

U. Narayan Sharma and Others vs. State of Sikkim and Others

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Court : Sikkim

Decided On : Oct-09-2014

Judge : S.P. Wangdi

Appeal No. : WP(C) No. 13 of 2013

Judgement :

Judgment (Oral)

Wangdi, J.

1. The Petitioners are presently serving as Lower Division Clerks (in short LDCs) in different departments under the Respondent No.1. Initially, they were appointed as Fieldmen/Field Assistants in the Department of Agriculture, Government of Sikkim which was later bifurcated as Horticulture and Cash Crop Development Department and Food Security and Agriculture Development Department, Government of Sikkim, Respondents No.2 and 3 respectively.
2. It is submitted that the Petitioners had successfully undergone training in different fields and having put in requisite number of years of service they were eligible for promotion to the posts of Village Level Workers (in short VLWs).
3. Mr. Jorgay Namkha, Learned Advocate, appearing on behalf of the Petitioners, submits that as per the practice prevalent in the department the next promotion for a person holding the post of Field Assistant was the post of Village Level Worker

(VLW). The department instead promoted the Petitioners to the posts of LDCs on different dates in the year 2011. Being seriously aggrieved by this, they had approached the State-Respondents to rectify their action and by promoting them as VLWs retrospectively from the dates of their promotions as LDCs. Their representations having not been considered, the Petitioners have chosen to prefer this Writ Petition, inter alia, praying for a direction to promote the Petitioners to the post of Village Level Workers.

4. Mr. Jorgay Namka in the course of his arguments relied upon Notification No.458/GEN/DOP dated 27-07-2011 which introduced an amendment to Schedule II to the Sikkim State Sub-ordinate Agriculture Service Rules, 2001, providing for different methods of recruitment to the post of VLW contained in Column 7 of the entries thereto. This amendment for the first time provided percentages of promotion for Fieldmen @ 10% on seniority basis and, 5% on merit respectively.

5. In compliance to order of this Court dated 31-05-2013 an affidavit has been filed on behalf of the State-Respondents essentially stating that when the Sikkim State Sub-ordinate Agriculture Service Rules, 2001, as it stood then was in vogue, there was no avenue for promotion of Group D workers to which category the Petitioners belonged. This, as per the State-Respondents, was evident from Schedule II to the the Sikkim State Subordinate Agriculture Service Rules, 2001. Even the Sikkim Sub-ordinate (Ministerial and Executive) Service (Amendment) Rules, 2001, was bereft of such provision. It was introduced for the first time by the Sikkim Subordinate (Ministerial and Executive) Service Amendment Rules, 2008, published vide Notification No.135/GEN/DOP dated 02-07-2008 by incorporating the following to Clause (3) to Schedule II to this Sikkim Sub-ordinate (Ministerial and Executive) Service Rules, 1984:-

10% by promotion from amongst Group D employees having Class X examination passed from a recognized board on seniority basis subject to availability of vacancies

6. In furtherance to this, the Department of Personnel, Adm. Reforms, Training, Public Grievances (DOPART), Government of Sikkim, wrote to all Secretaries/Head of Departments vide letter dated 07-01-2009 requesting them to

circulate a provisional seniority list of Group D employees amongst the concerned persons working under their respective departments and also to submit their acceptance of the seniority list or otherwise on or before 31-01-2009. It is stated that in compliance to this, the Department of Horticulture and Cash Crop Development Department, Respondent No.2, by letter dated 07-02-2009 sent the seniority list of Group D employees under them which also contained the names of the Petitioners at serial nos.1, 9, 16, 17, 18 and, at serial no.7 of the list sent vide letter dated 07-01-2009 of the Respondent No.3 to the Respondent No.1. After receipt of the seniority list, persons found eligible under the relevant Rules were promoted to the next higher grade of LDCs by Office Order dated 21-03-2011 filed as Annexure 12 in the Writ Petition and, the Petitioners were amongst those who were promoted.

7. The Petitioners, however, are aggrieved by the fact that they ought to have been promoted to VLWs as per prevailing practice and not as LDCs.

8. In the course of his argument, it is fairly conceded by Mr. Jorgay Namka that there was no Rule in existence which provided for promotion of Field Assistants to VLWs and that it was only by an amendment brought to Schedule II to the Sikkim State Sub-ordinate Agriculture Service (Amendment) Rules, 2011, that provisions for promotion of Field Assistants to the post of VLWs was introduced.

9. I have heard the Learned Counsel in detail and carefully considered the various Rules and documents referred to by them. In my view, the Petitioners appear to be mis-conceived as no provisions of any Rules, Law or the Constitution appears to have been violated by the Respondents. As conceded by Mr. Namka, it was not mandatory under the Rules that the Field Assistants/Fieldmen should have been promoted as VLWs. The Sikkim State Sub-ordinate Agriculture Service Rules, 2001, made no such provision. Schedule II of the Rules as it stood prescribed for 100% by direct recruitment to the post of VLWs. This was provision later amended on 27-07-2011 by making following provisions:-

(ii) under the column 7 , for the existing entries, the following entries shall be substituted, namely;-

(i) 85% by direct recruitment,

(ii) 10% by promotion of Fieldman/ Field Assistants on seniority basis against the total number of vacancies and

(iii) 5% by promotion of Fieldman/ Field Assistants who has passed class X examination by interview on merit basis against the total number of vacancies.

10. The Petitioners, as already observed, were promoted on 21-03-2011. Obviously, therefore, when the Sikkim State Sub-ordinate Agriculture Service Rules, 2001, was amended the Petitioners had already been promoted.

11. For this reason, it cannot be said that the State-Respondents are in breach of any of the Rules. We also find that the Petitioners had willingly joined their respective places of promotion without demur.

12. Under these circumstances, the Petitioners are not entitled to any of the reliefs claimed in the Writ Petition.

13. In the result, the Writ Petition is dismissed with no order as to costs.

14. In spite of this, it is left open for the State-Respondents to consider as to whether, in view of their experience as Fieldmen/Field Assistants, the case of the Petitioners can be considered as promotions to the post of Village Level Workers without disturbing their seniority, if there are sufficient number of vacancies available in such post.

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