
(2010) 12 SHI CK 0486
In the High Court Of Himachal Pradesh
Case No : CWP No. 1229 of 2005

Sunder Singh Verma

APPELLANT

Vs

H.P. Vidhan Sabha and Others

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0486

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Petitioner, who has been an employee of H.P. Vidhan Sabha, was appointed as Senior Reporter in the year 1994. On 18.2.2000, he was promoted as Chief Reporter. Earlier the post of Chief Reporter was known as Under Secretary (R&D) and it was re-designated as Chief Reporter on 30.9.1999, vide Notification, copy Annexure P-10. However, no corresponding change was made in Recruitment and Promotion Rules of H.P. Vidhan Sabha and because of no corresponding change; the post of Chief Reporter is not reflected in the Second Schedule to Himachal Pradesh Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1974. In the Schedule, old post of Under Secretary (Reporting and Debates) continues to be shown in place of the re-designated post of Chief Reporter.

2. Petitioner's services, as Chief Reporter, on ad hoc basis, were regularized on 19.6.2000. Respondent No. 2 Kesar Dass was promoted as Under Secretary on 13.6.2000 and Respondent No. 3 Smt. Kamla Bhalla was promoted also as Under Secretary in December, 2001. Two posts of Deputy Secretaries fell vacant in the year 2005. Against both these vacancies, Respondents No. 2 and 3 were promoted, even though they had been promoted as Under Secretaries subsequent to the promotion of Petitioner as Chief Reporter, which post was earlier known as Under Secretary (R&D). Petitioner claims that he having been promoted as Under Secretary, prior to Respondents No. 2 and 3, ought to have been considered for promotion to the post of Deputy Secretary, when

Respondents No. 3 were considered for such promotion.

3. Stand taken by the Secretary, Vidhan Sabha, impleaded as Respondent No. 1 as also the private Respondents, is similar. According to them, Petitioner did not belong to the cadre of Under Secretaries, but to the cadre of Chief Reporters and the post of Chief Reporter, being not in feeder post for promotion to the post of Deputy Secretary, he was rightly not considered for promotion to the said post.

4. I have heard learned Counsel for the parties and gone through the record.

5. As already noticed, no change has been effected in H.P. Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1974, despite re-designation of the post of Under Secretary (R&D) as Chief Reporter and in the Second Schedule to the Rules, which specifies various posts, their pay scales and method of recruitment, there is no reference to any post of Chief Reporter.

6. It has been submitted on behalf of Respondents that promotional avenue for the holder of the post of Chief Reporter is there in the Rules and the Schedule and the Chief Reporter is eligible for promotion to the post of Editor of Debates, whose pay-scale is equivalent to that of Deputy Secretary. Entry No. 4 of Second Schedule to the Rules pertains to the post of Editor of Debates. It says that appointment is made to the post by promotion from amongst Senior Reporters, with three years regular service or regular combined with continuous ad hoc service. The entry nowhere says that the post is to be filled up by promotion from amongst Chief Reporters, which posts were known as Under Secretaries (R&D), prior to the change in designation, vide Notification, copy Annexure P-10.

7. Initially, there used to be a combined seniority list of Under Secretaries and Under Secretaries (R&D). Copy of one such list is Annexure P-14. It shows the seniority as on 1.1.1984. One Shri K.C. Gupta is shown at Sr. No. 3 in this list. Subsequently, separate seniority lists of Under Secretaries and Secretaries (R&D) were circulated, some time in the year 1989. Sh. K.C. Gupta was shown as the only person in the seniority list of Under Secretaries (R&D), vide Annexure P-12, while other two persons were shown in another seniority list of Under Secretaries. Said Shri K.C. Gupta made a representation that he could not have been shown in a seniority list separate from the seniority list of other Under Secretaries and the action of the Authorities was likely to affect his chances of promotion to the post of Deputy Secretary. His representation was considered and an order was issued on 27.4.1989, copy Annexure P-13, which stated that separate seniority lists of Under secretaries and Under Secretaries (R&D) had been issued, because feeder cadre for the two sets of posts of Under Secretaries were different and to allay his fears that he may not be considered for promotion to the post of Deputy Secretary, it was clarified that so far as promotion to the post of Deputy Secretary was concerned, preparation of separate lists was not going to make any difference, meaning thereby that the holders of the posts of both the Under Secretaries and the Under Secretaries (R&D) were to be considered as feeder posts for promotion to the post of Deputy Secretary.

8. Learned Counsel, representing the Respondents, submit that Office Order, Annexure P-13 cannot override the Rules and if by mistake some functionary of Respondent No. 1 has issued this Office Order that does not bind either Respondent No. 1 or the private Respondents. May be what the learned Counsel have submitted is technically true, in the sense that if an Office Order or anything said by a functionary of a Department of the Government is contrary to the Rules, that will not have the effect of interpreting the Rules in that fashion, but here, as already noticed, even after re-designation of the post of Under Secretary (R&D) as Chief Reporter, there has not been any change in the Rules, indicating as to what will be the promotional avenue to the holder of the post of Chief Reporter, though it is being canvassed that Chief Reporter is eligible for promotion to the post of Editor of Debates, which post is equivalent to the post of Deputy Secretary. In fact, according to the Rules, feeder cadre for the post of Editor of Debates is the Senior Reporter and not the Chief Reporter. Petitioner, as per Rules, is required to be treated as Under Secretary (R&D), despite re-designation of the said post as Chief Reporter for the purpose of promotional avenues to the holder of the post of Chief Reporter, because the re-designated post has not been reflected in the Rules. Rules still speak of Under Secretary (R&D).

9. In view of the above stated position, writ petition is allowed and Respondent No. 1 is directed to consider the Petitioner for promotion to the post of Deputy Secretary and, if on such consideration he is found to be suitable, he be promoted to the said post from the date Respondent No. 3 has been appointed, because Respondent No. 3 was junior to the Petitioner as Under Secretary, with all consequential benefits like pay, seniority etc. This direction be complied with within three months from today.

10. Writ petition stands disposed of.