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(2010) 12 SHI CK 0233

In the High Court Of Himachal Pradesh

Case No : CWP No. 1311 of 2009

Satish Jamwal and Others APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0233

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this petition, the Petitioners have prayed for the quashing of the Recruitment and Promotion Rules, Annexure P-6 and in the alternative have prayed that the Panchayat Inspectors should be placed en-bloc senior to the Auditors. They have also prayed that the State be directed to amend the R&P Rules and restore the promotion quota for the two categories as it existed prior to the amendment.

2. Briefly stated, the fact of the case are that the Petitioners are all working as Panchayat Inspectors and the Private Respondents are Auditors. Under the R&P Rules of 1996, for filling up the posts of Panchayati Raj Department Instructors the feeder category was Panchayat Inspectors and Auditors i.e. 50% from amongst Panchayat Inspectors and 50% from amongst Auditors. The roster was also prescribed and first post went to Panchayat Inspectors, second to Auditors, 3rd to Panchayat Inspectors, 4th to Auditors and so on and so forth.

3. The Recruitment and Promotion Rules for the posts of District Audit Officers were virtually identical and similar reservation and roster points were provided. The Rules were amended in the year 2000 vide Annexure P-4 but these did not affect the reservation or the roster points.

4. The Petitioners allege that both the feeder categories i.e. Panchayat Inspectors and Auditors are totally different categories and according to the Petitioners the

Auditors were in the lower scale of pay and therefore should not have been given equal weightage for promotion to the higher categories of Panchyati Raj Department Instructors and District Audit Officers. It is however not disputed before me that this Court vide another judgment has directed that Auditors are entitled to the same pay as Panchayat Inspectors and therefore they both are in the same scale of pay.

5. The Rules were again amended in the year 2007 and by these Rules the Petitioners have been affected. In these Rules though both Auditors and Panchayat Inspectors having five years of service are eligible for promotion to the posts of District Audit Officers/Panchayati Raj Department Instructors but there is now no reservation for any particular category and as such there is no roster point provided. The proviso reads as follows:

Provided that for the purpose of promotion a combined seniority list of eligible Auditors and Panchayat Inspectors on the basis of length of service without disturbing their cadre-wise inter-se seniority shall be prepared.

6. This clearly envisages that there shall be a combined seniority list of Auditors and Panchayat Inspectors on the basis of length of service and the promotions shall be made on the basis of such combined seniority list. It is contended that the action of the Respondents-State in framing Rules Annexure P-6 is illegal, arbitrary and against the principles of service law and shall adversely affect the career prospects of the Petitioners. One of the grounds of challenge is that the pay scale of Panchayat Inspectors was higher than that of Auditors but this ground is no longer available to the Petitioners for the reasons stated aforesaid.

7. This Court has a very limited jurisdiction in such matters. It is for the employer to decide what Rules are to be framed. The Rules can only be set-aside if they are unconstitutional. The employer in its wisdom has decided that a combined seniority list of both the feeder categories shall be maintained. There is no material on record to show that this decision is illegal or arbitrary. If both the Auditors and Panchayat Inspectors are in the same scale of pay and they both are in the feeder category for filling up the higher posts of District Audit Officers/ Panchayati Raj Department Instructors, there is nothing illegal in directing that a joint seniority list on the basis of length of service of these two categories should be maintained.

8. The State in its reply has explained why such amendment was necessitated. According to the State prior to the year 1996, there were 69 sanctioned posts of Auditors and they used to be eligible for promotion to the 12 posts of District Audit Officers. On the other hand 69 Panchayat Inspectors were only eligible to be promoted to six posts of Panchayati Raj Department Instructors. Therefore, the Auditors had better chances of promotion under the Rules of 1987. It appears that on the representation of Panchayat Inspectors the Rules were amended in the year 1996 and a provision was made for 50% promotion from amongst Auditors and 50% from amongst Panchayat Inspectors and roster was

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also provided. However, it was found that persons who had much longer service in the Auditors category were being deprived of promotion and persons who had joined much later as Panchayat Inspectors were being promoted on account of reservation and roster. Hence, the need to again amend the Rules.

9. There is rationality and reasoning in the approach of the Government. When two feeder categories are in the same pay scale and employees of both these categories are eligible to common higher posts, there is no reason why joint seniority list for the purposes of promotion should not be maintained.

10. In view of the above discussion, I find no merit in the petition which is dismissed. No order as to costs.

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