
(2023) 08 SHI CK 0068
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1669 Of 2020

Raj Kumar

APPELLANT

Vs

State Of H.P. And Ors

RESPONDENT

Date of Decision : 16-08-2023

Acts Referred:

Citation : (2023) 08 SHI CK 0068

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : K.B. Khajuria,. Pushpender Jaswal, Gautam Sood, Rahul Thakur,
Priyanka Chauhan, Manohar Lal Sharma

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive reliefs:-

i) That the respondent department may very kindly be directed to place on record the promotion orders qua respondents No. 4 and 5 and the same may quashed and set aside being illegal and unconstitutional.

ii. That in view of the above mentioned facts and circumstances, the impugned result sheet Annexure P-2 prepared by the respondent department for promotion to the post of Forest Guard under 10% quota whereby, the candidature of respondents No. 4 and 5 have been considered and promoted totally in violation of R&P Rules may kindly be quashed and set aside, in the interest of justice and fair play.

iii. That the respondents may kindly be directed to promote the petitioner to the post of Forest Guard under 10% quota being fully eligible.

2. Petitioner has assailed the promotion of respondents No. 4 and 5 to the post of Forest Guard, on the ground that respondent No. 4 was not holding a post in

the feeder category and respondent No. 5 did not have the requisite qualification. In support of his contention, petitioner has placed reliance upon the Forest Guard, Class-IV (Non-Gazetted) Executive Section, Recruitment & Promotion Rules, 2014, which govern the field of appointments to the post of Forest Guard.

3. As per petitioner, respondent No. 4 was holding the post of Jamadar, Class-IV, in the pay scale of Rs.2720-100-3220-110-3660-120-4260 (pre-revised) and Rs.4900-10680+1800 GP after revision. The post of Jamadar is stated to be the promotional post from the feeder category of Peon/Khalasi with five years of service in the cadre. The specific allegation of petitioner is that the post of Jamadar is not the feeder category post for promotion to the post of Forest Guard from 10% quota reserved for said post by promotion on the basis of limited competitive test (LCT).

4. As regards respondent No. 5, the case of petitioner is that though the said respondent was holding a post of Chowkidar, which was a feeder category post for promotion by way of LCT to the post of Forest Guard, he did not have the requisite qualification of 10+2. Thus, respondent No. 5 could not have been considered for promotion to the post of LCT.

5. Respondents No. 4 and 5 have opted not to file separate replies, rather have adopted the reply filed on behalf of the official respondents. The official respondents have tried to justify their action in respect of respondent No. 4, on the ground that the post of Jamadar was a Class-IV post. The R&P Rules for the post of Forest Guard mentioning posts of Resin Watcher, Timber Watcher, Depot Watcher, Malies, Sweepers, Peons, Chowkidars, Dak Runners and Forest workers as feeder category are not exhaustive rather are indicative to include all Class-IV categories which was mentioned in R&P Rules of Forest Guard in 1978 and 2003. Respondent No. 5 was stated to be above the age of 50 years on the date of consideration for being promoted to the post of Forest Guard and as such was exempted under R&P Rules, 2014, from having the educational qualification of 10+2.

6. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

7. The precise grievance of the petitioner is that he was eligible for being considered to the promotion to the post of Forest Guard under 10% quota by way of LCT as he was holding the post of Peon and had five years service at his back. Petitioner had participated in the selection process, but the official respondents had wrongly and illegally promoted ineligible candidates i.e respondents No. 4 and 5 by ignoring the petitioner.

8. The process for making promotion to the post of Forest Guard under 10% quota by way of LCT was held by the official respondents in the year 2020. Undeniably, the recruitment and promotion rules for the post of Forest Guard notified on 20.09.2014 were applicable Clauses 10 and 11 of R&P Rules, 2014, are relevant to the issue involved in the instant petition and the relevant extract

of such clauses is being reproduced as under:-

"10. Method(s) of recruitment, whether by direct recruitment or by promotion, deputation/ Secondment, transfer and the percentage of post(s) to be filled in by various methods.- (i) 90% by direct recruitment on a regular basis or by recruitment on contract basis, as the case may be.

(ii) 10% by promotion on the basis of Limited Competitive Test.

11. In case of recruitment by promotion, deputation, transfer, grade from which promotion/deputation/transfer is to be made.- By promotion from amongst Class-IV officials i.e Resin Watcher, Timber Watcher, Depot Watcher, Malies, Sweepers, Peons, Chowkidars, Dak Runners and Forest workers possessing the recognized 'Matric/10+2 or its equivalent qualification' with 05(five) years regular service or regular combined with continuous adhoc service, if any, in the grade.

Provided that a Class-IV official possessing 'Matric' qualification shall have to acquire the recognized qualification of 10+2 within a period of 03(three) years. If the candidate fails to acquire the 10+2 qualification by 31.12.2017, then he/she shall be reverted to the parent Class-IV post.

Provided that the above proviso shall not render such Class-IV officials having qualification of Matric or its equivalent, ineligible for promotion to the post of Forest Guard against 10% quota who were in the cadres of Class-IV after attaining the age of 50 years."

9. Evidently, the post of Jamadar is not entered as a feeder category post for promotion to the post of Forest Guard by 10% quota by way of LCT, though it is a Class-IV post. The officials respondents have placed on record a copy of Recruitment & Promotion Rules for the post of Jamadar, Class-IV, in the department of Forest, Himachal Pradesh, notified on 08.03.2006. The post of Jamadar has been classified as a Class-IV (Non-Gazetted) post with the pay scale of Rs. 2720-100-3220-110-3660-120-4260 (pre-revised). The method of recruitment has been prescribed as 100% by promotion from amongst the Peon/Khalasi with five years service in the cadre. Thus, the official respondents themselves have categorized the post of Jamadar as a promotional post for the feeder category of Peon/Khalasi.

10. During the course of proceedings of instant petition, an order was passed on 12.07.2023 in following terms:-

"Learned counsel for respondents No.4 and 5 submits that he is under instructions to adopt the reply filed on behalf of respondents No.1 to 3.

Learned Deputy Advocate General to take instructions as to whether any incumbent holding the post of Jamadar was promoted to the post of Forest Guard under limited quota; whether the post of Jamadar is equivalent to that of Peon; whether the post of Jamadar is a placement or promotional post for the feeder category of Peon; and what are the pay scales for the post of Jamadar and Peon.

List on 20.07.2023.”

11. In compliance to above order dated 12. 07.2023, the official respondents had placed on record instructions in which it was again reiterated that the post of Jamadar is a promotional post for the feeder category of Peon and a comparative chart of their respective pay scales has also submitted in following terms:-

Category

Pay Scale as per H.P. Govt. Notification No. Fin.(PER) B(7)-1/2009 dated 26.08.2009

Revised Pay Scale as per HP Govt. Notification No. Fin (PER)B(7)- 64/2010 dated 27.09.2012

Jamadar

Rs. 2720-100-3220-110-3660- 120-4260

4900-10680+1800 GP

Peon

Rs. 2520-100-3220-110-3660- 120-4140

4900-10680+1300 GP (initial) 4900-10680+1650 GP (after two years regular service).

12. Thus, it is clear that the post of Jamadar is a promotional post for the feeder category of Peon carrying higher emoluments. The pre-revised as well as post revised pay scales of Jamadar carry higher emoluments than those received by Peon. In revised pay scale, the grade pay for the post of Jamadar is Rs. 1800/- whereas it is Rs. 1300/- initial and Rs. 1650/- after two years of regular service for the post of Peon.

13. In these circumstances, the defence raised by the respondents cannot be countenanced and it cannot be said that the post of Jamadar was to be read by implication in Clause-11 of Recruitment & Promotion, Rules, 2014. Since, the promotions in question were made under R&P Rules, 2014, respondents cannot derive any benefits from the earlier Rules which stood specifically repealed by 2014 Rules. It is not the case of respondents that any of the categories mentioned as feeder category for promotion to the post of Forest Guard under 10% quota by way of LCT was carrying the pay scale equivalent to that of the Jamadar. The reasons for non-inclusion of the post of Jamadar in the above noted feeder category cannot be said to be unintentional for the simple reason that the post of Jamadar, though a Class-IV post, was a separate class with a higher pay scale.

14. In view of what has been discussed above, there is no difficulty in holding that respondent No. 4 was not eligible to be considered for promotion to the post of Forest Guard by way of LCT.

15. As regards respondent No. 5, the clear stand of respondents is that the date of birth of respondent No. 5 was 04.06.1966 and he had crossed the age of 50 years at the time of consideration of his candidature for promotion to the post of Forest Guard. The petitioner has not been able to controvert this factual aspect. That being so, no fault can be found with the promotion of respondent No.5 to the post of Forest Guard, Class-IV (Non-Gazetted). Having qualification of matric and having attained the age of 50 years, respondent No. 5 was exempted from being rendered ineligible for promotion to the post of Forest Guard against 10% quota for want of qualification of 10+2.

16. In view of above discussion, the petition is partly allowed. The result of qualified candidates (Annexure P-2) to the extent it includes the name of Mr. Upesh Kumar, respondent No. 4, is quashed and consequently, the order of promotion, whereby respondent No. 4 has been promoted to the post of Forest Guard is also quashed. Respondents are further directed to consider the case of the petitioner for promotion to the post of Forest Guard under 10% quota in case he, otherwise, is found qualified and having a claim on merit.

17. The petition is, accordingly, disposed of, so also the pending miscellaneous application(s), if any.