

(2009) 11 SHI CK 0022
In the High Court Of Himachal Pradesh

State of H.P. and Another	Vs	APPELLANT
Rattan Chand and Another Vs State of H.P. and Others	 R.N. Sharma and Others State of H.P. Vs Baljeet Singh Rajpal and Others	RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Citation : (2009) 11 SHI CK 0022

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—All these writ petitions are being disposed of by a common judgment since common questions of law and fact are involved in these petitions.

2. Briefly stated the facts of the case are that all the private parties i.e. Original Applicants before the erstwhile H.P. State Administrative Tribunal as well as respondents are Graduate Engineers. Their services were governed by the Himachal Pradesh Public Works Department Rules. An amendment was made in the year 1973 to the said Rules. According to the Rules, as existing in 1972, there were two modes of recruitment to the post of Assistant Engineer (Civil). 25% of the posts were to be filled in by direct recruitment and 75% by promotion. In respect of promotional posts, 40% were to be filled in from amongst the Junior Engineers having one year regular service, 20% to be filled in from Sectional Officers (Diploma Holders) having 7 years regular service, 5% from amongst Draughtsmen and 10% from Sectional Officers and Draughtsmen who had passed AMIE or its equivalent.

3. Fresh Rules were promulgated in the year 1973 and the promotional avenue for Graduate Junior Engineers was totally removed.

4. Aggrieved by the amendment made in the Rules, Shri N.K. Jindal and others filed a CWP No. 6 of 1974 in this regard, which was disposed by a learned Single

Judge of this Court on March 21, 1975 holding that the petitioners would be denied an equal chance of promotion as Assistant Engineers. Therefore, the Rules were struck down and respondents No. 1 and 2 were directed to consider the petitioners also for promotions according to the Rules of 1972.

5. Thereafter the Rules were amended on 12th November, 1976. In these Rules, a saving clause has been incorporated, which provides that all graduate engineers appointed on ad hoc basis shall be appointed regularly subject to their being found suitable by the H.P. Public Service Commission. It was also provided that in future Graduate Engineers would not be recruited as Junior Engineers unless a degree holder voluntarily applies for the post and in case they choose to work against the post of Sectional officer, then their promotion would be governed strictly in accordance with the Rules. The saving clause also provides that Graduate Junior Engineers shall be eligible for promotion as Assistant Engineers provided they have put in one year as such and for this purpose, vacancies falling in the direct recruitment quota will be utilized. It was also provided in the said clause that till all these Graduate Junior Engineers are promoted, direct recruitment to the post of Assistant Engineer shall be suspended.

6. It would be pertinent to mention that aggrieved by the judgment of the learned Single Judge passed in CWP No. 6 of 1974, the State filed an LPA bearing No. 25 of 1975. On April 26, 1985, a statement was made on behalf of the State that the Rules have been amended and, therefore, the appeal has become infructuous. The appeal was disposed as having become infructuous without going into the merits thereof.

7. The Rules of 1976 were made retrospective and were made applicable from 20.6.1973. However, in the seniority list, the Original Applicants, who were directly appointed as Graduate Junior Engineers before the amendment of the Rules, continued to be shown senior. In the year 1988, a fresh seniority list was issued whereby giving effect to this amendment, the private respondents before the Tribunal who are Graduate Engineers but were initially recruited as Junior Engineers were given the benefit of the amended Rules and granted seniority over and above the Original Applicants.

8. Aggrieved by the said action of the State, the Original Applicants filed the Original Applications before the learned Tribunal. The learned Tribunal allowed the Original Applications and held that the Rules in question could not be made retrospective and could apply only w.e.f. 12.11.1976 and not prior to the said date. Aggrieved by the said order of the learned Tribunal, the State as well as private parties have filed the present petitions.

9. We have heard Shri Vikas Rathour, learned Deputy Advocate General for the State, Mr. Rajnish Maniktala, learned Counsel for the Engineers who were initially recruited as Graduate Junior Engineers, Mr. Dalip Sharma and Mr. Paresh Sharma, learned Counsel for the directly recruited Graduate Engineers. The first

contention raised on behalf of the State is that the petition was not within limitation since the Rules were amended in the year 1976 and the petition was filed in the year 1988. From the facts narrated above, it is clear that though the Rules were amended in the year 1976 but they were not given effect to and the directly appointed Graduate Assistant Engineers were always shown senior to the other category of Graduate Junior Engineers. It was only in the year 1988, that for the first time, the seniority was changed. The Original Applications were filed in the year 1989 well within the period of limitation. Hence this contention is rejected.

10. The next contention of the State is that the Rules were amended pursuant to the directions given by this Court in CWP No. 6 of 1974 and hence they are to be given retrospective effect. This Court did not direct the State to amend the Rules. It only quashed the Rules. The Rules were amended in the year 1976. In 1985, this Court was informed that the appeal filed by the State has become infructuous and the same was disposed of as such by this Court without going into the merits thereof. The petitioners in CWP No. 6 of 1974 never made an attempt to get the judgment passed in their favour executed.

11. We are only concerned with the question whether the amendment to the Rules could be made retrospective or not. Undisputedly, under the Rules of 1973, the Graduate Junior Engineers had no right to claim promotion in the promotional quota against the quota of Graduate Assistant Engineers. This amendment was quashed by this Court. It was further directed that the petitioners be considered for promotion as per the 1972 Rules. Admittedly, they were not considered at that time in terms of the 1972 Rules. On the other hand, an amendment was brought about by the State which changed the scenario totally. This amendment was brought about to get over the judgment of this Court and the amendment was made retrospective. Now, this amendment basically provided that till the Graduate Engineers who had been recruited as Junior Engineers are not promoted, no direct recruitment would be done. But the fact remains that the Original Applicants before the learned Tribunal prior to the amendment of these Rules on 12.11.1976 had already been appointed as Assistant Engineers against the quota of directly recruited Engineers. Therefore, their rights which had fructified after their appointment prior to the amendment of 12.11.1976 could not have been taken away by making the amendment retrospective. Therefore, we find no error in the order of the learned Tribunal and as such all the writ petitions are rejected. No costs.