
(2009) 11 SHI CK 0072
In the High Court Of Himachal Pradesh

Ram Kumar Thakur

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Himachal Pradesh Municipal Corporation Act, 1994 — Section 46(3)

Citation : (2009) 3 ShimLC 346

Hon'ble Judges : R.B. Misra, Acting C.J.;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—The petitioner is working as a Clerk in the respondent-Corporation. He has assailed the appointment of respondent No. 3 and has also sought amendment in the Recruitment and Promotion Rules by seeking insertion of the feeder category of ministerial staff for the promotion to the post of Law Officer.

2. Ms. Ranjana Parmar has vehemently argued that her client is eligible and qualified to be considered for the post of Law Officer lying vacant in the respondent-corporation. She further contended that in few departments, the post of Law Officer is to be filled up from the staff employed therein. She further contended that her client is holding degree in law and should have been considered for the post of Law Officer instead of considering the case of respondent No. 3 by way of secondment and thereafter absorbing him permanently.

3. Mr. R.K. Bawa, learned Advocate General, Mr. Shrawan Dogra and Mr. Harmender Chandel have strenuously argued that the appointment of respondent No. 3 to the post of Law Officer is in accordance with law. They have also contended that the petitioner is not eligible for being considered for the post of Law Officer as per the Recruitment and Promotion Rules. Mr. Shrawan Dogra and Mr. Harmender Chandel have separately argued that there is only one post of

Law Officer available and the nomenclature of the same was only changed as Legal Advisor-cum-Law Officer vide letter dated 3.1.2008.

4. We have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. The post of Law Officer was created in the pay scale of Rs. 10025-15100 equivalent to the pay scale of Legal Advisor-cum-Prosecutor. The Corporation had decided to fill up the post as per the criteria fixed by the State Government by way of secondment. The applications were called from the eligible candidates from the State Government, Corporation/ Boards possessing degree of law and also having ten years experience in handling legal matters out of which five years experience in the pay scale of Rs. 10025-15100 and five years ACRs of the officer being adjudged very good. The Service Selection Committee was approved by the State Government on 11.8.2005. The interview was fixed on 20.8.2005. Respondent No. 3 also participated in the selection process. The Service Selection Committee recommended the name of respondent No. 3 for appointment to the post of Law Officer by way of secondment. Respondent No. 3 was appointed as Law Officer on secondment basis on 23.8.2005. The State Government also approved the Recruitment and Promotion Rules of the post of Law Officer on 13.12.2005. It is a selection post as per the Recruitment and Promotion Rules. This is to be filled up as per column No. 10, 100% by transfer from Government Departments, Boards and Corporations from amongst the persons, who have worked in the pay scale of Rs. 10025-15100 at least for five years. The suitability of the candidate is to be adjudged by a Service Selection Committee to be constituted by the State Government. In sequel to the approval accorded by the State Government to the Recruitment and Promotion Rules, the Corporation commenced the process for filling up the post. The option of respondent No. 3 was also sought. He exercised his option for permanent absorption on 24.12.2005. The same was duly considered by the State Government and he was absorbed on 13.1.2006. An amendment was also carried out in Section 46 (3) of the Himachal Pradesh Municipal Corporation Act, 1994 whereby the nomenclature of the post of "Law Officer" was changed to "Legal Advisor-cum-Law Officer".

6. What emerges from the above enumerated facts is that due process was followed for appointing respondent No. 3 as Law Officer on secondment basis as per the criteria laid down and after his suitability was adjudged by the Service Selection Committee. The criteria, including mode of filling up the post and the decision to appoint the petitioner by way of secondment was duly approved by the State Government. It is in these circumstances respondent No. 3 was appointed as Law Officer on secondment basis. There is subtle distinction between "deputation" and "secondment". A person sent on deputation is entitled to deputation allowance, however, a person sent on secondment is not entitled to any separate allowance. The petitioner did not fulfill the criteria prescribed for filling up the post on secondment basis. He is merely working as a Clerk in the

respondent-corporation. He did not possess ten years experience in handling legal matters with five years in the pay scale of Rs. 10025-15100 and with five years "very good" ACRs. A person, who is not eligible, cannot assail the appointment of a person, may be, made by way of direct recruitment, secondment or deputation basis. There is no merit in the submission of Ms. Ranjana Parmar that the post in question should have been filled up from the ministerial staff. The petitioner is working as a Clerk and in his hierarchy, he is entitled to be considered for promotion to the post of Senior Clerk and thereafter Senior Assistant. The framing of Recruitment and Promotion Rules is legislative in character. The framing of Recruitment and Promotion Rules and laying down the qualifications therein is a statutory function. This Court cannot ask the rule making authority to prescribe a particular feeder category for promotion to a particular post. The scope of judicial review in these matters is very limited.

7. The petitioner is also not eligible as per the Recruitment and Promotion Rules, which were approved by the State Government for filling up the post of Law Officer on 17.12.2005. Respondent No. 3 was working on secondment basis and a conscious decision had been taken to seek his option whether he would like to be absorbed in the corporation as Law Officer or not vide letter dated 24.12.2005. He gave his option. Consequently, he was absorbed vide letter dated 13.1.2006. In the meantime, as noticed above, an amendment was carried out in Section 46(3) of the Himachal Pradesh Municipal Corporation Act, 1994. The nomenclature of the post was changed from "Law Officer" to "Legal Advisor-cum-Law Officer".

8. Ms. Ranjana Parmar has lastly contended that one more post of Law Officer is lying vacant in the respondent-corporation on the basis of letter dated 16.10.2008. This position has been explained by the Director, Urban Development, in letter 30.1.2009. The Corporation, in its reply to CMP (T) 677/2009 has also explained that no post of Law Officer is existing in the respondent-Corporation.

9. The petitioner has also filed CMP (T) No. 677/2009 seeking quashing of letters dated 10.8.2005, 11.8.2005 and 13.1.2006, Recruitment and Promotion Rules notified on 13.12.2005 and seeking consideration of his case by inserting ministerial staff in feeder category for promotion to the post of Law Officer by way of amendment. The reliefs sought for in substance are the same, which have been sought in the main petition except that new Recruitment and Promotion Rules have been challenged. We are of the considered view that the application is misconceived. The amendment sought for cannot be allowed for the simple reason that the petitioner, as discussed hereinabove, is not eligible to be considered for the post in question. He is working as a Clerk. He does not possess ten years experience in the pay scale of Rs. 10025-15100 while working as Law Officer. The petitioner has no locus standi in these circumstances to assail the Recruitment and Promotion Rules duly framed and notified.

10. Consequently, in view of the observations made hereinabove, there is no

merit in the petition and the same is dismissed. The CMP (T) No. 677/2009 also stands dismissed. No costs.