
(2012) 03 SHI CK 0174
In the High Court Of Himachal Pradesh
Case No : CWP No. 302 of 2011-A

Shri Ajay Singh Thakur

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0174

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The petitioner approaches this Court praying for an appropriate writ or direction to the respondents to create further promotional avenues for the post presently held by the petitioner which is store ledger clerk. The alternate prayer is that this post which is isolated be merged in the cadre of clerks, which will provide further promotional avenues to the petitioner. The fact that the petitioner is working as store ledger clerk stands established on record and is not disputed. It is also not disputed that there is no promotional avenue(s) for the petitioner who is working against an isolated post. The stand adopted by the State is that the Assured Career Progression Scheme notified vide notification dated PR- 7/51/98 dated 15.12.98, provides avenues of higher scales of pay after putting in service for a fixed number of years. The higher scales have been provided which would adequately take care for all monetary benefits to be paid to the petitioner herein without providing any promotional avenues.

2. Learned counsel appearing for the petitioner has drawn my attention to Annexure P-13 which are the instructions issued on 31st August, 2009 withdrawing/superseding the Scheme. Annexure P-13 reads as under:

...Sir/Madam,

1. On the subject cited above, I am directed to say that under the pre-revised pay scales, the Assured Career Progression Scheme was applicable to various categories of the State Government employees circulated vide letters No. (i) Fin.

(PR)B(7)-51/98 dated 15.12.1998, (ii) Fin-(PR)B(7)-1/98-II dated 23.6.2000 and (iii) Fin (PR)B(7)-51/98-I dated 4th August, 2001. The ACPS dt. 15.12.98 was applicable to all the employees of the State Government, the ACPS dt. 23.6.2000 was applicable to the officers of H.P. Administrative Services, H.P. Police Services, H.P. Health Services Class-I (Generalist), H.P. Health Services Class-I (Dental), Animal Husbandry Veterinary Class-I Services, Assistant Engineer, Assistant Architect, Assistant Town Planner, Additional Superintendent of Police/Deputy Superintendent of Police (Wireless), and the 4.8.2001 ACPS was applicable to Junior Engineers.

2. Similarly, under the pre-revised pay scales, three tier pay scales were allowed to the Assistant Automobile Engineer vide Notification No. Fin-(PR)B(7)-1/98 dated 1.9.1998, H.P. Agricultural Services (Class-I), Sub Divisional Soil Conservation Officers/Division Engineer Soil Conservation vide Notification No. Fin.(PR)B(7)- 1/98-III dated 18.5.2002, H.P. Horticulture Services (Class-I) vide Notification No. Fin. (PR)B(7)-1/98-IV dated 8.2.2005, Assistant Director of Factories vide Notification No. Fin (PR)B(7)-1/98 dated 19.7.2000 and H.P. Forest Services. Some categories of employees were allowed two tier pay scales whether proportionately or after completion of prescribed years of services, such as Clerks, Investigators, Staff Nurses, Technicians (Junior Technicians), Executive Engineers, Architect, Senior Hydrologist, District Town Planner, Town and Country Planner and Deputy Director in H&FW Department.

3. The Himachal Pradesh Civil Services (Revised Pay) Rules, 2009 have been notified vide notification no. Fin- (PR)B(7)-1/2009 dated 26th August, 2009, published in H.P. Rajpatra No. 108 dated 26th August, 2009 and the above mentioned Rules take precedence over the prerevised pay rules.

4. The above referred Assured Career Progression Schemes, three/two tier pay structure whether after completion of prescribed years of services or proportionately, were applicable under the pre-revised pay scale, whereas no such scheme has so far been formulated/notified under the revised pay structure. Therefore, it has been decided that the cases of the officers/officials of the State Government due for grant of benefits under the ACPS or the cases of officials/officers who were eligible for placement in the next higher pay scale in the three/two tier pay scales under the pre-revised pay scales, may not be considered after 26.8.2009, till further orders.

5. These instructions shall also apply to all other categories of employees who were allowed three or two tier pay scales. It shall be the responsibility of the authorities concerned in their respective department to ensure strict compliance of these instructions. This may be brought to the notice of all concerned....

3. Learned counsel appearing for the petitioner also submits that the Constitutional mandate as considered by the Supreme Court in Raghunath Prasad Singh vs. Secretary, Home (Police) Department Government of Bihar and others, 1988 (Supp) SCC 519 provides that at least two promotional avenues

should be provided to an incumbent during his entire career. The Court holds:

4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organization. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organization within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the police wireless organization to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organization.

(at pp. 520-521)

4. He then submits that this principle has been reaffirmed in Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, holding:

9...This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organization public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors. There cannot be any modern management must less any career planning, manpower development, management development etc. which is not related to a system of promotions....

(at pp 638-639)

Submission made by the learned Additional Advocate General that the petitioner shall be entitled to the benefit of Assured Career Progression Scheme cannot be accepted for the reason that it already stands abolished. On the question that he has been granted benefit of higher pay scale, the petitioner would otherwise be

entitled to the increments. This submission therefore cannot be accepted in view of the law laid down by the Supreme Court, *supra*. In these circumstances, this writ petition is allowed. A direction is issued to the respondents to consider the case of the petitioner in accordance with the law laid down, by the Supreme Court as noticed above. Learned counsel appearing for the petitioner submits that the post be merged with that of clerk on which the petitioner is already performing duty. He places reliance on the material placed on record of the case. That will be a matter to be considered by the State. This writ petition is disposed of accordingly. The entire process be completed not later than 1st October, 2012. No order as to costs.