
(2012) 03 SHI CK 0439
In the High Court Of Himachal Pradesh
Case No : CWP No. 2057 of 2011

Shri Nain Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 03 SHI CK 0439

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : M.L. Sharma, for the Appellant; J.K. Verma, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Justice Dharam Chand Chaudhary, Judge

1. The writ petition is filed with the following prayer:-

i) To issue a writ of mandamus or any other appropriate writ, order or direction declaring the petitioner to be working on the post of Clerk since 1.4.1998 with all consequential benefits including promotion to the higher posts at par with his juniors in the cadre of Clerk.

In nut shell the case of the petitioner is that he was engaged on daily wage basis as Store-Clerk in the year 1988 and his services were later on regularized as such w.e.f. 1.4.1998. He was made to discharge the duties of Clerk/Senior Assistant also vide office orders Annexure P-2 and Annexure P-3. Later on he was asked to exercise his option for merger of the post he occupied into the cadre of Clerks and such option was also exercised by him vide Annexure P-4. Irrespective of he having exercised his option no order qua merger of the post occupied by him post into clerical cadre has yet been issued by the respondent.

2. The respondent in reply to the writ petition have claimed by way of

preliminary submissions that the petitioner was initially engaged as Chowkidar/Beldar on daily wage basis in the year 1988 and subsequently as Store Keeper w.e.f. 1.9.1995. On completion of 10 years service he was regularized as Store Keeper w.e.f. 1.4.1998. It is denied that he was deployed as Senior Assistant and Clerk, however, on the transfer of the then Senior Assistant Shri Naraian Singh in the month of September 2001 and Shri Bhagat Ram in the month of July 2009 from Sub-Division Habban where the petitioner is working, he was given the charge of the post of Senior Assistant temporarily and as a stop gap arrangement and on joining duties by Shri Vidya Dutt Senior Assistant on 22.8.2001 after few months of the transfer of Shri Naraian Singh and Shri Parmod Kumar on 16.10.2010 after over one year of the transfer of Shri Bhagat Ram, the charge of the post of Senior Assistant was taken by them from the petitioner. There being no provision in the recruitment and promotion Rules for promotion to the post of Clerk/Senior Assistant from amongst the store keeper, it is submitted that the petitioner is not entitled to claim any benefit merely on account of he having held the charge of the post of Senior Assistant temporarily.

3. While admitting that the petitioner has opted for merger into the clerical cadre, it has been submitted that the matter is still under consideration of the competent authority.

4. Shri M.L. Sharma, learned counsel for the petitioner has contended that irrespective of the option for merger of the post of Store Keeper presently held by him into clerical cadre having been exercised by the petitioner long back, he has not yet been absorbed in clerical cadre and on the other hand he is being deployed to perform the duties of clerk/Senior Assistant from time to time. He has also relied upon the judgment rendered by the erstwhile H.P. State Administrative Tribunal in OA No. 346 of 1991, titled Satya Prakash Keprate Vs. State of H.P. and that of this Court in Civil Review No. 14 of 2009, titled Chander Singh Vs. Satya Prakash & Others.

5. On the other hand learned Deputy Advocate General while drawing the attention of this Court to the factual matrix has strenuously contended that the petitioner cannot claim his merger into clerical cadre as a matter of right nor is he entitled to claim promotion to the post of Clerk/Senior Assistant merely on account of he has held the charge of the post of Senior Assistant temporarily and as a stop gap arrangement. Learned Deputy Advocate General has also pointed out that the declaration as sought in this petition cannot be granted while exercising the writ jurisdiction under Article 226 of the Constitution of India.

6. On analyzing the rival submissions and also the given facts and circumstances, the present is a case where no doubt the petitioner is presently working as Store Clerk on regular basis in HPPWD Sub Division, Habban, District Sirmaur, w.e.f. 1.4.1998. But he was not initially engaged as such in the year 1988 and rather he was engaged initially as Chowkidar/Beldar.

7. There is no controversy qua the petitioner having been given the charge of the

post of Senior Assistant firstly vide order dated 28.4.2001 Annexure P-2 on the transfer of Shri Naraian Singh from HPPWD Sub Division Habban, HPPWD Division Rajgarh and thereafter vide order Annexure P-3 dated 22.7.2009 when Shri Bhagat Ram Senior Assistant was relieved from the office of Assistant Engineer Habban to HPPWD Division Rajgarh. On the first occasion the charge of the post of Senior Assistant in Sub Division, Habban remained with the petitioner for about 4 months whereas on the second occasion for a period over one year. Mere handling the charge of the post of Senior Assistant temporarily and as a stop gap arrangement does not entitle the petitioner to claim promotion as Clerk/Senior Assistant. As a matter of fact, a public servant can claim promotion to any post in accordance with Rules applicable to such post. In the case in hand, it is not the case of the petitioner that he is entitled to be promoted as such under Rules or any other instruction, merely on account of his having handled the charge of the post of Senior Assistant for some time pursuant to stop gap arrangements made by the respondent. No doubt he can claim the benefit of equal pay for equal work, however, he has not claimed any such relief nor pleaded so in the writ petition.

8. True it is that he has exercised his option for the merger of the post of Store Keeper he occupied into clerical cadre vide Annexure P-3. This matter is still under consideration of the competent authority as has come in reply to the writ petition. The appropriate remedy available to the petitioner would have been to make a representation to such authority for expediting the matter and not to approach this Court by filing the present writ petition.

9. In this view of the matter, what to speak of a declaration even no direction to the effect that the petitioner is entitled to be appointed as clerk w.e.f. 1.4.1998 with all consequential benefits including promotion etc to the higher post(s) as sought in this petition can be issued. This court while exercising its writ jurisdiction, cannot grant the relief of declaration.

10. The ratio of Judgment of the erstwhile administrative tribunal and that of this Court cited supra is also not attracted in the given facts and circumstances of the present case for the reason that the facts of that case were quite different to that of the present case.

11. The result of the aforesaid discussion would be that there is no merit in this writ petition and the same thus deserves to be dismissed with liberty reserved to the petitioner to make a representation to the third respondent to expedite the matter qua merger of the post of Store Clerk, he is presently holding into clerical cadre pursuant to the option he already exercised. With the above observations, this writ petition is hereby dismissed, however liberty is reserved in favour of the petitioner to make representation to the third respondent for expediting the decision in the matter of merger of the post of held by him into clerical cadre. There shall be a direction to the third respondent to decide the representation, if made by the petitioner within three months from the date of receipt thereof. The pending application(s), if any, also stand disposed of.

No order so as to costs.