

Suresh Chander Mohan Vs. H.P. State Electricity Board

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SooperKanoon Citation : sooperkanoon.com/891729

Court : Himachal Pradesh

Decided On : Mar-24-2009

Reported in : 2009(2)ShimLC181

Judge : Sanjay Karol, J.

Appellant : Suresh Chander Mohan

Respondent : H.P. State Electricity Board

Disposition : Petition allowed

Judgement :

Sanjay Karol, J.

1. In the present petition, the petitioner has prayed for the following relief:

(i) that the impugned Annexure A-3, dated 24.4.1996 may be quashed and set aside;

(ii) that the respondent Board may be directed to consider the case of the applicant for promotion to the post of UDC w.e.f. 30.3.1989 on the basis of seniority which has now been given to the applicant;

(iii) that the respondent Board may be directed to give all the consequential benefits to the applicant after promoting him as UDC w.e.f. 30.3.1989 like

seniority, arrears of salary etc. with interest.

2. Petitioner served the Indian Army from 29.8.1970 upto 29.11.1978. Thereafter, he joined the service of the respondent-Board, as Lower Division Clerk on 30.6.1983. His pay scale was fixed at Rs. 400-600. In order to give benefits to the Ex-servicemen, who were employed with the State Government, the State of Himachal Pradesh framed the Rules known as 'Demobilized Armed Forces Personal (Reservation of Vacancies in H.P. State Non-Technical Services) Rules, 1972'.

3. These Rules were made applicable to the employees of the Board and, as such, in terms of Rules 5, the petitioner was entitled for consideration of his past service for the purposes of promotion and other monetary benefits.

4. Vide office order dated 30.3.1989 (Annexure RA-3), the respondent promoted some employees as Upper Division Clerks on adhoc basis. One Smt. Gaytri Devi, who was junior to the petitioner was promoted as UDC on ad hoc basis and placed immediately below Shri Chander Mani (Sr. No. 31).

5. The petitioner felt aggrieved and, as such, made a representation to the respondent bringing on record the anomaly which had surfaced perhaps due to over sight. Vide orders dated 19.9.1994 (Annexure RA-4), the petitioner was also promoted as UDC on adhoc basis in the pay scale of Rs. 1800-3200. Accordingly, the respondent circulated a final seniority list dated 30.4.1994 (Annexure RA-5) and the petitioner was placed at his correct position i.e. immediately below Shri Chander Mani Sharma and above Smt. Gaytri Devi.

6. Noticeably, Smt. Gaytri Devi was promoted w.e.f. 30.3.1989 whereas the petitioner was promoted w.e.f. 19.9.1994. The grievance of the petitioner still being alive, he made a representation to the respondent vide letter dated 5.10.1995 (Annexure A-2), which stood rejected in terms of the order dated 24.4.1996 passed by the Secretary of the Board (Annexure A-3). The contents of the same are being reproduced as under:

I am to refer to your letter No. F&A;/I(Admn.)13/96-18982-83 dated 29.3.1996 and to say that the case has been examined in this office with reference to relevant record and it is informed that it may not be possible to consider the request of Sh. Suresh Chand, Sr. Asstt. for Adhoc promotion from the back date. However, if the official feels that he has been put to financial loss, he may represent for the stepping up of his pay over his junior i.e. Smt. Gaytri Devi.

You are, therefore, requested to examine the stepping up case of the official on the basis of representation submitted by him and send the same to this office with your comments along with comparative statement etc. immediately.

7. Why the petitioner was not promoted w.e.f. 30.3.1989 and the benefits of adhoc service also not given to him has not been sufficiently explained, which needs to be considered.

8. Importantly, the only defence now taken is that vide letter dated 13.8.1984 (Annexure RA-2), the respondent-Board had sought information from the field and since the same was not forthcoming hence, the petitioner was not promoted. It is also argued that adhoc promotion does not confer any right on a particular individual as appointments were made purely by way of a stop-gap arrangement. In the rejoinder, petitioner has pleaded that 437 persons were promoted on adhoc basis, and continued to be posted as such over a continuous period of time and hence the plea taken by the respondent-Board has been falsely taken only to deprive the petitioner of his legitimate right of promotion and consequential benefits.

9. Annexures A-5 and A-6 filed along with the rejoinder show that both Shri Chander Mani Sharma and Smt. Gaytri Devi are enjoying benefits of higher pay scale, whereas the petitioner has not been accorded benefits of the same.

10. Having perused the record, I am convinced that the stand taken by the respondent-Board is not only false but also contrary to the settled position of law.

11. It is not the respondent's case that the petitioner had, in any manner, failed to furnish any documents disentitling him for the benefits under the Rules. The Board

itself was enjoined with the duty to have conferred benefits, in accordance with Rules, to those persons who had served the nation at the time of need.

12. Petitioner was enrolled as an ex-serviceman and at the time of his appointment all documents were in the power and possession of the respondent-Board. Simply because the officials of the respondent did not adhere to the letter dated 13.8.1984, that by itself would not render the petitioner's claim to be baseless or untenable in law. In fact the respondent-Board itself noticed the mistake of having promoted a person junior to the petitioner, hence, the mistake was rectified and the petitioner was promoted w.e.f. 19.9.1994 and the seniority list amended. There is nothing else on record to show as to why the petitioner was not promoted w.e.f. 30.3.1989 i.e. date when Smt. Gaytri Devi was promoted. It is also not the case of the respondent that the petitioner was otherwise not eligible to have been promoted.

13. A Division Bench of this Court in *Dr. V.K. Bhargava v. State of Himachal Pradesh and Ors.* 1985 ILR HP Series 358 has held as under:

It cannot be possibly disputed that even an ad hoc appointment to a post is an appointment to an office, howsoever tenuous its character may be. Such ad hoc appointment authorizes the appointee to occupy the post and to perform the functions and to discharge the duties and to draw the emoluments attached to the post. In case of ad hoc appointment to any post by way of promotion, there is also the conferment of a higher status or position. When such an appointment is made to any office under the State, Articles 14 and 16 will undoubtedly have an impact.

It is no answer to the charge of infringement of Articles 14 and 16 to say then that the public servant has no right to the post and that the appointment was merely on an officiating or adhoc basis.

Even in respect of adhoc appointments, an aggrieved public servant can invoke the writ jurisdiction in any of the following three situations: (1) where there is a statutory enactment governing adhoc appointments and any action is taken concerning such appointment which is in breach of such enactment, (2) where there is no statutory enactment but there is a policy decision or an executive order

governing adhoc appointments and any action is taken concerning such appointment by making an arbitrary, irrational or fanciful departure from such policy or an executive order, and (3) even where there is no statutory enactment or policy decision or an executive order governing adhoc appointments but any action is taken concerning such appointment without regard to valid and relevant principles applicable alike to all similarly situate and guided by extraneous or irrelevant considerations or founded on mala fide exercise or abuse of power. Any such action can be challenged in writ jurisdiction on the ground of statutory violation and/or infringement of Articles 14 and 16, as the case may be.

If there are policy decisions/executive instructions governing ad hoc appointments and there is any arbitrary or irrational departure therefrom on the part of the State, the challenge can be justifiably based on the ground that such act impinges upon the guarantee of equality of treatment enshrined in Article 16. If there is a statutory enactment regulating such appointments and there is a breach thereof, an additional ground of challenge based on the infringement of legal right would also be available.

The petitioner's case is squarely covered by the aforesaid decision.

14. The respondent plea that Smt. Gaytri Devi was promoted only as a stop-gap arrangement is obviously incorrect and has been taken only to defeat the petitioner's right. No less than 437 persons were appointed on ad hoc basis for a continuous period of more than six years.

15. In this view of the matter, Annexure A-3 is quashed. The respondent is directed to consider the petitioner's case for promotion to the post of UDC w.e.f. 30.3.1989, on the basis of his seniority and also pay all consequential benefits for a period of at least three years prior to the filing of the petition. The respondent shall do the needful within a period of 12 weeks from today. It is clarified that if the amount is not paid to the petitioner within a period of four months, the petitioner shall be entitled to interest @ 9% from the said date.

For the aforesaid reasons, the petition is allowed.

