
(2014) 07 SHI CK 0127
In the High Court Of Himachal Pradesh
Case No : LPA No. 110 of 2008

Sanjeev Kumar Gupta

APPELLANT

Vs

Himachal Pradesh Vidhan Sabha

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 07 SHI CK 0127

Hon'ble Judges : V.K. Sharma, J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Dilip Sharma, Senior Advocate and Manish Sharma, Advocate for the Appellant; Dushyant Dadwal and Rajiv Jiwan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—The appellant is the writ respondent, whose appointment Annexure P-7 as Senior Assistant on ad hoc/stop gap arrangement came to be challenged by the writ petitioners-(respondents herein).

2. The case set out in the writ petition was that petitioner No. 1 had joined as Clerk in the Vidhan Sabha on 2.8.1985, was confirmed on 19.5.1988 and promoted as Senior Clerk on 3.8.1993 and thereafter as Junior Assistant on 2.8.1995. Similarly, the writ petitioners No. 2 and 3 joined the Himachal Pradesh Vidhan Sabha in the cadre of Clerks on 1.7.1986 and 14.7.1986, respectively. All the writ petitioners were working as Junior Assistants in the H.P. Vidhan Sabha, whereas the appellant came to be appointed for the first time as Proof Reader on 23.9.88 and was thus junior to the writ petitioners.

3. The grievance of the writ petitioners was that earlier Clerks, Proof Readers and Junior Assistants were eligible for promotion to the post of Senior Assistants amongst those who had completed ten years service in the feeder category, which was reckoned from the date of appointment in the Vidhan Sabha but now the respondent No. 1 had reduced the period of eligibility in case of proof readers

and increased the period qua the clerical cadre, which was unfair and arbitrary. It was their allegation that in the joint seniority list circulated, which remained unchallenged, the respondent was shown at Sr. No. 17, whereas the petitioners were all placed above him in the seniority list. They further claimed that they cannot be denied promotion as they were senior to the appellant because of their induction in the feeder cadre was earlier than that of respondent No. 2 (appellant herein).

4. The H.P. Vidhan Sabha was arrayed as respondent No. 1 and filed its reply wherein it has been contended that seniority relied upon by the petitioners was not at all relevant in view of the amendment made in the Recruitment and Promotion Rules (for short, the Rules), whereby seniority of the appellant was to be reckoned above that of the writ petitioners as the rule itself provided that for the purpose of combined seniority "the Proof Readers will be equated with Junior Assistants". Since the rules were not challenged and had been framed by the competent authority, the respondent No. 1 prayed for dismissal of the writ petition.

5. The appellant, who was arrayed as respondent No. 2 in the writ petition filed a separate reply, where he set out a comparison of pay scale granted in his favour viz-a-viz pay scale of the writ petitions to claim that he was holding a post carrying high pay scale and therefore, was entitled to be placed above the writ petitioners in the combined seniority list. It was claimed that grant of higher pay scale to Proof Reader was possibly one of the reasons, which weighed with respondent No. 1 to prescribe lesser years of service for the feeder category for further promotion to the post of Senior Assistant as compared to other feeder posts for which such prescribed length of service was more.

6. The writ petition filed by the writ petitioners came to be allowed vide the impugned judgment holding that since the post was a non-selection post, therefore, it was seniority alone which would govern the selection, subject of-course to the incumbent being otherwise fit. The learned Single Judge though observed that rules did not provide for determination of inter se seniority between the writ petitioners and the appellant herein, however, this very seniority was in fact made the foundation and the basis for allowing the writ petition by assigning the following reasons:-

... This stand cannot be accepted. The rules do not provide for determination of inter se seniority, between respondent No. 2 and the petitioners. Admittedly, till the joint seniority list was being issued, he was being shown junior to the petitioners. Merely on the basis of consideration for eligibility, the respondent cannot be considered to be senior. There is nothing on record to suggest that a combined seniority list was issued showing respondent No. 2 to be senior to the petitioners which would provide them an opportunity to represent their case showing that actual length of service rendered in a cadre/grade would constitute right place in seniority instead of being propped up by artificial fiction contrary to the principles used for determination of seniority.

7. The other reason accorded for rejecting the claim of the appellant and for allowing the writ petition was that "merely because the cadre of Proof Readers constitutes a single man cadre the same cannot constitute a ground for giving him preference in seniority over the rest."

8. We have heard the learned counsel for the parties and have gone through the record. Before delving on the other points as raised in the appeal, it would be apt to reproduce the pay scales and qualification prescribed for the post of Clerks, Junior Assistant, Proof Reader and Senior Assistant as under:-

9. What would appear from the aforesaid pay scales and qualification is that not only the Clerks, but even the Junior Assistant were placed in a far lower pay scale than that of proof Readers. Not only this, the essential qualification for Clerks was Matriculation in second Division or 10+2 or its equivalent, while the essential qualification for Proof Reader was much higher qualification prescribing therein Graduation from a recognized University with experience of Proof Reading.

10. The post of Senior Assistant was a non-selection post, which was required to be filled up 100% by way of promotion in the following manner:-

From the perusal of the aforesaid rules, it is absolutely clear that in so far as the promotion from amongst Clerical cadre of Clerks/Senior Clerks/Junior Assistants to the post of Senior Assistant is concerned, ten years regular service or regular combined with continuous adhoc service is provided for. While in so far as the Proof Reader is concerned, a lesser service of only five years regular service or regular combined with continuous adhoc service in the grade has been prescribed. The post of Proof Reader was therefore recognized by the employer itself to be a far most superior post in the matter of pay scale, qualification as also status and responsibility.

11. Sh. Dilip Sharma, Senior Advocate representing the appellant has rightly contended that there has been a conscious use of word of "Junior Assistant" in the amended rules because the Clerical cadre itself comprised:

- i. Clerks
- ii. Senior Clerks; and
- iii. Junior Assistants.

For the purpose of eligibility, the Proof Reader having five years regular service has not been equated with Clerks or Senior Clerks, but has been equated with that of the Junior Assistants having ten years regular service in that capacity. The reason for this is obvious. It was never intended that the entire length of service of those belonging to clerical cadre right from clerk onwards/then senior clerks and thereafter as Junior Assistant be counted for reckoning ten years service, because this would defeat the very object of the rule.

12. The matter of equivalence of different posts is a purely administrative function, which normally does not call for interference on judicial review unless

and until shown to be grossly arbitrary or unreasonable and would defeat logic or common sense. In the present case, the amended rules seek to balance the competing interest of two groups i.e. Junior Assistants on the one hand and Proof Reader on the other in an equitable manner. By balancing out those interest on the bedrock of higher educational qualification and pay scale with the experience gained by the Junior Assistants. The new group so created as a feeder category is guarded by longer length of experience of ten years for Junior Assistants coupled with the higher qualification and pay scale of Proof Readers in order to bring both these categories at par with each other. Higher qualification as a basis of classification in the matter of promotion has received judicial approval from time to time and reference may be made to Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others, , The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, ; Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, ; P. Murugesan and Others Vs. State of Tamil Nadu and Others, , M. Rathinaswami and Others etc. Vs. State of Tamil Nadu and Others etc., .

13. The respondent No. 1 is the best judge of its needs consistent with the efficiency of administration. Manpower planning is purely administrative functioning. The matter of equation of posts is best left to the informed judgment of expert bodies and the court is least equipped to interfere in such policy matter. If the respondent No. 1 in its wisdom has clubbed both these posts for the purpose of consideration for promotion to the next higher post of Senior Assistant to best serve the respondent No. 1, it cannot be said such decision is perverse, unreasonable or arbitrary or even violative of Articles 14 and 16 of the Constitution. Un-equals can be made equal provided sufficient thought is paid in striking a balance and various equalizing inputs are built in to the decision making. It is trite that mere chances of promotion are not conditions of service and do not constitute a fundamental right enforceable in a court of law. It is always open to the government (Vidhan Sabha) to create two sources of recruitment by promotion as it thinks fit in its wisdom.

14. Further more there was no scope of interference when undisputedly, the amendment carried out in the rules had not been challenged in the writ petition, therefore, the rules are required to be religiously followed particularly when they are absolutely clear and unambiguous. Allowing the writ petition in this factual background meant quashing the rules which in fact had not even been challenged.

15. In view of the aforesaid discussion and for all the reasons assigned above, we find merit in the appeal and the same is accordingly allowed. Consequently, the order passed by the learned Single Judge on 24.6.2008 is set-aside and the writ petition is accordingly dismissed, leaving the parties to bear their own costs.