
(2012) 01 SHI CK 0076
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 15589 of 2008

Shri Shiv Singh

APPELLANT

Vs

State of HP

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 SHI CK 0076

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, Judge

1. The petitioner has prayed for quashing of Annexure A-6 Office Order dated 12.04.2007 show-cause notice why the petitioner be not demoted to the post of Peon and Annexure A-9 Office Order dated 01.08.2007 rejecting representation of the petitioner.
2. The facts, in brief, are that in July, 1975, the petitioner was appointed as Peon. In the year 1995, the petitioner applied for seeking permission to do matriculation which was allowed. The petitioner passed matriculation examination in second division in the year 1996 from the Board of Adult Education and Training, New Delhi, which is equivalent to the matriculation examination of Himachal Pradesh Board of School Education. The petitioner submitted his matriculation examination certificate to the department for record and necessary entry in the service record for further promotion.
3. It has been alleged that as per Recruitment and Promotion Rules, next promotion for the category of Peon is that of Clerk in the department, 10% posts of total strength of the cadre of the Clerk are reserved for Class-IV employees including the category of Peons. The Class-IV employees, who have done matriculation in second division from recognized Board are eligible for promotion to next higher post of Clerk as per Recruitment and Promotion Rules.

4. The department constituted Departmental Promotion Committee for the purpose of promotion from the category of Class-IV employees to the posts of Clerks. The D.P.C. recommended the names of eligible and qualified Class-IV employees for promotion. The service record and qualification acquired by the eligible persons were scrutinized and verified by the department. The D.P.C. recommended the name of petitioner for promotion to the post of Clerk and the petitioner was promoted to the post of Clerk vide Office Order dated 24.12.1997. The promotion, initially, was ad hoc. The petitioner joined his duties as Clerk at Sub Employment Exchange, Rohru.

5. On 01.05.2001, the department informed the petitioner that the certificate of matriculation examination by the Board of Adult Education and Training is not recognized by the Government of Himachal Pradesh, the petitioner was called upon to submit his explanation. The petitioner submitted his explanation. The petitioner did not receive any further communication from the department, by necessary implication the proceedings stood closed by treating matriculation examination from the Board of Adult Education and Training, New Delhi, equivalent to matriculation examination conducted by H.P. Board of School Education.

6. The respondents on 12.04.2007 issued Office Order proposing to revert the petitioner from the post of Clerk to the post of Peon. The petitioner cannot be reverted to the post of Peon without holding inquiry. The petitioner submitted reply to the Office Order dated 12.04.2007. The petitioner filed O.A. No. 1277 of 2007 which on 06.06.2007 was ordered to be treated as representation by the erstwhile Tribunal and to be decided within a period of two months from the date of order. The respondent No. 3 vide Office Order dated 01.08.2007 Annexure A-9 rejected the representation and, therefore, petitioner has filed petition for quashing Office Order dated 12.04.2007 and Office Order dated 01.08.2007 rejecting the representation.

7. The respondents 1 to 3 have filed joint reply and made preliminary submissions that the petition is pre-mature inasmuch as the petitioner filed petition before the Tribunal when his reply dated 07.05.2007 to the Office Order dated 12.04.2007 was under consideration. The petitioner was heard on the representation and his representation has been dismissed by speaking order dated 01.08.2007.

8. It has been stated that the main issue involved is that the qualification of matriculation from the Board of Adult Education and Training (Proadh Shiksha Sansthan), New Delhi, is recognized in Himachal Pradesh being equivalent to matriculation examination of Himachal Pradesh Board of School Education or not. The Principal Secretary (Education) to the Government of Himachal Pradesh has informed that the matriculation examination conducted by Board of Adult Education and Training (Proadh Shiksha Sansthan), New Delhi, is not equivalent to matriculation examination of H.P. Board of School Education vide letters dated 20.07.2005 and 12.11.2007. Therefore, petitioner did not fulfill the minimum

qualification which was required for promotion from the Class-IV to Clerk(Class-III) as per Recruitment and Promotion Rules. In these circumstances, the representation of the petitioner was rejected.

9. On merits, the respondents 1 to 3 have reiterated the stand taken in preliminary submissions. It has also been submitted that petitioner never sought permission from the department for doing matriculation examination from the Board of Adult Education and Training (Proadh Shiksha Sansthan), New Delhi. The review Departmental Promotion Committee Meeting was held on 05.04.2007 recommending reversion of petitioner to the post of Peon from the post of Clerk. The respondents made prayer for rejection of the petition.

10. I have heard the learned counsel for the parties. It has been submitted on behalf of the petitioner that petitioner passed matriculation examination from Board of Adult Education and Training (Proadh Shiksha Sansthan), New Delhi. A copy of the certificate dated 26.12.1996 showing petitioner having passed matriculation examination of the Board held in September, 1996, has been placed on record as Annexure A-1. The marks-sheet dated 13.12.1996 is Annexure A-2. The petitioner submitted his certificates to the department and the certificates of the petitioner were scrutinized by the department and on that basis D.P.C. recommended the petitioner for promotion as Clerk.

11. The petitioner vide Office Order dated 24.12.1997 Annexure A-3 on the basis of recommendation of D.P.C. held on 24.12.1997 was promoted as Clerk. The petitioner did not conceal anything nor misrepresented for his promotion from Class-IV to Clerk (Class-III). The petitioner was given show-cause on 12.04.2007 for reverting him from Clerk to the post of Peon(Class-IV) and ultimately his representation has been rejected vide Office Order dated 01.08.2007. It has been submitted that at the time of issuing Office Order dated 12.04.2007, the petitioner had completed more than 9 years of service as Clerk. The respondents are estopped from reverting the petitioner from the post of Clerk to the post of Peon.

12. On behalf of the respondents, it has been submitted that the promotion of the petitioner from Class-IV Peon to Clerk (Class-III) was wrong, illegal. The petitioner was not eligible for promotion as he was not matriculate at the time of promotion which is the requirement of Recruitment and Promotion Rules for promotion from Class-IV to the post of Clerk (Class-III). The department has every right to rectify the mistake, therefore, no fault can be found with Office Order dated 12.04.2007 and Office Order dated 01.08.2007.

13. In the Office Order dated 01.08.2007, relevant part of Recruitment and Promotion Rules of Ministerial Cadre Class-III issued vide notification dated June, 1963, Rule-8 (L) has been reproduced as follows:-

Clerk (Rs.60-4-80/5-120/5-175) Matriculate of recognized University or its equivalent and possessing a good speed of typewriting.

14. The respondents are heavily relying on letter dated 20.07.2005 from Principal Secretary (Education) to the Government of Himachal Pradesh which is as follows:-

I am directed to refer to your letter No. MPP-B(2)-1/92-V-loose, dated 2.3.2004 on the subject cited above and to say that the examination conducted from board of Adult Education & Training (Proadh Shiksha Sansthan) New Delhi and Hindi Sahitya Samellan Allahabad are not equivalent to Matric Standard Examination of H.P. Board of School Education.

15. The respondents are also relying on letter dated 12.11.2007 from Principal Secretary(Education) to the Labour Commissioner-cum-Director of Employment, where again letter dated 20.07.2005 has been reiterated. On 24.12.1997 D.P.C. recommended petitioner for promotion from Class-IV to Clerk (Class-III)and the petitioner was promoted vide Office Order dated 24.12.1997 from Class-IV to Clerk(Class-III).

16. There is nothing on record that before 24.12.1997 there was a decision of Himachal Pradesh Government that matriculation examination conducted by Board of Adult Education and Training(Proadh Shiksha Sansthan),New Delhi, is not equivalent to matriculation examination conducted by Himachal Pradesh Board of School Education.

17. The petitioner did not conceal anything or played fraud. It appears from the conduct of the respondents that respondents treated matriculation examination of petitioner from the Board of Adult Education and Training (Proadh Shiksha Sansthan), New Delhi, equivalent to matriculation examination of Himachal Pradesh Board of School Education. The respondents promoted the petitioner as Clerk and he continued as such and only on 12.04.2007, the respondents issued Office Order why the petitioner should not be reverted from the post of Clerk to the post of Peon (Class-IV) and later on rejected his representation on 01.08.2007.

18. On behalf of the respondents, it has been submitted that in Md. Ashif and Others Vs. State of Bihar and Others, it has been held that the appointments of the appellants against the posts were manifestly illegal and wholly undeserved to say the least. Inasmuch as these appointments came to be cancelled pursuant to the said directions no matter nearly a decade and a half later the termination could not be said to be illegal so as to warrant interference of a writ court for reinstatement of those illegally appointed. In other words, it has been submitted that once the petitioner was not eligible for promotion to the post of Clerk, the illegal promotion of petitioner does not create a vested right in favour of petitioner.

19. In Dr. B.L. Asawa Vs. State of Rajasthan and Others, , where a question with respect to a Post Graduate Medical Degree granted by a University was in question, the Supreme Court held that a Post Graduate Medical Degree granted by a University duly established by statute in this Country and which has also

been recognized by the Indian Medical Council by inclusion to the schedule of the Medical Council Act has ipso facto to be regarded, accepted and treated as valid throughout the Country. The Supreme Court has also held in the case of a Post Graduate Degree in the concerned subject awarded by a statutory Indian University, no recognition or declaration of equivalence by any other University is called for.

20. The Recruitment and Promotion Rules noticed in Office Order dated 01.08.2007 for the post of Clerk provides matriculate of recognized University or its equivalent and possessing a good speed of typewriting. The relevant rule nowhere provides that matriculation examination should be equivalent to matric standard examination of Himachal Pradesh School Education Board as stated in letters dated 20.07.2005 and 12.11.2007. On the contrary, the rule provides that a candidate should be matriculate of a recognized University or its equivalent.

21. The respondents at the most were required to consider independently whether the petitioner is matriculate of recognized University or Board or its equivalent. However, the respondents proceeded that the petitioner though matriculate, but his matriculation examination is not equivalent to the matriculation examination conducted by Himachal Pradesh Board of School Education which is not the requirement of rule noticed in Office Order dated 01.08.2007, the petitioner has made out a case in his favour.

22. In view of above discussion, the petition is allowed. The Office order dated 12.04.2007 Annexure A-6 and Office Order dated 01.08.2007 Annexure A-9 are quashed. The respondents are directed not to revert the petitioner from the post of Clerk to the post of Peon. No costs.