

(2011) 03 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 534 of 2009

Shiv Ram Bali

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 2 ShimLC 122

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that Petitioner was appointed as Patwari in the Settlement Department and was posted at Rampur, District Shimla. Thereafter, Petitioner joined the Public Works Department as Patwari on permanent basis in the office of Land Acquisition Officer, Shimla on 1.6.1987. There are 79 posts of Patwari, 22 posts of Kanungo and 9 posts of Naib Tehsildar in the Respondent-Department. Petitioner filed original application before the erstwhile Himachal Pradesh Administrative Tribunal for making Recruitment and Promotion Rules for promotion to the posts of Kanungo from Patwari. Thereafter, Recruitment and Promotion Rules were framed by the Respondent-department on 27.10.1995 for the posts of Kanungo. Petitioner was promoted as Kanungo in the year 1996. Thereafter, he filed original application bearing O.A. No. 251/1998 seeking directions to the Respondents to frame Recruitment and Promotion Rules to the posts of Naib Tehsildar. This petition was directed to be treated as representation on 4.1.1999. Thereafter, the Recruitment and Promotion Rules for the posts of Naib Tehsildar were framed and the Petitioner was promoted to the post of Naib Tehsildar on 8.10.1999. Petitioner made representations to the Respondent-department for up-gradation of the post of Naib Tehsildar or promotion to the post of Tehsildar. Case of the Petitioner was recommended by Respondent No. 4 on 11.3.2004. His case was also recommended, as per Annexure A-7 dated 28.7.2005 by the

Secretary (PW) to Respondent No. 1. Thereafter, Petitioner filed original application bearing No. 723/2007 for the redressal of his grievance. The same was also directed to be treated as representation to the Principal Secretary (Finance) to the Government of Himachal Pradesh on 2.4.2007. The representation was considered by the Principal Secretary (Finance) and the same was rejected on 11.5.2007.

2. Mr. Ramesh Sharma has strenuously argued that his client has been stagnating on the same post of Naib Tehsildar and the Respondents may be directed to frame Recruitment and Promotion Rules for the post of Tehsildar or in the alternative, the post of Naib Tehsildar be upgraded. He has also argued that there should be 2-3 promotional avenues to an employee to remove stagnation and improve efficiency.

3. Mr. Anshul Bansal, learned Additional Advocate General has vehemently argued that the case of the Petitioner was duly considered and in the Respondent-Department, Assured Career Progression Scheme has also been introduced to remove the stagnation. He then argued that to create a post is a policy matter and the framing of Recruitment and Promotion Rules is also a legislative function and the scope of judicial review in such like matters is very limited.

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

5. Petitioner has joined the Respondent-department on 1.6.1987. He has already obtained two promotions from the post of Patwari. He was promoted as Kanungo from the post of Patwari in the year 1996 and thereafter as Naib Tehsildar from the post of Kanungo on 8.10.1996. The Respondent-department has not created any post of Tehsildar. This Court cannot direct the Respondents to create a post. It is a policy matter. Similarly, the Court cannot direct the Respondents to frame Recruitment and Promotion Rules. It is the prerogative of the State, being legislative function, to frame the Recruitment and Promotion Rules.

6. It is true that the case of the Petitioner was favourably recommended by Respondent No. 4 on 11.3.2004. The original application No. 723/2007 filed by the Petitioner was directed to be treated as representation on 2.4.2007 by the State of Himachal Pradesh. Thereafter, the Secretary (Finance) has passed a detailed and reasoned order vide Annexure A-9 dated 11.5.2007. It is not disputed that the Assured Career Progression Scheme is in vogue in Respondent-department, which guarantees the next pay scale in the hierarchy of pay scales alongwith one increment on completion of 8 years of service and one proficiency step up on completion of 16/24 years of service. The basic idea of introducing the Assured Career Progression Scheme is to remove the stagnation. In the instant case, the Petitioner has already been promoted twice as such it is not a case of stagnation. It is settled law that it is only in those case where there are no promotional avenues, the Court may intervene by directing the employer to provide reasonable promotional avenues to its employees. In this case, it is

reiterated that the Petitioner has already availed two promotions.

7. Mr. Ramesh Sharma has argued that since the Petitioner has qualified the departmental examination, he is entitled for promotion. Merely qualifying of departmental examination does not entitle the incumbent to seek promotion.

8. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed. No costs.