

Smt. Sona Devi. Vs. State of H.P Through Secretary, and ors.

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Court : Himachal pradesh

Decided On : Dec-07-2010

Judge : V.K. Sharma, J.

Appeal No. : CWP (T) No. 8624 of 2008

Appellant : Smt. Sona Devi

Respondent : State of H.P Through Secretary, and ors.

Advocate for Def. : Mr. Anil Jaswal, Dy. Adv.

Advocate for Pet/Ap. : Mr. Dibender Ghosh, Adv.

Judgement :

1. The petition has been filed on the following prayers vide para 7 (i) and (ii): (i) Quashing Notional Promotion ordered vide Office order No. EDN-H (1) B (2 1/96-4, dated 20.4.2001 and Annexure A-4. (ii) Further directions are issued to the respondents No.1 and 2 to give promotion to the applicant, as Superintendent Grade-II from the date i.e. 13.11.1995, when similarly situated persons were so promoted i.e. November, 1995 with all consequential benefits including, as the promotion of the applicant was due from the same date.
2. In the reply, filed on behalf of respondent, the following stand has been taken vide para 6 (i): 6 (i) that this para is admitted, therefore, calls for no submissions. However, it is submitted that at the time of holding the Departmental promotion committee, the name of the applicant was also under the zone of consideration for

promotion to the post of Superintendent Grade-II. But, due to the verification of Scheduled Tribe certificate, the said certificate, on verification was cancelled by the District Magistrate Sirmour. But now after the decision of appeal by the Ld. Additional District Judge, Nahan the applicant stands promoted to the post of Superintendent Grade-II vide order dated 20.4.2001 on notional basis w.e.f. 20.8.1996, the date from her juniors were promoted and the pay of the applicant is also fixed in the Grade of Superintendent Grade-II vide order dated 6.8.2001 from the date of promotion as Superintendent Grade-II on notional basis. So in view of these facts the applicant is not entitled for all consequential benefits because, she had not actually worked on the post of Suptd. Grade II w.e.f. 20.8.96 upto the date of actually joining the post of Suptd. Grade-II

3. A rejoinder refuting the above stand and reiterating the averments set up in the petition has also been filed.

4. Some of the undisputed facts may be noticed first. Admittedly, the petitioner who belongs to Scheduled Tribe had joined the employment of the respondents, particularly respondent No.2 as Clerk in the year 1981. Thereafter, she was promoted as Senior Assistant in 1986. It is also not in dispute that on the basis of her seniority the petitioner became eligible for promotion to the post of Superintendent Grade-II. However, in the mean while the Scheduled Tribe Certificate issued in favour of the petitioner came 3 to be cancelled by an order dated 9.9.1996 Annexure A-1 passed by the District Magistrate, District Sirmour, Nahan. Being aggrieved by the said order the petitioner filed a Civil Suit in the Court of learned Senior Sub Judge, Sirmour District Nahan which was decreed vide judgment and decree dated 4.5.1999, Annexure A-2, which in appeal at the instance of the respondents were upheld by the learned District Judge Sirmour at Nahan, vide judgment dated 6.3.2000, Annexure A-3, and the same has admittedly attained finality.

5. against the above backdrop the petitioner was thereafter promoted as Superintendent Grade-II vide Office order dated 6.8.2001, Annexure A-4 notionally w.e.f. 20.8.1996. This gave raise to the filing of the present petition on the averments that in due course the petitioner would have been promoted as

Superintendent Grade-II w.e.f. 20.8.1996, but for cancellation of her Scheduled Tribe Certificate for which she was not at fault. Thus, according to the petitioner, she ought to have been promoted as Superintendent Grade-II w.e.f. 20.8.1996 for all intents and purposes including all consequential benefits and not on notional basis as has been done under the impugned office order dated 6.8.2001, Annexure A-4.

6. True it is that the petitioner has not worked as Superintendent Grade-II during the period 20.8.1996 to 6.8.2001 when she was ultimately promoted as such on notional basis. However, the fact remains that had her Scheduled Tribe Certificate not been cancelled vide order dated 9.9.1996, Annexure A-1 she would have been promoted as Superintendent Grade-II in due course. However, it was not done without there being any fault on the part of the petitioner.

7. In view of the above, the petition is allowed. Consequently office order dated 6.8.2001; Annexure A-4 is quashed with a direction to the respondents to grant promotion to the petitioner as Superintendent Grade-II w.e.f. 20.8.1996 for all intents and purposes including consequential benefits admissible to the said post, within three months from today.

8. The petition stands disposed of, so also the pending CMP(s), if any.

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