
(2011) 12 SHI CK 0224
In the High Court Of Himachal Pradesh
Case No : CWP 4231 of 2010

Vidya Sagar and Others

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Himachal Pradesh Departmental Examinations Rules, 1976 — Rule 17, 2(2)

Citation : (2011) 12 SHI CK 0224

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surjit Singh, Judge

1. Petitioners, in this case, were appointed as Agriculture Inspectors from various dates, in the years 1988 and 1989, as indicated in the table, drawn as part of para 2 of the writ petition. The posts of Agriculture Inspectors were re-designated as Assistant Development Officers (Agriculture) vide Notification dated 10.5.1980, Annexure P-1, issued by the Government of H.P., Department of Agriculture. Agriculture Inspectors, appointed in the pay scale of Rs.700-1200, Class III Non Gazetted, re-designated as Assistant Development Officers (Agriculture) vide Notification dated 20.4.1980 Ext P-1, were to enjoy Gazetted status, on completion of five years continuous service. Petitioners completed five years continuous service in the years 1993 and 1994 and, thus, according to them, they became Gazetted Officers, within the meaning of Annexure P-1.

2. Government formulated a Scheme for Proficiency Step Up, in the year 1986 and on 18.7.1992, a clarificatory letter (copy Annexure P-2) was issued, which said that the benefit of Proficiency Step Up shall be available from due date, only to those Gazetted Officers who passed departmental examination, within eight years of their appointment/promotion to the Service concerned.

3. Petitioners passed the departmental examination in the years 1998-99 and

according to them, they became entitled to Proficiency Step Up benefit from the due date, i.e. on completion of eight years service, from the dates of their initial appointments, in the years 1988 and 1989. Initially such benefit had been given to them vide order dated 5.9.1999, Annexure P-4, but later on, the said benefit was withdrawn, vide Annexure P-5 and though, notionally it was given from the dates of completion of eight years service, actual financial benefit was given from the dates of their passing the departmental examination. They made representations, which were rejected. So, they filed an Original Application before the then H.P. State Administrative Tribunal. They applied for quashing the notification Annexure P-5. On abolition of the said Tribunal, matter came to this Court. Notification, Annexure P-5, was struck down by this Court, vide order dated 19.6.2009, on the ground that the same did not state the reasons for not giving the benefit of Proficiency Step Up to the petitioners from the dates of completion of eight years service by them and directed that speaking order be passed. Respondents then passed order Annexure P-9, dated 18.2.2010, in which it is stated that because of para 3 of clarificatory letter dated 18.7.1992, copy Annexure P-2, petitioners, having not passed the departmental examination, within eight years of their appointments to the Service, were though notionally entitled to Proficiency Step Up higher scale, but the actual financial benefit was to be available to them only from the date, when they passed the departmental examination, because they passed such examination, after eight years of their appointments. Para 3 of the said Notification, Annexure P-2, reads as follows:

An Officer who, on being appointed/ promoted to any Service/ Class, fails to pass the departmental examination within eight years, but passes such examination thereafter, he may be sanctioned Proficiency Step Up, if and when due, but he will not be entitled to arrears (note: presumably for the period, prior to the date of passing of the departmental examination).

4. Petitioners are aggrieved by this Annexure P-9. So, they have approached this Court by means of the present writ petition for quashing the said order and restoring the order Annexure P-4, by which they were given the benefit of Proficiency Step Up, from the date of their completing eight years service, with the benefit of arrears.

5. Respondents have taken the same stand which is the basis for passing impugned order, Annexure P-9.

6. I have heard learned counsel for the parties and gone through the record.

7. Clarificatory letter, Annexure P-2, is applicable only in the case of Gazetted Officers. That means, it applies only to those government servants, who enjoy gazetted status. Also, requirement for passing departmental examination is applicable only to gazetted officers, as is made out from H.P. Departmental Examination Rules, 1976. Rule 2(2) of the said Rules says that the same shall govern the departmental examination in respect of-

(i) the members of the Himachal Pradesh Administrative Service;

- (ii) the members of the Himachal Pradesh Forest Service;
- (iii) Tehsildars and Naib Tehsildars;
- (iv) all other gazetted officers working in connection with the affairs of the State of Himachal Pradesh not included in clauses (i) to (iii) above; and
- (v), any other class or category of officers which may be included by the Government from time to time.....

8. It is not the case of the respondents that the service of the petitioners, before their attaining gazetted status, had been included under Clause (v) of the aforesaid Rule 2(2) of the H.P. Departmental Examination Rules, 1976. Rules of Service, of which the petitioners are Members, were re-framed in the year 1995 and Rule 17 of the Rules says that every member of the service shall pass the departmental examination, as prescribed in the H.P. Departmental Examination Rules, 1976, as amended from time to time, failing which they shall not, inter alia, be eligible for Proficiency placement in the higher scale, after completing 8 years and 18 years of service. Prior to these rules of 1995, copy of which is Annexure P-3, there was not only no requirement for the petitioners to have passed the departmental examination, until gazetted status remained available to them, on completion of five years of service, but also they could not have taken the examination, because Rule 2(2) of the Rules, referred to above, does not apply to non gazetted government servants of the State. The requirement of passing the departmental examination, thus, became applicable to the petitioners only when, on completion of 5 years of service, they started enjoying gazetted officers' status. They became gazetted officers only in the years 1993 and 1994 and, therefore, they were supposed to have passed the departmental examination, within 8 years of their becoming gazetted officers to get the benefit of Proficiency higher scales from due date, as per requirement of Annexure P-2, para 2 of which says that those officers who, within 8 years of appointment/promotion to a service or class, pass the departmental examination, will be entitled to Proficiency higher scale, from the due date (including arrears).

9. Petitioner, having passed the departmental examination within 8 years of their becoming gazetted status holders, are thus, entitled to Proficiency higher scales, on completion of 8 years and 18 years of service, with arrears, as per clarification No. 2 of the aforesaid clarificatory letter, Annexure P-2.

10. As a result of the above discussion, writ petition is allowed and Annexure P-9 is quashed. As an implication of the quashing of Annexure P-9 as also the order passed by this Court in the earlier writ petition, Annexure P-5 also stands quashed. Annexure P-4, by which the petitioners were granted Proficiency higher pay scales, is restored.