

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 389 of 2000.

Judgment reserved on 1.6.2007.

Date of decision June 29, 2007.

Bachittar Singh Guleria	...Petitioner.
Versus	
The Chairman, Zila Parishad, Bilaspur & others	...Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

*Whether approved for reporting?*¹

For the Petitioner	Mr. Raman Sethi, Advocate.
For respondent No.2	Mr. Rajan Dewan, Addl.AG.
For respondent No.3	Mr. Sandeep Sharma, Asstt Solicitor General of India.

Dev Darshan Sud, J.

The petitioner has approached this Court under Article 226 of the Constitution of India with the prayer that the respondents be directed to determine the service conditions of the petitioner and other employees similarly situated for framing Recruitment

¹ *Whether reports of Local Papers may be allowed to see the judgment?*

and Promotion Rules; a writ of mandamus directing respondent No. 1 to promote the petitioner to the next higher post of Statistical Assistant with effect from 1995 when he had completed 10 years of service and which according to the Board Management of respondent No. 1, was the minimum experience required; prohibiting the respondents from filling up the post of Statistical Assistants from any other source, by deputation etc.

The petitioner approached this Court on the allegations that he had been working for the last 15 years with respondent No. 1 as Junior Assistant and has not been given any promotion till the date of filing the writ petition. The grievance of the petitioner is that the respondents have not framed any Recruitment and Promotion Rules for direct recruitment which resulted in this category of employees being discriminated against and consequent stagnation. Employees who are being sent to respondent No. 1 from the Rural Integrated Development Department of the State on deputation / secondment basis were being promoted as the Rules applicable for their service conditions in their parent department were applied for promoting them. The allegation of the petitioner

further is that the funding of the District Rural Development Agency is shared 50% by the Union and 50% by the State Government.

The petitioner was appointed as a Clerk on regular basis with effect from 16.4.1985. One Uday Singh Rana who was working as Statistical Assistant was transferred to District Rural Development Agency, Mandi. He was an employee in the State Government working in the Rural Integrated Development Department. In his absence, the petitioner was asked to discharge the duties of Statistical Assistant from 1989. The petitioner represented to the respondents praying that since he was working against a vacancy of Statistical Assistant and having attained the minimum requisite experience, he be promoted to that post. The further case of the petitioner is that in the year 1996, respondent No. 1 submitted a proposal that since the post of Statistical Assistant was lying vacant since the year 1989, it should be filled in. Recommendation was also made that since the petitioner had completed 12 years service, he should be promoted with effect from April 1995 and paid the same salary as admissible

to Statistical Assistant. This proposal, according to the petitioner, was contained in File No. IRD 22/96.

In its meeting held on 15.9.1998, resolution was passed by the governing body of respondent No. 1 that promotional avenues to directly recruited employees of District Rural Development Agency should be provided. In the same meeting, the case of the petitioner and two other employees was recommended for promotion to the next higher post. The petitioner further submits that the employees of District Rural Development Agency including the petitioner are being considered for any promotion in the absence of Recruitment and Promotion Rules, but persons who are much junior to the petitioner have been appointed as Senior Assistants while the petitioner and other employees languish on the same post. The petitioner has named the employees junior to him from other agencies recruited much later in point of time in para 12 of the petition.

When this writ petition was taken up for hearing, the stand of the respondents primarily was that the Rules are being finalized. On 11.5.2007, when this case was taken up for hearing, my attention was

drawn to paragraph 6 of the reply filed by respondent No. 2 in which such a stand was taken by the respondents. The reply had been filed in the year 2000. The matter was again taken up on 29.5.2007 when again this Court was informed that matter regarding framing of the Recruitment and Promotion Rules was still under consideration of the respondents.

A period of more than 7 years has elapsed since the writ petition was filed but till date no action has been taken by the respondents. Learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in Dr. Ms. O.Z.Hussain v. Union of India and others (AIR 1990 SC 311), holding that:

" This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of

Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non medical wing of the Directorate." (Page 313 Para 7).

The state of stagnation created by the respondents by their inaction cannot be allowed to continue. Till date, the respondents have not come up with any Recruitment and Promotion Rules. Although, strictly speaking a service / cadre can be constituted without Recruitment and Promotion Rules, but it cannot be allowed to lead to arbitrary results. In the present case, employees on deputation from other

departments are stealing a march over the employees who have been recruited directly and who are stagnating.

Learned counsel for the petitioner has submitted that the post of Statistical Assistant has been abolished from the DRDA, Bilaspur with effect from 1999. Instead, a new post has been introduced as that of an Investigator. He has submitted that the post of Investigator is the next higher post for promotion from amongst Statistical Assistants / Senior Assistants with five years regular service. The petitioner submits that he was recommended for promotion to the post of Statistical Assistant with effect from April 1995. This decision was allowed to stagnate and the recommendation not given effect to only on the ground that Recruitment and Promotion Rules were to be framed. How long would it take to frame such Rules? Till the date of hearing of this petition, there is no answer. Submission of the learned counsel is that in case the recommendation would have been given effect to in 1995 itself, petitioner would have been eligible to the post of Investigator. Even otherwise, these facts are not disputed from the record. It is uncontroverted that the petitioner has been discharging the duties of a

Statistical Assistant since 1989. He has, therefore, acquired the requisite experience on date.

In the facts and circumstances of the case, this writ petition is accepted. Following directions are issued to the respondents:

- i) Recruitment and Promotion Rules will be framed by them within a specified time frame for employees of DRDA, considering the fact that the service conditions of the petitioner and employees similarly situate have been kept in a limbo;
- ii) The case of the petitioner will be considered for promotion to the post of investigator. For this purpose, the respondents will keep in mind the unanimous recommendation of the Board of the DRDA recommending the promotion of the petitioner as Statistical Assistant from the post of Clerk and also the fact that at the time when the recommendation had been made the petitioner had fulfilled the basic requisite qualifications required for the post.
- iii) This exercise will be completed within a period of eight weeks from the date of this judgment.

There shall be no order as to costs.

June 29, 2007 (PC) . (Dev Darshan Sud) , J.