

(2012) 01 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : CWP No. 5938 of 2011-F

Rajesh Kumar and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2012) 01 SHI CK 0013

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that respondent-State has framed the Recruitment and Promotion Rules, under Article 309 of the Constitution of India for filling up the posts of Planning Officers vide notification dated 30.5.1998 and amended from time to time. According to the existing Recruitment and Promotion Rules, Annexure P-5, the post of Planning Officer is to be filled up 20% by direct recruitment, 5% by transfer, failing which by direct recruitment and 75% by promotion out of which 25% from the feeder category of Junior Engineers with 5 years of service and 50% from Senior Planning Draftsman with 5 years of service. Case of the petitioner, in a nutshell, is that the cadre strength of the Junior Engineers, which is also one of the feeder categories for promotion to the Post of Planning Officer, is 29 and the cadre strength of the Senior Planning Draftsman, which is also feeder category for promotion to the post of Planning Officer, is 13. The respondent-Department has already proposed the amendment in the Recruitment and Promotion Rules as per letter dated 2.2.2011 whereby it has been proposed that the ratio of promotion as far as Junior Engineers is concerned will be increased from 25% to 35% to the post of Planning Officer and the ratio of Senior Planning Draftsman will be reduced from 50% to 35%. Petitioners have also made representations for the redressal of their grievance, however, respondent-State has taken decision that existing vacancies are to be filled up on the basis of existing Recruitment and Promotion Rules.

2. Ms. Jyotsna Rewal Dua has strenuously argued that the writ of mandamus be issued to the respondents-State to increase the quota of feeder category of Junior Engineers for promotion to the post of Planning Officer from existing 25% to 35% in terms of the proposed amendment as per letter dated 2.2.2011.

3. Mr. Vikas Rathore, learned Deputy Advocate General and Mr. Dilip Sharma have strenuously argued that the scope of judicial review in these matters is very limited and it is for the employer to frame the Recruitment and Promotion Rules under Article 309 of the Constitution of India.

4. I have heard the learned counsel for the parties and have perused the pleadings carefully.

5. It is by now well settled that the Courts cannot direct that in what manner the Recruitment and Promotion Rules are to be framed under Article 309 of the Constitution of India. This is legislative act and the scope of judicial review is very limited.

6. Their Lordships of the Hon^{ble} Supreme Court in Mallikarjuna Rao and Others Vs. State of Andhra Pradesh and Others, have held that the High Courts of the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309. Their Lordships have held as under:

13. The Special Rules have been framed under Art. 309 of the Constitution. The power under Art. 309 of the Constitution to frame rules is the legislative power, This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution.

7. The Department has already proposed the amendment in the Recruitment and Promotion Rules as per Annexure P-8 dated 2.2.2011 by increasing quota of Junior Engineers for promotion to the post of Planning Officer and the corresponding decreasing the quota of Senior Planning Draftsman from 25% to 35%. This Court cannot issue positive directions to amend the Recruitment and Promotion Rules in a particular manner.

8. Accordingly, in view of the observations and discussions made hereinabove, the present petition is disposed of with direction to the respondent-State to take decision on the basis of Annexure P-8 within a period of eight weeks from today. It is made clear that as far as the old vacancies are concerned, the same shall be filled up as per the Recruitment and Promotion Rules framed on 30.5.1998 and amended from time to time. Pending application(s), if any, also stands disposed of. No costs.