

(2010) 05 SHI CK 0045
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 4846 of 2008

Smt. Bindra and Others

APPELLANT

Vs

Himachal Road Transport Corporation

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Citation : (2010) 2 ShimLC 217

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that petitioner No. 1 was appointed as Steno-typist in the month of November, 1985 in the pay scale of Rs. 400-600. Petitioners No. 2 and 3 were appointed in the same capacity, i.e. Steno-typists in the month of April, 1985 and December, 1985, respectively. Petitioner No. 1 was promoted to the post of Junior Scale Stenographer in the pay scale of Rs. 510-880 on 21.5.1990 and petitioners No. 2 and 3 were promoted as Junior Scale Stenographers on 1.6.1990. Petitioner No. 1 was promoted to the post of Senior Scale Stenographer on temporary/ad hoc basis on 10.6.1992 in the pay scale of Rs. 1800-3200. Petitioner Nos. 2 and 3 were promoted to the post of Senior Scale Stenographer in the pay scale of Rs. 1800-3200 on 22.5.1992. Petitioners No. 2 and 3 were promoted to the post of Senior Scale Stenographer purely on temporary/ad hoc basis. Respondent-corporation issued order dated 13.11.1992 vide Annexures A-7 and A-8 whereby orders dated 10.6.1992 and 22.5.1992 were withdrawn. Petitioners approached erstwhile Himachal Pradesh Administrative Tribunal by way of O.A. Nos. 1446/1992, 1412/1992 and 1447/1992 against the order dated 13.11.1992. Tribunal quashed and set aside the order dated 13.11.1992 on 3.12.1992 with liberty reserved to the respondent-corporation to proceed against the petitioners in accordance with law. Thereafter, Managing Director of the respondent-corporation issued show-cause notice to the petitioners on 23.12.1992 whereby

they were granted fifteen days time to make representation against the same. Petitioners filed replies to the memorandum dated 2.1.1993. The copy of reply filed by petitioner No. 2 dated 2.1.1993 has been placed on record vide Annexure A-9. Respondent-corporation issued order dated 1.1.1998 whereby petitioners were granted promotion on ad hoc basis in the pay scale of Rs. 1800-3200 with effect from 1.6.1995, 31.5.1995 and 9.7.1995 instead of 10.6.1992 and 22.5.1992, respectively. Petitioners have assailed office order dated 1.1.1998 by way of present petition.

2. Case of the petitioners, in a nutshell, is that they were eligible and qualified for promotion to the post of Senior Scale Stenographer as per the Himachal Road Transport Corporation (Class-I, II, III and IV) Services (Recruitment, Promotion and Certain Conditions of Service) (Fourth Amendment) Regulations, 1984 dated 21.11.1998 (Annexure A-5) (hereinafter referred to as "Regulations" for brevity sake). Precise case of the respondent-corporation is that since petitioners have not put in five years service as Junior Scale Stenographer in the pay scale of Rs. 1500-2640, they could not be promoted and granted the higher pay scale of Rs. 1800-3200.

3. Mr. Ashwani Sharma has strenuously argued that his clients were fully eligible and qualified to be considered to the post of Senior Scale Stenographer. He then contended that his clients have worked for one year as Stenographer and also four years as Steno-typist. He also contended that petitioners have rightly been promoted on the basis of Regulations and no instructions could be issued contrary to the Regulations. He also contended that the post of Senior Scale Stenographer is a promotional post and his clients have rightly been promoted strictly as per Regulations though on ad hoc/temporary basis on 10.6.1992 and 22.5.1992, respectively. He further contended that it was not necessary for his clients to be placed in the pay scale of Rs. 1200-2100 and then Rs. 1500-2640 before being granted pay scale of Rs. 1800-3200. He has relied upon letter dated 27.3.1990 issued by the State Government (Finance Department), which was circulated by the respondent-corporation vide office order No. HO : 9E-181/90 (A) dated 27.8.1990 whereby existing incumbents as on 27.9.1989 were continued to be governed under the pre-existing pattern of pay scales available to them on the date of issue of the orders for promotion in the corporation till they retire. In other words, his submission was that there was neither any illegality nor irregularity in the promotion given to his clients in the year 1992.

4. Mr. Adarsh Sharma has justified the issuance of Annexure A-1 dated 1.1.1998. He then contended that since the petitioners had not been placed in the pay scale of Rs. 1500-2640 on the basis of Annexure A-6 dated 27.8.1990, there is nothing wrong with the decision dated 1.1.1998.

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

6. It is not in dispute that the petitioners had been working as Steno-typists with

effect from November, 1985, April, 1985 and December, 1985, respectively and thereafter they were promoted to the post of Senior Scale Stenographer, as far as petitioner No. 1 is concerned on 22.5.1992 and petitioners No. 2 and 3 on 10.6.1992. The promotion to the post of Senior Scale Stenographer is regulated under the Regulations. It will be apt at this stage to reproduce relevant extract of the Regulation governing the post of Stenographer:

By promotion from amongst stenographers (Rs. 510-880) to (Rs. 570-1080) with at least three years" service as such or with at least one years" service as stenographer (Rs. 510-880) and atleast four years" service as Steno-Typist and then to Stenographer (Rs. 600-1120) by promotion from amongst Stenographers (Rs. 570-1080) with atleast three years" service as such or with atleast one year"s service as Stenographer (Rs. 570-1080) and at least four years" service as Stenographer Rs. 510-880), failing which by direct recruitment.

7. A bare perusal of this Regulation reveals that an incumbent is required to have at least three years" service as Stenographer or with at least one year"s service as Stenographer and at least four years" service as Steno-typist. Petitioners had worked for a period of more than one year as Stenographer and four years as Steno-typist and they were fully eligible and qualified to be considered for promotion to the post of Senior Scale Stenographer. However, case of the respondent-corporation, in a nutshell, is that petitioners were required to be put in the pay scale of Rs. 1200-2100 and thereafter they were required to be put in the pay scale of Rs. 1500-2640, which was to be given to 50% of the total number of posts of Junior Scale Stenographers in a cadre after a minimum period of five years of service as Junior Scale Stenographer Grade-II in the cadres. It was only thereafter the petitioners could be granted pay scale of Rs. 1800-3200. It will be pertinent to mention at this stage that new pay scale pattern was adopted by the respondent-corporation vide office order dated 27.8.1990. Para 2 of office order dated 27.8.1990 reads thus:

The pay scale of any other posts is not revised on the basis of the revised scales of the posts indicated as above. The protection to the existing incumbents will remain operative in accordance with the Fin. Depth Letter No. IF (C)4-2/88 dated 27.9.89 and subsequent letter dated 27.3.1990 (copies enclosed for ready reference).

8. In office order dated 27.8.1990, there is a reference to letter dated 27.3.1990. It is evident from the reply filed by the petitioners to show-cause dated 23.12.1992 that this letter was also adopted by the respondent-corporation and circulated vide office order No. HO : 9 E-181/90 (A) dated 27.8.1990. The operative portion of order dated 27.3.1990 as reproduced in the reply to show-cause notice reads thus:

It is further clarified that no appointments after 27.9.1989 in the public sector undertakings by way of direct recruitment or deputation against the common category posts will be made on a pattern other than the directorate pattern of

pay scales. But, all existing incumbents as on 27.9.89 will continue to be governed under the pre-existing pattern of pay scales available to them on the date of issue of the orders on further promotion in the corporation till they retire. This means, for example, that a Clerk or a Steno-typist in the service of an undertaking will continue to get promotion/placement on higher post in the line under the pre-existing pattern as personal to him because of the protection provided under the orders subject of course to eligibility under the R&P Rules.

9. It is clear from the phraseology employed in the operative portion of letter dated 27.3.1990 that as far as existing incumbents were concerned as on 27.9.1989, they were continued to be governed under the preexisting pattern of pay scales available to them on the date of issue of the orders on further promotion in the corporation till they retire. This position has further been clarified by way of illustration in the following manner:

That a Clerk or a Steno-typist in the service of an undertaking will continue to get promotion/placement on higher post in the line under the pre-existing pattern as personal to him because of the protection provided under the orders subject to eligibility under the R&P Rules.

10. It is reiterated that respondent-corporation has not carried out any corresponding amendment in the Regulations for the post of Senior Scale Stenographer. Moreover, petitioners were protected and were eligible to be promoted to the higher post as per the existing Regulations as per operative portion of order dated 27.3.1990, reproduced hereinabove. As per Regulations, an incumbent, who has worked as Stenographer with at least three years" service or with at least one year"s service as Stenographer and at least four years" service as Steno-typist is eligible for promotion to the post of Senior Scale Stenographer in the higher pay scale. Petitioners had already put in qualifying service as per Regulations and their promotions dated 10.6.1992 and 22.5.1992 though on ad hoc/temporary basis was legal. They were protected as per letter dated 27.3.1990 as well.

11. The matter is required to be considered from another angle. The pay scale of Rs. 510-880 was payable to the post of Junior Scale Stenographer, which was revised to Rs. 1200-2100 and thereafter to Rs. 1500-2640 as per office order dated 27.8.1990. The pay scale of Senior Scale Stenographer, which was initially Rs. 570-1080 was revised to Rs. 600-1120, and further revised to Rs. 1800-3200. Petitioners were getting pay scale of Rs. 510-880. All the incumbents, who were working, as Junior Scale Stenographers were automatically to be paid Rs. 1200-2100. Thereafter the pay scale of Rs. 1500-2640 was payable to 50% to the total number of posts of Junior Scale Stenographers in a cadre, who had put in five years" of service as Junior Scale Stenographer Grade-II. The post of Senior Scale Stenographer is a promotional post as per Regulations and the persons, who are working in the cadre of Junior Scale Stenographers, are eligible for promotion to this post. Petitioners were also in the zone of consideration for being promoted to the posts of Senior Scale

Stenographers since the posts were lying vacant. They have been promoted by the corporation though on ad hoc/temporary basis with effect from 10.6.1992 and 22.5.1992. Since the petitioners stood promoted to the post of Senior Scale Stenographer, they were not required to be put in the pay scale of Rs. 1500-2640 as argued by Mr. Adarsh Sharma. What has been given to the petitioners on the basis of Regulations could not be taken away by issuance of office order dated 27.8.1990.

12. Now, the Court has to advert whether the petitioners have been dealt with in a just and fair manner or not. Petitioners have neither misled nor misrepresented the authorities at the time of granting them promotion on 10.6.1992 and 22.5.1992 to the post of Senior Scale Stenographer. Respondent-corporation had taken a conscious decision to promote them pursuant to which they started discharging their duties under Divisional Managers. The post of Senior Scale Stenographer is attached to the office of Divisional Manager. Respondent-corporation had withdrawn the promotion order on 13.11.1992, which led to filing of the original applications. Order dated 13.11.1992 was quashed and set aside and the liberty was reserved to the respondent-corporation to decide the matter in accordance with law. Respondent-corporation served memorandum on the petitioners on 13.11.1992 whereby they were granted fifteen days time to submit their replies. Petitioners submitted replies. Respondent-corporation did not take any action on memorandum dated 13.11.1992 till 1.1.1998. Respondent has not explained why decision was not taken with promptitude with effect from 13.11.1992 to 1.1.1998. A bare perusal of order dated 1.1.1998 makes it explicitly clear that petitioners have been held entitled for promotion with effect from 1.6.1995, 31.5/1995 and 9.7.1997, respectively on ad hoc/temporary basis in the pay scale of Rs. 1800-3200. Managing Direction has also ordered the recoveries to be made from the petitioners in 48 equal installments. Impugned order could not be issued after a delay of about six years. Petitioners have worked continuously with effect from 10.6.1992 and 22.5.1992 as Senior Scale Stenographers. Respondent-corporation should have taken a decision at the earliest. However, petitioners have worked and gained more experience as Senior Scale Stenographer. Since the petitioners have worked on the higher post, they were entitled to the pay scale of higher post and the order whereby recoveries were ordered to be effected from the petitioners i.e. 1.1.1998 is declared illegal. Managing Director could not order recoveries to be effected from the petitioners by way of 48 installments.

13. The decision to revert the petitioners was taken on 13.11.1992 and thereafter on 1.1.1998. We are in 2010. In other words, petitioners have been working as Senior Scale Stenographers for more than 18 years. Consequently, decision of the respondent-corporation to issue Annexure A-1 dated 1.1.1998 is declared arbitrary and illegal.

14. Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexure A-1 dated 1.1.1998 is quashed and set aside. Petitioners shall

be deemed to be working as Senior Scale Stenographers with effect from 10.6.1992 and 22.5.1992, respectively with all the consequential benefits. There shall, however, be no order as to costs.