

(2011) 12 SHI CK 0293
In the High Court Of Himachal Pradesh
Case No : LPA No. 9 of 2007

Principal, Regional Engineering College (Now N.I.T.,
Hamirpur), Hamirpur, District Hamirpur, H.P. and National
Institute of Technology, Hamirpur, District Hamirpur, H.P.

APPELLANT

Vs

Shri P.C. Katoch, The Secretary (Technical Education) to the
Government of H.P, Shimla-2, H.P., The Director (T),
Government of India, Ministry of Human Resources and
Development, Department of Education, Shastri Bhawan,
New Delhi-110001 and Shri D.R. Dhatwalia, Assistant
Registrar, Regional Engineering College, Hamirpur, District
Hamirpur, H.P.

RESPONDENT

Date of Decision : 26-12-2011

Acts Referred:

Citation : (2011) 12 SHI CK 0293

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, Judge

1. This is a Letters Patent Appeal filed under Clause 10 of the Letters Patents against the judgment of the learned Single Judge Mr. Justice Rajiv Sharma, dated 1.5.2007, passed in CWP No. 351 of 2000, wherein he allowed the writ petition filed by the respondents (hereinafter also referred to as petitioners). It was directed by the Court that the respondents shall convene the meeting of Departmental promotion Committee (DPC) for filling up the post of Deputy Registrar within a period of three weeks and appellant No. 1 was directed to consider the case of the petitioner for promotion to the post of Deputy Registrar.

2. Briefly stated, the facts leading to the filing of the present LPA are that the petitioner P.C. Katoch filed a writ petition as against the appellants and others, directing the respondents for formulation of the pay scales to various posts in the

Engineering College, Hamirpur, produce the records of the meeting of the Board of Governors and also prayed for quashing of Annexures as detailed in the petition. A notice of the petition was issued to the respondents, who filed the reply and contested the petition and accordingly the order was passed by the learned Single judge, as detailed above.

3. We have heard the learned counsel for the parties.

4. By its impugned order, the learned Single Judge had directed the respondents to convene a meeting of the Departmental Promotion Committee (DPC) and to consider the case of the petitioner for the post of Deputy Registrar. We have gone through the Rules, vide which appointments to the post of Deputy Registrar are to be made. Firstly the department is to consider the case of direct recruitment to the post of Deputy Registrar and in case no direct appointee is found eligible or is available then they have to consider the case of the Assistant Registrars and other persons holding similar posts, which makes them entitled to be appointed as Deputy Registrar. Once the respondents were competent to appoint a person directly to the post of Deputy Registrar, no direction could have been issued to the respondents to call a meeting of the Departmental Promotion Committee (DPC) and consider the case of the petitioner. The said question would have arisen only, when it was found by the department that they were not able to select a person as direct person to be appointed as Deputy Registrar then similarly placed persons could have been considered by the department. It may be true that the department had not filled up the post of Deputy Registrar since long, as alleged in the petition, for which the direction could have been made to the respondents to fill up the post as per Rules and nothing beyond that.

5. We have gone through the pleadings of the petitioner in the writ petition filed by the petitioner and an oblique reference was made only in para-6 of the petition that the petitioner is entitled to be considered and promoted to the post of Deputy Registrar. It was reiterated by the petitioner himself in para-6 as under:-

Recruitment and Promotion Rules to the post of Deputy Registrar are filed herewith and marked as Annexure P-G to this writ petition. According to the eligibility criteria, promotion to the post of Deputy Registrar is to be made by direct recruitment or by promotion. In the case of promotion, the zone of selection is from amongst Astd. Registrar/Superintendent Grade-I/Section Officers with minimum 5 years regular service in the grade on the basis of their inter se seniority, persons in the higher grade being treated senior to those in the lower grade.

6. A reference was made to these rules, but no prayer was made in the reliefs claimed by the petitioner that such a direction be issued to the respondents to consider the case of the petitioner. We are not convinced of the submissions made by the learned counsel for the petitioner that such a relief could be granted by moulding the relief. In case there was some prayer for grant of the relief and

the relief claimed now was ancillary and was arising out of the main relief claimed by the petitioner, it would be granted. The petitioner did not claim for this relief at all in the reliefs claimed by him and did not amend the petition and meanwhile the post of Deputy Registrar may have fallen vacant and such directions were issued by the learned Single Judge. The relief claimed can be moulded in view of the subsequent developments, if it arises from the main prayer made by the petitioner in the writ petition, which was not so in the present case. Once there was no such prayer, the same could not have been granted by the learned Single Judge by moulding the relief in favor of the petitioner, which he claimed subsequently without amending the writ petition.

7. In view of the above discussions, we are satisfied that the relief granted by the learned Single Judge was not in consonance with the prayer made by the petitioner, which could not have been granted in the facts of the case. The promotion is to be made firstly by direct recruitment, for which there was no direction and directions were issued to call the meeting of the Departmental Promotion Committee (DPC), which could not be said in accordance with the Rules.

8. We have been informed during the course of hearing that presently the petitioner has been appointed as Deputy Registrar in accordance with the Rules and these submissions are only recorded, but no comments can be made upon the said appointment.

9. In view of the above discussions, we accordingly hold that the impugned order passed by the learned Single Judge was not in accordance with the prayers made and could not have been granted and as such the said order is being set aside. The LPA filed by the appellants stands allowed accordingly. Pending miscellaneous application (s), if any, stands disposed of.