

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No. 1127 of 2001**

**Reserved on: 22.7.2008**

**Date of decision: 31.07.2008**

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Jai Ram & Anr.

... Petitioners

Versus

State of H.P. & Ors.

... Respondents

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*Coram :*

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?<sup>1</sup> No.

For the Petitioners: Ms. Ranjana Parmar, Advocate.

For the respondents: Mr. R.M. Bisht, Deputy Advocate General, for respondents No. 1 to 3.

Respondent No. 4 in person.

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**Per V.K. Ahuja, J. :**

This is a writ petition filed by the petitioners under Articles 226/227 of the Constitution of India, challenging the orders passed by the learned State Administrative Tribunal, dated 27.4.2001, vide which the petitioners had prayed for quashing the appointment of respondent No. 4 as Foreman Grade-I and to direct the State of H.P. to fill up the post of Foreman Grade-I in accordance with the Recruitment and Promotion Rules as well as to consider the case of petitioner No.1 for promotion to the post of Foreman Grade-I.

Briefly stated, the facts of the case are that petitioner No. 1 was at Sr. No. 7 in the seniority list of Electrician Grade-I as it

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<sup>1</sup>Whether reporters of Local Papers may be allowed to see the judgment? Yes.

stood on 31.3.1996. The name of petitioner No. 2 appears at Sr. No. 9 and the next promotion post from the post of Electrician Grade-I to the post of Foreman Grade-I was to be made in accordance with the seniority list. It was alleged that petitioner no. 1 was the senior most candidate available in the respondent department from Electrician Grade-I and he was expecting his promotion to the post of Foreman Grade-I and petitioner No. 2 was also eligible for promotion but in an arbitrary manner services of respondent No. 3 were regularized by the respondents. The petitioner filed an Original Application before the State Administrative Tribunal who directed the respondents to make appointments to the post of Foreman in accordance with the Recruitment and Promotion Rules. The petitioners alleged that the initial appointment of respondents No. 4 as Foreman de-hors rules since there is no provision for appointment to the post of Foreman on daily wage basis or through direct recruitment. Thus, it was alleged that since the initial appointment of respondents No. 4 was illegal and against rules and it was wrongly held that regularization of respondent No. 4 was in accordance with law laid down by the Hon'ble Supreme Court in Mool Raj Upadhaya's case. It was alleged that regularization of respondent No. 4 on completion of ten years service cannot be made against statutory rules and respondent No. 4 was not entitled for regularization after ten years of service de-hors rules and since his regularization was against the rules which prescribe mode of filling up the post of Foreman Grade-I 100% by promotion and as such the order of promotion of respondent No. 4 was illegal and the petitioners being the senior most were entitled to be considered for promotion.

An Original Application was filed by the petitioners before the State Administrative Tribunal challenging the regularization of

respondent No. 4 as Foreman Grade-I vide order dated 2.6.1999. They took up the plea that this promotion was to be made by promotion, failing which by direct recruitment. It was also alleged that petitioners No. 1 and 2 are the senior most candidates available in the department from Electrician Grade-I. They took up the plea that services of respondent No. 4 were regularized on completion of ten years continuous service in view of the regularization policy of the State in view of the decision in Mool Raj Upadhaya's case as decided by the Hon'ble Supreme Court. The pleadings of both the parties as well as that of State of H.P. were duly considered by the State Administrative Tribunal in its order.

The petitioners have challenged the order passed by the learned Tribunal that since they were the senior most persons, they were liable to be promoted and respondent No. 4 was not entitled to be promoted against the said post.

The learned Tribunal had referred to the decision of the Hon'ble Supreme Court in **Mool Raj Upadhaya Vs. State of Himachal Pradesh and others, 1994 (Suppl.)(2) SCC-316**. It was observed that in view of the policy approved by the Hon'ble Apex Court, a person who has completed ten years continuous service with 240 days in each year has to be regularized in accordance with the regularization policy of the State approved in Mool Raj Upadhaya's case. Thus, it was observed that no right of applicants has been infringed as the service of respondent No. 4 has been regularized upon the creation of post so created by the Government for regularization in accordance with the policy in the light of the judgment of Apex Court in Mool Raj Upadhaya's case. Once the post had been specifically created and respondent No. 4 had been regularized in accordance with the directions given by

the Apex Court and after approval of the policy of the State Government, the petitioners cannot be said to be having an inherent right to be considered against that post which had not fallen vacant in routine manner which had been created specifically to comply with the directions issued by the Apex Court. Therefore, the order passed by the learned Tribunal which is a reasoned order, does not call for an interference by this Court and as such, no case is made out for quashing of the said order. The writ petition filed by the petitioners is dismissed accordingly.

**( Deepak Gupta ),  
Judge**

**July 31 , 2008  
(BSS)**

**( V.K. Ahuja ),  
Judge**

