

(2022) 07 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3155 Of 2019

Sohan Lal Verma

APPELLANT

Vs

State Of HP And Others

RESPONDENT

Date of Decision : 01-07-2022

Acts Referred:

Citation : (2022) 07 SHI CK 0001

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Ajay Kumar Dhiman, P.K. Bhatti, Rupinder Singh

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive reliefs:

"i) A writ in the nature of certiorari may be issued and thereby quash the impugned order of promotion of respondent No.3 Geeta Negi dated 24.1.2019 Annexure P-1.

ii) A writ in the nature of mandamus may be issued and thereby directing the respondents No. 1 and 2 to consider the case of the petitioner for promotion to the post of Superintendent Grade I before respondent No.3.

iii) That respondent may kindly be directed to open the sealed cover of the petitioner for promotion to the post of Superintendent Grade II from due date i.e. 2.3.2015."

2. The grievance of the petitioner is two-fold. In the first instance, petitioner has claimed promotion to the post of Superintendent Grade-II w.e.f. 2.3.2015 and secondly, challenge has been laid to the promotion of respondent No.3 to the post of Superintendent Grade-I, ordered vide notification dated 24.1.2019

(Annexure P-3).

3. On the first count, the case of petitioner is that he had become eligible for promotion to the post of Superintendent Grade-II w.e.f. 2.3.2015. His juniors were promoted from time to time by keeping his case in sealed cover. Petitioner was finally promoted to the post of Superintendent Grade-II on 7. 4.2017, on the basis of recommendations of DPC held on 5. 4.2017.

4. As regards the promotion to the post of Superintendent Grade-I, petitioner has submitted that he was senior to respondent No.3 in the seniority list of Superintendent Grade-II and hence the promotion of private respondent to the post of Superintendent Grade-I w.e.f. 24.1.2019 is bad in law. The action of official respondents in promoting respondent No.3 to the post of Superintendent Grade-I has also been assailed on the ground that the Government of Himachal Pradesh has taken a decision not to grant the benefit of 85th Constitutional Amendment in the State, therefore, the promotion of respondent No.3 by granting the benefit of Scheduled Tribe category is unsustainable.

5. Respondents have contested the claim of petitioner. The official respondents, by way of reply to the writ petition have submitted that the petitioner was facing departmental proceedings vide charge-sheet dated 18.7.2014. The charges against the petitioner were proved and a penalty of withholding two increments without cumulative effect was imposed against him vide order dated 13.8.2015. It was for this reason that the case of the petitioner was kept in sealed cover and his case for promotion to the post of Superintendent Grade-II could be considered only after the expiry of penalty period. Accordingly, petitioner was promoted to the post of Superintendent Grade-II w.e.f. 7.4.2017.

6. The promotion of respondent No.3 to the post of Superintendent Grade-I has been sought to be justified on the ground that the promotional post in the cadre of Superintendent Grade-I was available on reservation roster Point No.12 (13 point roster), reserved for Scheduled Tribe Category. Respondent No.3 was the only available candidate in seniority list of Superintendent Grade-II, who belonged to Scheduled Tribe Category and accordingly she was rightly considered and promoted to the post of Superintendent Grade-I vide notification dated 24.1.2019.

7. I have heard learned counsel for petitioner, respondent No.3 and learned Additional Advocate General for the State.

8. Petitioner has not been able to controvert the factual position stated on behalf of official respondents. Nothing has been placed on record to show that the order vide which penalty was imposed upon the petitioner was either set aside, quashed or modified. That being so, petitioner could not claim right to be considered for promotion before expiry of the period of penalty. No fault can be found in the administrative action of official respondents in this regard.

9. The plea of petitioner challenging promotion of respondent No.3 to the post of

Superintendent Grade-I appears to be clearly misconceived. The benefit in the matter of promotion in public employment is available to the employees belonging to categories of Scheduled Caste and Scheduled Tribe. 85th amendment to the Constitution of India only provides for consequential seniority along with benefit of promotion to the employees belonging to Scheduled Caste or Scheduled Tribe category. Respondent No.3 has been promoted to the post reserved for Scheduled Tribe Category. Petitioner cannot have any dispute with respondent No.3 on this count. Further, the grievance of petitioner is without any substance, as he cannot claim seniority above respondent No.3 till he is promoted to the post of Superintendent Grade-I.

10. In view of the above discussion, there is no merit in the writ petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.