
(2011) 05 SHI CK 0108
In the High Court Of Himachal Pradesh
Case No : CWP T No. 2967 of 2008

Shri Rajinder Paul

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Citation : (2011) 05 SHI CK 0108

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide paras 1 to 3:

1. That in view of the above submissions, it is humbly prayed that the applicant may kindly be given the seniority in the Head Office Cadre from the date of his appointment i.e. from 2.5.1964 and Annexure A-5 is prayed to be quashed in the interest of justice and fair play.

2. That alternatively the applicant may be deemed to have been regularized as Assistant from 24.10.1975 and all consequential promotions to the post of Superintendent Gr. I & II may be conferred on him accordingly.

3. That the applicant may be allowed all the pay fixation benefits retrospectively with reference to his date of appointment from 2.5.1964 as Clerk of Head Office and 24.10.1975 as SDC/UDC & Assistant.

2. In the reply, the Respondents have taken the following stand vide para 12 of the preliminary submissions:

12. That a further revision in the pay scales came into existence vide notification dated 2.11.79 and the position of R&P Rules were automatically changed and the scale of some categories of employees were down graded. The post of Clerks were also divided on 50:50 basis by designating them as Clerk in the scale of 400-600 and Sr. Clerks in the pay scale of Rs. 510-800 w.e.f. 1.1.78. This

implementation of pay scale was also endorsed by the Government on joint cadre vide Govt. letter No. PBW-2-B (13)12/79 dated 8.1.1980 w.e.f. 1.1.78 and copy of which is placed at Annexure R-20. The same was required to be released on the position of staff cadre as obtainable in view of the joint seniority list worked out on the basis of amendments to the Public Works Department Subordinate Class-III (Clerks/Steno Typists Services) R&P Rules notified vide notification dated 23.2.79, copy of which is already placed as Annexure R-19. In view of this position the claim of the applicant is accrued to assigned him seniority as assigned in the joint integrity seniority list having being passed the departmental examination over and above of the 19 unqualified Clerks who were promoted to the post of U.D.C. purely on temporary basis for the period of 3 months because the Government, to the C.W.P. No. 19/78 titled Mehar Chand Rana, LDC and D.S. Thakur, LDC v. State of H.P. and Chief Engineer (PWD), filed an affidavit under the signature of Sh. B.C. Negi, Secretary (PW) on 16.6.78, stating therein that all the 19 Clerks who were appointed as U.D.C. on temporary basis for 3 months without qualifying the Departmental examination of Clerks have been reverted as Clerks on 14.1.78 and also contended that writ petition has become in fructuous, on the basis of that affidavit of Secretary (PW) the Advocate of the Petitioner did not press the C.W.P. and the said petition was accordingly dismissed a copy of which is annexed as Annexure R-21. On the basis of the averments made in the affidavit no unqualified clerk can be given seniority over and above the qualified clerks for the purpose of giving promotion to the post of U.D.C. now Sr. Assistant. Accordingly the applicant is required to be given seniority over and above the unqualified U.D.C./ Assistants/Superintendents Gr. II from the date of qualifying the departmental examination and promoted to the post of U.D.C. from the date when S.D.C. and Accounts Clerks were clubbed and redesignated as U.D.C. and temporary promotion followed by regular promotion on 26.6.1978. However, if the claim of the applicant is accepted it will unsettle the settled things.

3. Rejoinder refuting the above stand on behalf of the Respondents and reiterating the averments set up in the petition has been filed.

4. The learned Counsel for the Petitioner submits at the very outset that the case of the Petitioner is covered under judgment dated 2.3.2010 of this Court in CWP (T) No. 2589 of 2008 (OA No. 1423/1995), reported as Shyam Lal and Ors. v. State of H.P. and Ors., 2010 (1) Him. L.R. 386. Para 9 of the judgment being relevant is being extracted below for ready reference:

9. The result of the above discussion, the petition is allowed. It is held that the Petitioners No. 1 to 4 were regularly appointed as Upper Division Clerks (Assistants) w.e.f. 7.10.1973, 1.10.1973, 1.10.1973 and 5.1.1973 respectively and they are entitled to all consequential benefits flowing there from such as seniority, pay fixation, promotion (notionally) if any, and pension etc. The Respondents No. 1 and 2 are directed to calculate the arrears and pay the same to the Petitioners within a period of four months from today, failing which the

Petitioners shall be entitled to payment of interest at the rate of 9% per annum on such arrears till payment. No costs.

5. In view of the above, if on facts, the case of the Petitioner is covered under the judgment referred to hereinabove in CWP (T) No. 2589 of 2008 (OA No. 1423/1995) and he is similarly situate, he shall also be treated similarly without any discrimination and benefit of the said judgment along with consequential benefits, if any, shall be extended to him within three months from the date of production of copies of this judgment as also the aforementioned judgment in CWP No. 2589 of 2008 (OA No. 1423/1995), failing which interest at the rate of 9% per annum shall also be payable.

6. The petition stands disposed of in the above terms, so also pending application(s), if any.