

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.561 of 2020
Reserved on: 05.05.2021
Decided on: 12.05.2021

Narinder Kumar DattaPetitioner.
Versus
State of H.P. & others Respondents.

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Varun Chandel, Advocate.

For the respondents : Mr. Sumesh Raj, Mr. Dinesh Thakur,
Additional Advocates General,
Ms. Divya Sood, Deputy Advocate
General, for the respondents No.1 to 4-
State.

Respondents No.5 and 6 *ex parte*.

Ajay Mohan Goel, Judge

By way of this petition, the petitioner has, *inter alia*, prayed for the following relief:-

“That the respondents may be directed to consider the name of the petitioner for promotion as Senior Assistant from the due date i.e. 2012 after receiving the DPC on 10.07.2012 and 05.06.2014, also

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Whether reporters of the local papers may be allowed to see the judgment?

placing the name of the petitioner in accordance with the corrected seniority list. Further the respondent may be directed to provide the petitioner all consequential benefits after granting his promotion w.e.f. 2012.”

2. The case of the petitioner is that he was appointed as a Clerk on compassionate basis in the year 1985. He was initially posted at D.C. Office Chamba, District Chamba, H.P., but on account of his family circumstances, he got himself transferred from District Chamba to District Kangra and was posted as a Clerk/Junior Assistant in the Office Deputy Commissioner, Kangra at Dharamshala, H.P. w.e.f. 31.01.1990. On account of this voluntarily transfer sought by the petitioner, he lost his seniority of District Chamba. In terms of his seniority as determined from the date when he joined in District Kangra, he was assigned seniority at serial No.60 in terms of the seniority list issued by the respondent-department, vide Annexure P-1, dated 31.12.2007. A Departmental Promotion Committee was convened for considering eligible candidates for promotion to the post of Senior Assistant, on 15.11.2011 and name of the petitioner

was recommended at serial No.12 in the probable list prepared for the purpose of promotion, however, the petitioner was not promoted. Thereafter, vide Notification dated 18.04.2012 (Annexure P-3 Colly), the Himachal Pradesh, Department of Personnel, Senior Assistant, Class-III (Non-Gazetted, Ministerial Services) Common Recruitment and Promotion Rules, 2011 were amended to the effect that the post of Senior Assistant was now to be filled 100% by promotion, *inter alia*, from amongst Clerks/ Junior Assistants of concerned departments, possessing ten years regular service or regular combined with continuous adhoc service, provided they possess the minimum educational qualification of 10+2. The next meeting of the Departmental Promotion Committee was held on 10.07.2012 (Annexure P-4), vide which the name of the petitioner alongwith other incumbents mentioned therein, which included incumbents similar to the petitioner who were only matriculate, were recommended for promotion to the post of Senior Assistant. Though, persons senior to the petitioner,

but matriculate, were promoted to the post of Senior Assistant on the recommendation of the Departmental Promotion Committee, however, the petitioner was not promoted, as sufficient number of promotional posts were not available. Thereafter, again a Departmental Promotion Committee was convened in the month of June, 2014, but the name of the petitioner was not recommended for promotion to the post of Senior Assistant as per his seniority, on the ground that he was not possessing the qualification of 10+2. The petitioner was promoted to the post of Senior Assistant in the year 2015, after he completed his 10+2 in the year 2014.

3. The grievance of the petitioner is that the act of the respondent-department of denying him promotion simply on the ground that he was not possessing the qualification of 10+2 in the year 2014, is bad in law as the respondent-department erred in not appreciating that as the petitioner was initially appointed by way of compassionate appointment, then in terms of the communication dated 31.03.2005, issued by the Financial Commissioner-cum-Secretary Revenue, to the

Government of Himachal Pradesh, the petitioner could not have been ignored for promotion to the post of Senior Assistant, on the ground that he was not possessing 10+2 qualification as there was an exemption from possessing the qualification of 10+2, in case of employees who were appointed as Clerks on compassionate basis, provided they possessed the qualification of matriculation. It is in this background that this petition has been filed, praying for the reliefs already enumerated hereinabove.

4. The petition is opposed by respondents-State, *inter alia*, on the ground that as the Recruitment and Promotion Rules to the post of Senior Assistant stood modified in the year 2012 and the minimum qualification necessary for promotion was 10+2, therefore, in the absence of the petitioner possessing the said qualification, he was not eligible to be considered for promotion till he attained the qualification of 10+2. It is further the stand of the State that though in the year 2012, name of the petitioner was recommended by the Departmental Promotion Committee, but he could not be

promoted, as number of posts available, were occupied by his seniors, whereas the Departmental Promotion Committee convened on 05.06.2014, rightly did not recommend the name of the petitioner for promotion to the post of Senior Assistant as he was not possessing the qualification of 10+2.

5. By way of rejoinder, the petitioner has reiterated the stand taken in the petition and denied the averments made in the reply as far as they are contrary to the stand of the petitioner.

6. I have heard learned counsel for the parties and also gone through the pleadings and documents appended therewith.

7. It is not in dispute that the petitioner was initially recruited against the post of Clerk on compassionate basis. It is also not in dispute that there is a communication issued by the Financial Commissioner-cum-Secretary Revenue to the Government of Himachal Pradesh, dated 31.03.2005, on the subject regarding "*modification in Recruitment and Promotion*

Rules for promotion as Senior Assistant", which reads as under:-

"I am directed to refer to your letter No.1 (247)-4854/Ka/Sha, dated 14.09.2004 on the above subject and to say that the condition for acquiring of higher qualification of Matric 2nd division or 10+2 examination pass for promotion to the post of Senior Assistant to those incumbents of the posts of Clerks who were promoted from Class-IV employees with the qualification of Matric pass or matric in English only with Hindu Rattan pass and the incumbents appointed as clerks on compassionate grounds with the qualification of Matric third division prior to 27.11.1991, will not be applicable.

As such the incumbents who are working on the posts of clerks with lower qualification prior to 27.11.1991 can not be debarred from promotion to the post of Senior Assistant. Similarly, the instructions issued by the Department of Personnel on dated 30.01.2002 will also not be applicable to those incumbents of class-IV employees who had been promoted/appointed as clerk prior to 27.11.1991.

It is also informed that the proviso below Rule-7(ii) and added Rule 7(iii) in the Recruitment

and Promotion Rules for the posts of Clerk have been notified vide this department Notification Rev. A(B)3-16/95, dated 23.07.1999 and corrigendum of even number dated 04.10.1999, which is not desirable now and therefore, it is required to omit aforesaid proviso and Rule-7(iii) from the Rules as these conditions have already been withdrawn by the Government and the common Recruitment Rules, 1984 for the post of Clerks have also been amended accordingly by the Department of Personnel (AP-III) vide Notification No. Per(AP-IIA(3)-2784-III, dated the 17-07-1998.

You are therefore, requested to take further action in the matter accordingly and send proposal through concerned Divisional Commissioner for amending R&P Rules for the post of Clerks in D.C. Offices alongwith various other amendments which are to be carried out in the said Rules immediately.”

8. A perusal of this communication demonstrates that it is not as if it was only in the year 2012, that the minimum qualification necessary for promotion to the post of Senior Assistant was prescribed as 10+2. However, an exemption was carved out earlier also in favour of those Clerks, who stood

recruited on compassionate basis for promotion to the post of Senior Assistant, provided that they were matriculate. ◇

9. During the course of arguments, learned Additional Advocate General could not demonstrate that communication dated 31.03.2005 was later on rescinded.

10. There is another important aspect of the matter which requires mentioning, at this stage. As has been observed by me hereinabove also, the condition of possessing 10+2 as the minimum qualification was existing prior to the year 2012 for promotion from the post of Clerk/ Junior Assistant to the post of Senior Assistant, yet the Departmental Promotion Committee which was held on 10.07.2012 (Annexure P-4), recommended not only the name of the petitioner for promotion to the post of Senior Assistant, but names of other incumbents, including one Shri Nirbhay Kumar and Smt. Darshana Devi, who as per the petitioner were also possessing the qualification of matriculation only and who admittedly on the recommendation of the said Departmental Promotion Committee's proceedings were

promoted to the post of Senior Assistant in the year 2012 itself.

11. In this background, the stand of the State that as the Recruitment and Promotion Rules to the post of Senior Assistant were amended in the year 2011-12 and 10+2 was made the minimum qualification for promotion, also does not hold any water for the reason that if that was the case, then why even in the year 2012, matriculates were promoted to the post of Senior Assistant, could not be explained by learned Additional Advocate General during the course of arguments.

12. In this background, in the year 2014, when the Departmental Promotion Committee was convened for recommending the candidates to the post of Senior Assistants from amongst Junior Assistants i.e. the Departmental Promotion Committee, dated 05.06.2014, the non-recommendation of the petitioner for promotion to the post of Senior Assistant simply on the ground that he was a matriculate and was not possessing the qualification of 10+2, is not justifiable in law.

13. This is more so for the reason that the factum of there being a communication issued by Secretary Revenue to the Government of Himachal Pradesh, to the effect that an incumbent appointed as a Clerk on compassionate basis, was eligible for promotion to the post of Senior Assistant, provided he was matriculate, has not been denied by the State in its reply, especially in response to para-10 of the writ petition. It is in this para of the writ petition, that the petitioner had averred about the existence of this exemption and the averments of this para stand admitted by the State. Therefore, the denial of promotion to the petitioner on the basis of his seniority in the year 2014, is not sustainable in law, as in the considered view of this Court, the petitioner having been appointed on compassionate basis, was exempted from possessing the qualification of 10+2 for promotion to the post of Senior Assistant, which was a non-selection post.

14. Accordingly, this writ petition is allowed to the extent that the act of the Departmental Promotion Committee of the respondent-department, convened on 05.06.2014, of not

recommending the petitioner for promotion to the post of Senior Assistant on the ground that he was not possessing the qualification of 10+2, is held to be bad in law and respondent-department is directed to promote the petitioner, as from the date when person Junior to him was actually promoted to the post of Senior Assistant, on the basis of the recommendations of the Departmental Promotion Committee, convened on 05.06.2014. For this purpose, if necessary, supernumerary post of Senior Assistant shall be created, which shall be personnel to the petitioner. The promotion shall stand conferred upon the petitioner with all consequential benefits including monetary benefits and needful be done within three months from today.

15. With these observations, this writ petition stands disposed of, so also pending miscellaneous applications, if any. Interim order, if any, stands vacated.

(Ajay Mohan Goel)
Judge

May 12, 2021
(Rishi)