion or by direct recruitment. We may add that the percentage provided in Rule 6(d) has been made changeable accordingly as these are fixed by the Himachal Pradesh Government from time to time.

15. The plea that reservation for Scheduled Castes in the matter of filling in the various posts contemplated by the 1973 Rules could only become applicable to the employees of the University, which is an autonomous body, with effect from December 2(sic) 1986 in terms of the resolution of the Executive Council, founded upon the decision of the Supreme Court in *Namdeo Pundlik Kamble*. (supra), is of no avail to the Respondent University, inasmuch as, it had chosen to provide for such reservation way back in the year 1973 when it framed the Recruitment and Promotion Rules. We, therefore, hold that reservation for

Scheduled Castes was available to a candidate like the Petitioner, on fulfilling the requisite conditions therefor, on account of the provision contained in Rule 6 and not on account of the decision subsequently taken by the Executive Council to make the concession available with effect from December 27, 1986.

The University must be held to be under an obligation to maintain the 40 point roster in respect of the posts of Deputy Registrars to give effect to the provisions of Rule 6(d). It should prepare the roster with effect from July 1970 in terms of the decision recorded on January 14, 1988 in the general meeting as is clear from the document filed as Annexure R-1 to the reply filed on behalf of the University in the amended writ petition. We find it stated at the end of this document that the office was to prepare necessary roster for all categories of employees taking into consideration the guidelines mentioned earlier.

16. As desired by us, the officials of the University instructing Shri Jishtu, have produced file No. 9-2/88/Estt of the University purporting to be "Roster of various categories". The file contains loose sheets of papers which, though numbered is not a satisfactory mode of maintaining the roster. The roster should be maintained properly in the manner in which it is contemplated (in a model form) by the compilation of the Himachal Pradesh Government relating to reservations for Scheduled Castes and Scheduled Tribes to the posts to be filled in by promotion and recruitment. The roster, we find from the compilation placed before us during the course of the hearing of the present petition, is to be maintained in a register.

17. Since we are dealing with the case of appointment by promotion to the post of a Deputy Registrar in the University, we direct the Respondent University to prepare and maintain a proper roster in respect of that post and also in respect of other posts for which reservation has been provided for in the rules. We have been informed by Shri Jishtu today, on the basis of instructions given to him by Shri Amar Nath sharma, Dealing Assistant, who is present in Court, that in all there are six posts of Deputy Registrars in the University, the first of which came to be available in the year 1970 Three more posts of Deputy Registrars became available in the year 1973 while one more in the year 1983 which, together with one post which became available in the year 1986, makes the total number of posts as six at present. We are also told that the posts which were added in the year 1973 became available subsequent to the enforcement of the Recruitment and Promotion rules which became effective from February 6, 1973.

18. As noticed earlier, the 1973 rules contemplate appointment of Deputy Registrars from amongst the Assistant Registrars who have approved service of three years. The case of the Petitioner is that he had the requisite number of years of approved service because he was admittedly appointed as an Assistant Registrar in the University with effect from November 1, 1973 (on ad hoc basis) and was regularised in that post with effect from April 1, 1976 and confirmed therein with effect from April 1, 1977. The Petitioner says that the decision contained in the Office Memorandum dated December 31, 1974 (Annexure Z-1 to

the petitions which is applicable in the case of the employees of the Himachal Pradesh University by virtue of the resolution of the Executive Council dated April 26, 1974 (Annexure BB to the petition), clearly contemplated that the service put in by the Petitioner as an Assistant Registrar on ad hoc basis with effect from November 1, 1973 was to count towards his "regular service more so when it was followed by regular service with effect from April 1, 1976. The Petitioner also says that in fact the University itself proposed an amendment in the definition of "approved service", as contained in Rule 2(ii)(k) in its meeting held on December 2, 1978 by defining "approved service" to mean the service rendered on temporary/ad hoc basis followed by regular service in the field of choice for confirmation/promotion by an employee appointed by the competent authority. An extract of the proceedings of the meeting of the Executive Council of that date is Annexure "CC to the writ petition. This proposal was accepted by the Executive Council in its meeting of the same date in respect of non-teaching staff, with effect from the date when similar provisions were made applicable to its employees by the Government of Himachal Pradesh, as is clear from the decision of the Executive Council at item No. 10 of its meeting held on December 2, 1978 of which the relevant extract is Annexure DD to the petition. In these circumstances, it is not possible to accept the plea put forward by Shri D.C. Jishtu that the decision to count the service rendered in an ad hoc capacity towards approved service will only be available to an employee from/after December 2, 1978 and not for any period prior to that date.

19. The recruitment and Promotion Rules also contemplate that the Applicant for the post of Deputy Registrar, for promotion from that of the Assistant Registrar, should have a particular quality of approved service as mentioned under item No. 15 of Rule 14 of the Rules.

20. The proceedings of the Recruitment and Promotion Committee for the posts of Deputy Registrar held on September 9, 1986 have been shown to us by the learned Counsel for the University. These proceedings show that the case of Petitioner Chauhan was considered for appointment as Deputy Registrar in respect of two vacancies, the first occurring with effect from May 22, 1983 and the second occurring on April 2, 1985. In respect of both these posts the grading of Petitioner Chauhan is shown to be "very Good". The matter was placed before the Executive Council in its meeting held on July 15, 1986, which accepted the recommendations of the recruitment and promotion committee and approved the promotion.

21. The Annual Confidential Reports of the Petitioner were also shown to us, as directed, by Shri Jishtu. We found that between the years 1973-74 and 1984-85 Petitioner Chauhan has on over-all assessment, been rated as "Good" or "Very Good" in different years. What has been urged by Petitioner Chauhan in this regard is that wherever he has been rated as "Good", the grading should be treated as "Very Good" and in the years in which he has been rated as "Very Good", it should be treated as "Outstanding", both being the next higher rating

to the one obtained by him, because of the provision to that effect contained at item No. (II) of Annexure II to letter No. 2-11/72-DP (Apptt), dated February 28, 1973 of the Chief Secretary to the Government of Himachal Pradesh addressed to all the Secretaries and Heads of Departments etc on the subject of reservations/concessions for the Scheduled Castes and Scheduled Tribes in Service. One of the concessions contemplated under Item No. (II) to Annexure II to that letter is that Scheduled Caste officers, who are within the zone of consideration and not unfit for consideration, are to be given by the Departmental Promotion Committee one grading higher than the grading otherwise assignable to them on the basis of record of service.

22. The above concession, says Petitioner Chauhan, is available to him as well on account of the decision contained in the resolution of the Executive Council of April 24, 1974 (Annexure BB to the writ petition) whereunder matters for which specific provision does not exist in the Statutes and the Ordinances of the University, the rules and regulations and the procedure that are followed by the State Government are to be followed by the University.

23. We find that while the Recruitment and Promotion Rules have provided for reservation for Scheduled Castes/Scheduled Tribes officers, even in the matter of promotion to higher post upto the post of Deputy Registrars, no further modalities are provided in them. As such, the aforesaid modalities, which are being followed by the State Government in the matter, are to be followed by the University in the matter of promotion.

24. An impassioned appeal was made by Petitioner Chauhan that having regard to the circumstances of his case we should direct that his promotion to the post of Deputy Registrar in the University should be treated to be one made against the post available in the year 1977. He has expressed apprehension that in case the matter is left to be decided by the University, it may be unduly delayed and he may not get a fair deal on account of some interested persons who are out to harm him. We are not inclined to accede to this prayer at this stage because we find that the case of the Petitioner will have to be considered for promotion to the post of Deputy Registrar, on a date anterior to the one on which he had actually been promoted, after preparing the roster afresh and considering the merits of the candidates in accordance with the relevant provisions contained in the Recruitment and Promotion Rules of 1973 having regard to the observations contained in this judgment. This will involve an exercise which we are not inclined to undertake in this judgment. We have no doubts about the bona fide of the functionaries of the Respondent University on the material placed before us in this petition. We are confident that the case of the Petitioner will be re-examined in a bona fide manner expeditiously. We feel that a period of four months should suffice for the purpose.

25. In the view that we have taken, we are not setting aside any promotions made so far. Instead, we direct the Respondent University to re-examine the case of Petitioner O.P. Chauhan for promotion as Deputy Registrar on the basis

that he was entitled to be considered for it earlier on account of the reservation for Scheduled Caste officers contained in the H.P. University Ministerial and Administrative Service (Recruitment, Promotion and Certain Conditions of Service) Rules, 1973 and the various orders made by the Government from time to time which are applicable, as indicated earlier, to the case of promotion of officers under the said Rules. They shall do so and record a decision about it within a period of four months from today and re-adjust the seniority of the officers affected by this exercise, in accordance with the relevant rules, within the same period. We dispose of the petition with these directions. The Petitioner would be entitled to his costs, which we assess at Rs. 500 from the Respondent University.