

(2015) 03 SHI CK 0101
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 222 of 2010

Rattan Lal

APPELLANT

Vs

Prem Vaid and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 03 SHI CK 0101

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : H.K. Paul, for the Appellant; Dilip Sharma, Senior Advocate and Nishi Goel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The appellant is aggrieved by the judgment passed by the learned writ Court on 20.9.2010 in CWP(T) No. 13201 of 2008 whereby the writ petition preferred by respondents No. 1 and 2 herein came to be allowed and the orders dated 20.1.2007 and 29.10.2007 respectively assigning seniority to the appellant over and above the respondents No. 1 and 2, were quashed and set-aside.

2. Some of the undisputed facts may be noticed at this stage, which are as follows:

3. The entire claim of the appellant rests upon the submission that since he had been promoted as Senior Assistant earlier to respondents No. 1 and 2 being promoted as Senior Scale Stenographers, therefore, he was required to be promoted earlier to them to the post of Superintendent Grade-II. However, this contention was not accepted by the learned writ Court.

4. We have heard learned counsel for the parties and have gone through the records of the case carefully.

5. As is discernible from the records, at the time when the respondents were

promoted to the post of Superintendent Grade-II, the appellant was not even eligible for consideration because there were 58 other senior eligible candidates in his cadre. The appellant belongs to the reserved category and had obtained accelerated promotion as Senior Assistant. Once, when his senior colleagues belonging to the general category caught up with him on promotion to the post of Senior Assistant, they re-gained their seniority in terms of the law declared by the Hon"ble Supreme Court as also the instructions issued by the State of Himachal Pradesh dated 27.5.1996 and 4.9.1997. The relevant portion of the instruction dated 27.5.1996 reads as under:

"(a) A candidate(s) irrespective of the category to which he belongs including the candidates belonging to the reserved categories shall be entitled for consideration for promotion on the basis of his seniority assigned to him in his entry grade/cadre, if he has not taken the benefit of reservation at any point of time in promotion.

(b) If a candidate has taken a benefit of promotion on account of reservation at any stage and has gained seniority above the senior general candidate in the promoted post, such reserved candidate will not be entitled to the consideration for the next promotion on the basis of such jumped up seniority till such time the representation of the said reserved category falls short of the prescribed percentage of reservation."

The aforesaid instructions were further clarified vide instruction dated 4.9.1997 relevant portion whereof reads as under:

"I am directed to refer to the instructions issued by the State Government vide Department of Personnel letter No. PER.(AP)-C-F(1)-1/95, dated the 27th May, 1996, followed by subsequent clarificatory instructions of even number, dated the 27th March, 1997 on the subject noted above and to further clarify that the said instructions do not contemplate revision of any seniority list prevailing on 27.5.1996, nor does it prohibit promotion of Officers (including SC/ST Officers) on the basis of the seniority list prevailing on 27th May, 1996. If on the basis of the seniority list prevailing on 27.5.1996 a junior SC/ST Officer is promoted to a higher post/grade because of the rule of reservation and his senior general/OBC Officer is promoted subsequently to that higher post/grade, the said senior General/OBC Officer will regain his original seniority over his earlier promoted SC/ST Officer in the immediate higher post/grade by virtue of this Department's instructions of 27th May, 1996." 6. The State has formulated Rules known as "the Himachal Pradesh Agriculture Deptt. Superintendent Grade-II (Class-III Non-Gazetted) R and P Rules, 1986" (for short the "Rules"). We are presently concerned only with Rule 11 thereof which relates to the promotion and reads thus:

7. In terms of the aforesaid Rules, the post of Superintendent Grade-II is to be filled up by promotion amongst the Superintendent Grade-IV and Assistants/Sr. Scale Stenographers, combined, failing which by promotion from amongst

Assistants and Sr. Scale Stenographers with atleast 6 years (including ad hoc rendered upto 31.12.83) service in the respective grades.

8. A plain reading of the Rules suggest that the feeder cadres for promotion to the post of Superintendent Grade-II are Senior Assistant/Senior Scale Stenographers with atleast 6 years service (including ad hoc service rendered upto 31.12.1983) in respective grades. It is further provided that for the purpose of promotion the combined seniority list of eligible Assistants/Senior Scale Stenographers will be prepared on the basis of length of service in the respective grades, inter se seniority not to be disturbed.

9. Once the Rules only provide for preparation of combined seniority list of eligible Assistants/Senior Scale Stenographers that too only on the basis of the length of service in the respective grades, then the mere fact that the appellant had been appointed as a Clerk earlier to the respondents No. 1 and 2 is of no significance, more particularly when the rules nowhere provide that seniority would be maintained on the basis of entry in service.

10. Furthermore, it is only on the basis of the combined seniority list of the eligible categories from both categories i.e. Assistants and Senior Scale Stenographers that further promotion to the post of Superintendent Grade-II is required to be made. Therefore, even if the appellant had been promoted as Senior Assistant earlier to respondents No. 1 and 2, being appointed as Senior Scale Stenographer even then he was ineligible for being promoted on the basis of the combined seniority list because of his being lower in seniority in the line of eligible Assistants. In such circumstances acceding to the claim of the appellant would not only amount to according seniority to the appellant over and above the respondents No. 1 and 2 but would otherwise result in promoting him as Superintendent Grade-II over and above the other 58 Senior Assistants, who had regained seniority over him and were yet to be promoted on the basis of the common seniority list. This would not only be impermissible but would be contrary to law.

11. It is settled law that where two posts constitute feeder post to a promotional post it is permissible to either fix a quota or have an integrated seniority list. If promotions are made from an integrated seniority list then obviously nobody can have a grievance.

12. In view of the aforesaid discussion, we find no merit in this appeal and the same is accordingly dismissed, leaving the parties to bear their own costs.