
(2011) 01 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 9960 of 2008

Ram Parkash Panchhi

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 01 SHI CK 0024

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as a Clerk in the year 1959. He was promoted to the post of Junior Auditor in 1962. Thereafter, he was promoted to the post of Accountant in 1973. He was promoted to the post of District Inspector on 01.12.1976. He was confirmed on 02.01.1980. However, he was not considered for promotion to the post of District Food & Supplies Controller. One Shri Tek Ram Verma filed C.W.P. No. 279 of 1983 in this Court. In C.M.P. No. 1995 of 1986, the directions were issued by this Court. The order passed in C.M.P. No. 1995 of 1986 has been reproduced in the writ petition. Case of the Petitioner was not considered for promotion, however, the persons mentioned at Sr. No. 20 and 21, were promoted to the post of District Food and Supplies Controller on 22nd September, 1986. Thereafter, further promotions were made on 27th June, 1988. Petitioner filed an Original Application No. 215 of 1988 before the erstwhile learned Himachal Pradesh Administrative Tribunal. The interim order was passed by the learned Tribunal on 29th June, 1989. The Original Application was disposed of by the learned Tribunal on 11th August, 1989 with a direction that the investigation of the criminal case, which was registered in August, 1987 be completed by 30th November, 1989 and thereafter, the Petitioner be considered for adhoc promotion on merit, in case he was exonerated in the investigation of the criminal case. Petitioner was promoted to

the post of District Food and Supplies Controller on adhoc basis on 07.02.1990 and was regularly promoted on 17.11.1993.

2. Mr. D.P. Gupta, learned Counsel for the Petitioner has strenuously argued that the case of the Petitioner was required to be considered for promotion to the post of District Food and Supplies Controller w.e.f. 22.09.1986, when two incumbents figuring at Sr. Nos. 20 and 21, were promoted. His further case is that his client has been over-looked for promotion, even on 27th June, 1988, when the persons at Sr. Nos. 10, 18 and 22, were promoted to the post of District Food and Supplies Controller. He further argued that no criminal case was ever instituted against the Petitioner and the Petitioner was only cited as PW-14 in the Sessions Trial No. 01 of 1999, decided on 24.05.2003.

3. Mr. Vinod Thakur, learned Deputy Advocate General has strenuously argued that the case of the Petitioner has now been promoted on regular basis on 17th November, 1993 and has also retired from service.

4. I have heard the learned Counsel for the parties and gone through pleadings carefully.

5. Petitioner was confirmed as District Inspector on 02.01.1980. He was at Sr. No. 16 in the seniority list of District Inspectors as per Annexure A-1, as it stood on 31.05.1979. Petitioner was required to be considered for promotion, even though on adhoc basis to the post of District Food and Supplies Controller on 22.09.1986 and 27.06.1988. The persons assigned Sr. No. 20 and 21 of the seniority list, namely, Shri Rikhi Ram Thakur and Shri Madan Lal were promoted. However, the Petitioner was again over-looked for promotion to the post of District Food and Supplies Controller when the persons assigned seniority at Sr. Nos. 10, 18 and 22 were promoted. It has been stated in the reply that the Petitioner could not be promoted since he was involved in a criminal case relating to mis-appropriation of foodgrains in Government Godowns under his supervision in District Lahaul and Spitti. The stand now taken in the reply is that the Petitioner's Annual Confidential Reports for the years 1981-82, 1982-83 and 1983-84 were adverse. The stand taken in the reply to Original Application No. 215 of 1988, which was disposed of on 11.08.1989 and in this reply are at variance. The persons junior to the Petitioner were promoted on adhoc basis as District Food and Supplies Controller on 22.09.1986 and 27.06.1988. However, fact of the matter is that F.I.R. No. 19 of 1987, dated 03.08.1987 was registered against one Sonam Choppal, Sonam Dorge, Man Chand, Govind Ram and Sonam Dev Thakur. Petitioner was never an accused in the Sessions Trial No. 01 of 1999, rather he has been cited as PW-14 in that case. The stand taken by the Respondents in the reply to Original Application No. 215 of 1988 was factually incorrect. Petitioner was not involved in any of the Criminal cases, as stated in the reply. The Respondents have tried to improve their case by stating that the Petitioner's case was not considered due to adverse entries. This was not the stand taken by the Respondents when the reply was filed to Original Application No. 215 of 1988. The Petitioner has been wrongly over-looked for promotion to

the post of District Food & Supplies Controller and the persons junior to him who were assigned seniority at Sr. Nos. 10, 18 and 22 have been promoted on 22.09.1986 and 27.06.1988. Petitioner has been promoted to the post of District Food & Supplies Controller on 07.02.1990 and has been appointed on regular basis on 17.11.1993. It is settled law by now that the incumbent who is otherwise eligible and qualified, is required to be considered for promotion on adhoc basis under Article 14 of the Constitution of India. This valuable right has been denied to the Petitioner on wrong premise.

6. A Division Bench of this Court in *Dr. V.K. Bhargava v. State of H.P. and Ors.* Indian Law Reports (Himachal Series) (1985), 358 has held as under:

33. It cannot be possibly disputed that even an ad-hoc appointment to a post is an appointment to an office, however, tenuous its character may be. Such ad-hoc appointment authorizes the appointee to occupy the post and to perform the functions and to discharge the duties and to draw the emoluments attached to the post. In case of ad-hoc appointment to any post by way of promotion, there is also the conferment of a higher status or position. When such an appointment is made to any office under the State, Articles 14 and 16 will undoubtedly have an impact. Article 16, sub-Article (1) provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It is settled law that Article 16 is only an incident of the application of the concept of equality enshrined in Article 14. Article 16, Sub-Articles (1) and (2), really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). These three provisions form part of the same constitutional code of guarantees and supplement each other and they give effect to the doctrine of equality in the matter of appointment and promotion. In other words, Article 16 guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. *The General Manager, Southern Railway Vs. Rangachari*, *State of Mysore and Another Vs. P. Narasing Rao*, and *C.A. Rajendran Vs. Union of India (UOI) and Others*, In deciding the scope and ambit of the fundamental right of equality of opportunity guaranteed by this Article, it is necessary to bear in mind that in construing the relevant Article a technical or pedantic approach must be avoided. Looked at from this angle, there is no reason to exclude the applicability of Article 16 in matters relating to ad-hoc employment or appointment to any office under the State. Any arbitrariness, unfairness or inequality of treatment in the matter of ad-hoc employment or appointment, including an appointment by way of ad-hoc promotion, to any office under the State would, therefore, give rise to a legitimate challenge enforceable in writ jurisdiction on the ground of the breach of Article 16. If there are any policy decisions/executive instructions governing ad-hoc appointments and there is any arbitrary or irrational departure therefrom on the part of the State, the challenge can be justifiable based on the ground that such act impinges upon the guarantee of equality of treatment enshrined in Article 16. If

there is a statutory enactment regulating such appointments and there is a breach thereof, an additional ground of challenge based on the infringement of a legal right would also be available. Thus much on principle.

7. Accordingly, in view of the observations made hereinabove, the petition is allowed. The Respondents are directed to consider the case of Petitioner for promotion to the post of District Food & Supplies Controller w.e.f. 22.09.1986 with all consequential benefits, within a period of two months from the date of production of a certified copy of this judgment by the Petitioner. No costs.