
(2013) 01 SHI CK 0055
In the High Court Of Himachal Pradesh
Case No : CWP No. 1359 of 2012-F

Ramesh Kumar Saini

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 14, 16, 21

Citation : (2013) 2 LLJ 474

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Y.P.S. Dhaulta, for the Appellant; D.S. Nainta, Addl. A.G. with Mr. Neeraj K. Sharma, Dy. A.G., for the Respondent

Judgement

Justice Dharam Chand Chaudhary, Judge

1. These writ petitions were tagged with CWP No. 4379 of 2010 for disposal, in view of the fact that the petitioners herein and in the above writ petition are serving the respondent-State as Work Inspectors and claim the relief of promotion to the post of Junior Engineer (Civil) in the Department of Public Works, however, delinked because for the purpose of promotion. Both set of petitioners i.e. one in these writ petitions and another in CWP No. 4379 of 2010 aforesaid have their own separate quota prescribed under the relevant Rules. These writ petitions are being disposed of by this common judgment for the reason that qualification of the petitioners in CWP No. 1359 of 2012 is higher Secondary Part-II, whereas, of the petitioners in CWP No. 6748 of 2012 are Higher Secondary Part-I, hence falls under the category of those Work Inspectors having matriculation or its equivalent recognized qualification with atleast 15 years regular service or regular combined with continuous adhoc service entitled to promotion as Junior Engineer (Civil) to the extent of 4% as per The Himachal Public Works Department, Junior Engineer (Civil) Class-III (Non-Gazetted), Recruitment and Promotion (First amendment) Rules, 2007 which reads as

follows:

Rule 10 (b) (v)

V) 4% from Work Inspectors who are Matriculates or possess its equivalent recognized qualification with atleast 15 years regular service or regular combined with continuous adhoc service, if any, in the grade and completed successfully the prescribed departmental training course of six months duration.

2. In a nutshell, it has been claimed in these writ petitions that the petitioners who were appointed as Work Inspectors in the month of October, 1975 though nearing their retirement, however, being duly eligible in accordance with the Recruitment and Promotion Rules and in the seniority list Annexure P-1 at Serial No. 43 and 52 have been denied promotion to the post of Junior Engineer (Civil), irrespective of their ACRs/V.C.C. having already been sought by the 2nd respondent vide letter dated 25.6.2011, Annexure P-2. The action on the part of the respondents in not promoting them has been assailed in these writ petitions being arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India, besides being violative of the principle of natural justice. The relief claimed in both these writ petitions, common in nature reads as follows:

i) That the petitioner be considered for promotion as Junior Engineer (Civil) with all consequential benefits with interest.

ii) That the petitioner be considered for as Junior Engineer (Civil) on notional basis since he is to retire on 29.2.2012 (in CWP No. 6748 of 2012 on 31.4.2012) with all post retrial consequential benefits alongwith interest.

3. No reply has been filed in CWP No. 6748 of 2012, despite time granted for filing the same. This writ petition, however, was ordered to be listed for hearing alongwith CWP No. 1359 of 2012 vide order passed on 23.8.2012.

4. In reply to CWP No. 1359 of 2012 apart from making reference to the provisions under the Recruitment and Promotion Rules for recruitment to the post of Junior Engineer (Civil) by way of direct recruitment/promotion, the stand taken by the respondents read as under:-

5. That the CWP No. 4379/2010 titled as Susheel Kumar and 4 others V/s State of H.P. is pending before this Hon"ble Court wherein the petitioners working as Work Inspectors in HPPWD have claimed promotion to the post of Junior Engineer from the quota meant for ITI trade work Inspectors. During the pendency of above writ petition on 30-07-2010 this Hon"ble Court was pleased to pass the following orders.

CMP No. 6896 of 2010

Allowed

CWP No. 4379 of 2010 & CMP No. 6895 of 2010

Notice dasti to respondents No. 3 to 15

Short reply within two weeks.

Post on 13th August, 2010

The proceedings may go on. However, before actually implementing the order, permission will be sought from the Court.

Copy dasti. (copy attached as Annexure R-5)

So due to aforesaid orders passed by this Hon''ble court the promotion for the post of Junior Engineer (Civil) was not made by the replying respondents. It is further submitted that replying respondents filed an application u/s 151 CPC on dated 04.02.2011 for seeking permission of this Hon''ble High Court for promotion to the post of Junior Engineer (Civil) from the category of Work Inspectors, which is still pending adjudication. Thereafter the replying respondents on dated 04.05.2011 again filed an application u/s 151 CPC for early hearing of CWP No. 4379/2010, which is also pending adjudication before this Hon''ble Court. Thereafter on dated 2.11.2011, replying respondents again filed an application 151 CPC before this Hon''ble Court for early hearing of CWP No. 4379/2010 seeking permission for the promotion to the post of Junior Engineer (Civil) from the feeder category of Work Inspectors, which is also pending adjudication before this Hon''ble Court. Hence, due to the reasons stated herein above the promotion to the post of Junior Engineer (Civil) from amongst the feeder category of Work Inspector could not be conducted.

...Although ACR/VCC in respect of eligible Work Inspectors including the petitioner were called for but promotion order could not be issued due to interim stay orders dated 30.07.2010 passed by this Hon''ble High Court in civil writ petition No. 4379/2010 titled as Susheel Kumar V/s state of H.P.

That the contents of these paras are wrong hence denied. No cause of action whatsoever rises to the petitioner to file and maintain to the present petition because the petitioner has neither been ignored/ deprived of the promotion to the post of J.E. (Civil) against 4% quota of Work Inspectors to the post of J.E. (Civil). However, due to the orders dated 30.07.2010 passed by this Hon''ble Court in CWP No. 4379/2010 titled as Susheel Kumar and 4 others v/s state of H.P. and others as stated in para No. 5 of the Preliminary submissions. The promotion to the post of Junior Engineer (Civil) amongst the category of Work Inspectors could not be made by the replying respondents.

That the contents of these Paras are wrong and hence denied in view of the submissions made herein above in Preliminary submissions 1 to 5 and reply on merits. The petitioner though falls in the consideration Zone for promotion as J.E. (Civil) but the promotions from amongst the Work Inspector could not be made by the respondent department due to orders dated 30.07.2010 passed by this Hon''ble High Court in CWP No. 4379/2010 Susheel Kumar & others V/s State of H.P., which continued.

5. It is seen from reply to the writ petition that as per admission on the part of

the respondents, the petitioners, no doubt, falls in the zone of consideration for promotion as Junior Engineer (Civil), however, they could not be promoted on account of interim order, reproduced supra passed by this Court in CWP No. 4379 of 2010. It is worthwhile to mention here that CWP No. 4379 of 2010 stands disposed of vide separate judgment of the day and the interim order so passed in that writ petition stands vacated. The petitioners, who no doubt, now stand retired on 29.3.2012 and 31.4.2012 respectively on attaining the age of superannuation, however, being eligible as per Recruitment and Promotion Rules and also in the zone of consideration for promotion as Junior Engineer (Civil) are entitled to be considered for promotion as such by the competent authority and if, ultimately promoted entitled to all consequential benefits.

6. In view of the above, both the writ petitions are disposed of with a direction to the 2nd respondent to consider the petitioners for promotion as Junior Engineer (Civil) within two months from the date of production of a copy of this judgment and if found suitable promote them notionally with all consequential benefits. Against the surviving grievances, if any, the petitioners are at liberty to approach this Court again, if so advised. With the above observations, these writ petition stand disposed of finally, so also the pending application(s), if any.