
(2011) 05 SHI CK 0170
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 7985 of 2008

Sohan Lal Goyal

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 05 SHI CK 0170

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The Petitioner has prayed a direction for considering his case for promotion against the post of Supervisor from the year 1978 or from the day when Respondent No. 3 was promoted as Supervisor. He has also prayed arrears, backwages and withheld salary for having rendered work of Supervisor. The consequential benefits and reliefs against the post of Supervisor have also been prayed.

2. The facts in brief are that the Petitioner was appointed as Mate on 29.9.1973 by Respondent No. 1. He worked as such and is entitled for promotion against the post of Supervisor. It has been alleged that one post of Supervisor is lying vacant, in addition, there is requirement of work and the name of the Petitioner was recommended for the post of Supervisor on promotion. The Respondent No. 1 passed resolution recommending the name of Petitioner for the post of Supervisor. The Petitioner is working as Supervisor whereas he has been designated as Mate only. This is clear from office orders issued by Respondent No. 1.

3. The Respondent No. 3 was appointed as Beldar by Respondent No. 1. He has been promoted as Supervisor. Govind Ram has retired as Supervisor. The Respondent No. 3 is junior to Petitioner and he has superseded the Petitioner. It

has been alleged that Respondent No. 1 in declining promotion to the Petitioner to the post of Supervisor has violated Articles 14 and 16 of the Constitution. The Petitioner has also been denied the salary of Supervisor even though the Petitioner is working as Supervisor. There is violation of principle of equal pay for equal work. The Respondent No. 3 is lesser qualified in comparison to the Petitioner. In these circumstances, the Petitioner has filed the petition.

4. The petition has been contested by Respondent No. 1 by filing reply and has submitted that Respondent No. 1 is not competent authority for promotion for the post of Supervisor. The competent authority is Respondent No. 2. It has been stated that Respondent No. 1 has sent the proposal to Respondent No. 2. No permission has been received from Respondent No. 2. It has been admitted that the Petitioner is working against the post of Mate. The Respondent No. 1 vide resolution No. 374/97 has decided that two additional Supervisors may be appointed and the case was sent to the Government for approval but the permission has not been received from the Government. The Petitioner was designated as Supervisor but no work of Supervisor was taken from the Petitioner. The Respondent No. 3 was promoted as Supervisor on 1.6.1977 but on or after 1994 the permission is required from the Government for promotion. The Respondent No. 1 has prayed for dismissal of the petition.

5. The Respondent No. 2 has filed separate reply and has stated that as per H.P. Ministerial/Non-Ministerial State Municipal Services (Recruitment, Promotion and other conditions of Services) Rules, 1997 (for short ?Rules), the requisite qualification for the post of Work Supervisor (Work Inspector) is matriculation in 2nd division or 10+2 with I.T.I. certificate in trade building constructions from the recognized institute. This qualification is essential for direct as well as for promotee candidates. The Petitioner is only 9th pass, therefore, he cannot be promoted to the post of Work Supervisor (Work Inspector). It has been stated that the documents annexed by the Petitioner with the petition do not disclose that the Petitioner was ever promoted to the post of Work Supervisor. The Respondent No. 1 in its resolution No. 374/97 dated 31.1.1997 Annexure A-2 has stated that the Petitioner was working as Mate in Respondent No. 1. The Petitioner was never promoted to the post of Work Supervisor (Work Inspector) in a particular pay scale, therefore, the principle of equal pay for equal work does not apply.

6. I have heard the learned Counsel for the parties. It is the stand of the Respondent No. 2 that the Rules provide qualification and requisite ITI certificate for promotion to the post of Supervisor. The educational qualification required is Matriculation in 2nd division or 10+2 under the Rules for the post of Work Supervisor (Work Inspector). This qualification is for both direct and promotee. The Petitioner is 9th pass, therefore, he is not eligible for promotion to the post of Work Supervisor (Work Inspector). It has not been contended on behalf of the Petitioner that Petitioner is eligible for promotion under the Rules. This being the position, the Petitioner is not entitled for promotion as Work Supervisor (Work

Inspector) under the Rules.

7. It is also the case of the Petitioner that he is working as Supervisor but he has not paid the wages of Supervisor. The office order dated 22.11.1993 Annexure A-3 indicates that Petitioner was designated as Supervisor. In the letter dated 25.10.1995 Annexure A-4, the Petitioner has been shown as Supervisor. Similarly, in letter dated 11.10.1995 Annexure A-5, the Petitioner has been shown as Supervisor. There is nothing on record that Petitioner in fact was promoted as Supervisor. On the contrary, the Petitioner is claiming promotion against the post of Supervisor. The Respondent No. 1 in the reply has stated that Petitioner was designated as Supervisor but no work of Supervisor was taken from the Petitioner. No rejoinder has been filed. In letter dated 9.6.2000 the Petitioner has been shown as Mate. In the resolution dated 31.1.1997 the Petitioner has been shown as Mate. It emerges from the material on record that the Petitioner was designated as Supervisor but no work of Supervisor was given to him. In the communications of Respondent No. 1 the Petitioner some times was described as Supervisor and some time as Mate. Simply on the basis of nomenclature, the Petitioner is not entitled to the wages of Supervisor. The Respondents have taken specific stand that though the Petitioner was designated as Supervisor, but no work of Supervisor was given to him. It appears since the Petitioner was designated as Supervisor vide office order dated 22.11.1993 Annexure A-3, therefore, after 22.11.1993 some times the Petitioner was shown as Supervisor in the communications of Respondent No. 1. There is nothing on record that in fact the Petitioner has actually worked as Supervisor. Thus, the Petitioner is not entitled to wages of Supervisor.

8. In view of the above, there is no merit in the petition and the same is dismissed.