
(2007) 05 SHI CK 0025
In the High Court Of Himachal Pradesh

P.C. Katoch

APPELLANT

Vs

The Principal, Regional Engineering College and Others

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 ShimLC 102

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—After arguing at length, Mr. Dushyant Dadwal submits that his client was not eligible at the time of filing of the writ petition for being promoted to the post of Deputy Registrar as per Recruitment and Promotion Rules for the post of Deputy Registrar, but during the pendency of the writ petition, he has become eligible for consideration for promotion. Mr. Dushyant submits that his client will be satisfied if this Court directs the respondent No. 1 to consider the case of the petitioner for promotion to the post of Deputy Registrar from the feeder category of Assistant Registrar(s) due to subsequent developments.

2. Mr. Kapil Dev Sood has vehemently opposed the prayer made by Mr. Dushyant Dadwal and submits that there is no prayer made by the petitioner in this petition for considering him for promotion to the post of Deputy Registrar and the subsequent events cannot be taken into Consideration.

3. I have perused the record and heard the parties. This Court has wide discretion under Article 226 of the Constitution of India to take into consideration the subsequent events which happened during the pendency of the petition and accordingly the relief can be moulded. The wide discretion of this Court cannot be restricted by extreme technicalities. If the petitioner succeeds in making out a case for taking into consideration the subsequent events into consideration there is no reason why this Court should not mould the relief appropriately. The

moulding of relief by taking into consideration the subsequent events also avoids multiplicity of litigation.

4. The petitioner as per Recruitment and Promotion Rules for the post of Deputy Registrar is eligible since he has put in five years regular service as Assistant Registrar.

5. Hon''ble Supreme Court has laid down in *Kanaya Ram and Others Vs. Rajender Kumar and Others*, , that the Courts can always take into consideration subsequent events. Your Lordships of the Supreme Court have opined as under:

It has been held ever since the leading case of *Abbott v. Minister for Lands*, that a mere right to take advantage of the provisions of an Act is not an accrued right. *Abbott* case has been followed by this Court in a number of decisions. In such a situation, the Court is bound to take into consideration the subsequent events and mould the relief accordingly.

6. Hon''ble Supreme Court in *B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others*, , has held that the Court can mould the prayer taking note of the changed circumstances and suitably mould the relief in order to mete out justice in the case. Your Lordships of Supreme Court have held as under:

The material facts and circumstances had undergone a substantial change subsequent to the filing of the original petition and it was in consequence thereof that it had become unnecessary for the petitioner to pursue his original prayer for the grant of a larger relief. Besides ignoring this crucial aspect, the Division Bench of the High Court has also lost sight of the well-established principle that in an action where a party has prayed for a larger relief it is always open to the Court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds.

7. Similarly, your Lordships of Supreme Court have held in *State of Rajasthan Vs. Hindustan Sugar Mills Ltd. and Others*, , that High Court under high prerogative jurisdiction under Article 226 can mould the relief in just and same manner as it may require by the demands of the situation. The observations of your Lordships are as under:

The High Court upheld the plea and came to the conclusion that the second enhancement would be being enforced for the first time in the fourth four year block commencing from June 1, 1966. The learned Counsel for the appellant is, under the circumstances, perfectly justified in submitting that the High Court instead of striking down the notification in toto could well have made the

notification unenforceable for a period of four months of the third four year block expiring on May 31, 1970, without prohibiting its enforcement even with effect from June 1, 1970 from which date the fourth four year block commenced, and the enhancement could have been made without any impediment in law. The High Court was exercising high prerogative jurisdiction under Article 226 and could have moulded the relief in a just and fair manner as required by the demands of the situation.

8. Mr. Kapil Dev Sood has also urged that no promotions can be made in view of communication dated 2nd April, 2007 issued by the Government of India, Ministry of Human Resource Development Department of Higher Education. Mr. Kapil Dev Sood has produced the copy of the communication dated 2nd April, 2007 for perusal of this Court. What has been stated in the communication dated 2nd April, 2007 is that pending notification by the Ministry, the NITs are advised not to re-structure their non-teaching cadre unilaterally or promote people against non-existent posts or under ACP in their Institutes. The emphasis in the communication dated 2nd April, 2007 is only that the promotion be not made against non-existent posts.

9. In the present case the post of Deputy Registrar is already in existent for which the Recruitment and Promotion Rules have already been framed. Once the Rules have been framed as per Annexure P-6 for the post of Deputy Registrar and the post is available, the same should be filled-up. The higher posts are required to be promptly filled-up by way of promotion as per Recruitment and Promotion Rules after adjudging the suitability of the candidates for efficient administration.

10. The Hon"ble Supreme Court in 2007 (5) Scale Coal India Ltd. and Ors. v. Saroj Kumar Misra, has held that a right of promotion can be withheld or kept in abeyance only in terms of valid rules. Their Lordships have opined as under:

10. Both First Appellant as also Mahanadi Coalfields Ltd., are "State" within the meaning of Article 12 of the Constitution of India. Their action must, therefore, satisfy the test of reasonableness and fairness. Although an employee of a State is not entitled to promotion to a higher post as a matter of right, he is entitled to be considered therefore in terms of Article 16 of the Constitution of India. A right of promotion can be withheld or kept in abeyance only in terms of valid rules. Rules operating in the field do not provide that only because some allegations have been made as against an officer of the company, the same would itself justify keeping a valuable right to be considered for promotion of an employee in abeyance. When a question of that nature comes up for consideration before a superior Court, the extant rules operating in the field must necessarily be construed in the light of the constitutional scheme of equality.

11. Accordingly, the writ petition is allowed and the following peremptory directions are issued to the respondent:

(i) The respondent No. 1 is directed to convene Departmental Promotion

Committee for filling-up the post of Deputy Registrar within a period of three weeks;

(ii) The Respondent No. 1 is directed to consider the case of the petitioner for promotion to the post of Deputy Registrar wholly uninfluenced and inhibited in any manner by communication dated 2nd April, 2007; and

(iii) If the petitioner is found suitable for promotion to the post of Deputy Registrar, he will be duly, promoted with all consequential benefits including arrears of salary etc.

There shall be no order as to costs.