

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP(T) No. 4960/2008 (OA 403/1998) with
CWP(T) No. 6533/2008 (OA 335/2000)

Date of Decision : April 30, 2010

CWP(T) No. 4960/2008 (OA 403/1998)

Sh. Birbal and another

Petitioners

Versus

State of H.P. and another

Respondents

CWP(T) No. 6533/2008 (OA 335/2000)

Sh. Kartar Chand

Petitioner

Versus

State of H.P. and another

Respondents

Coram:

Hon'ble Mr. Justice Sanjay Karol, Judge.

*Whether approved for reporting?*¹ No.

For the petitioner(s) : Mr. Bhuvnesh Sharma and Mr. Ramakant
Sharma, Advocates, for the petitioners.

For the respondents : Mr. Ram Murti Bisht, Deputy Advocate General
for the respondents.

Sanjay Karol, J. (Oral)

The petitioners are working as Sweepers in the Health Department of the State. This fact is not disputed by the respondents. The State of Himachal Pradesh has formulated the Himachal Pradesh Department of Health & Family Welfare, Clerk, Class-III (Non-Gazetted) Recruitment and Promotion Rules, 1998 (hereinafter referred to as the Rules). These Rules were notified on

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

29.12.1998. The post of a Clerk, which is a Class-III (Non Gazetted) post, as per Rule 10 is to be filled up by promotion upto the extent of 10%. Rule 11 lays down the criteria and the eligibility for filling up such posts by promotion. The Relevant extract read as under:-

"By promotion from amongst the Class-IV officials who have passed Matric or Hindi (Rattan) with (English as one of subjects) and also possess 5 years regular service or regular combined with continuous adhoc (rendered upto 31.3.1998) service, if any, in the grade."

2. There is no doubt that the petitioners before the Court fulfill the educational qualifications laid down in the Rules. They also have the requisite regular service.

3. It is the grievance of the petitioners that they have not been considered for promotion. In the return the respondents have justified the petitioners exclusion for being considered for promotion to the benefits of 10% quota on the ground that Sweepers do not form a category of Class-IV employees. It is true that a separate seniority list is being maintained for the Sweepers but however that fact by itself would not be a ground to oust the petitioners from being considered for the post of a Clerk. There is no ambiguity in the Rules. They are clear and unequivocal. The Rules does not create a distinction between different categories of Class - IV employees. It simply states that the promotion is to take place "amongst the Class-IV officials". It cannot be disputed that

Sweepers fall in this category. Hence the stand taken by the respondents is untenable in law.

4. In the petition the petitioners have simply prayed as under:-

- “(i) That the Respondents may very kindly be directed to consider the category of sweepers possessing matriculation qualification/middle qualification for promotion to any of the Class III posts namely Clerk, Operation Theatre Assistant, Nursing Orderly etc.
- (ii) Entire record pertaining to the case of the applicants may also be summoned from the Respondents.
- (iii) Any other or further order which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case also be passed in favour of the applicants and against the respondents.”

5. In these circumstances the respondents are directed to consider the petitioners’ case for promotion as a Clerk, if otherwise found eligible, in accordance with law. The decision shall be taken by the respondent/authorities within a period of twelve weeks from the date of the receipt of the certified copy of the order.

6. With the aforesaid observations the present petitions stand disposed of.

(Sanjay Karol),
Judge.

April 30, 2010
(PK)