

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP(T) No. 5271 of 2008

Date of Decision : August 31, 2010

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Surinder Kumar

Petitioner

Versus

State of H.P. and others

Respondents

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*Coram:*

The Hon'ble Mr. Justice Sanjay Karol, Judge.

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

For the petitioner : Mr. D. R. Sharma, Advocate and Mr. R. R. Rahi, Advocate, for the petitioner.

For the respondents : Mr. Ram Murti Bisht, Dy. Advocate General for respondents No. 1 and 2.  
Mr. K. S. Kanwar, Advocate, for respondent No. 3.  
Mr. A. K. Vashisht, Advocate, for respondent No. 5.

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Sanjay Karol, J. (Oral)

Learned counsel for the petitioner submits that the challenge in effect is to the office order dated 19.5.2005 whereby respondent No. 2 issued a revised final seniority list of Senior Assistants. There is no dispute that in view of the revised final seniority list (Annexure A-6) petitioner is placed at a position lower than the private respondents No. 3, 4 and 5 namely Sh. Yudhbir Singh, Sh. Parshotam Ram and Sh. Kultar Chand respectively.

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

2. Facts are not in dispute. On 2.3.1987 petitioner was appointed as a Clerk in the department of Rural Development. In the said department he was promoted as a Senior Assistant on 10.4.1997. The State of Himachal Pradesh established respondent No. 2 Board in which petitioner was placed on deputation as a Senior Assistant w.e.f. 15.6.1999. He continued to officiate as such till the time he was absorbed in respondent No. 2 on 1.5.2001.

3. It is also not in dispute that with their parent departments private respondents No. 3, 4 and 5 were promoted as Senior Assistants on 28.6.1997, 30.4.1997 and 21.2.1999 respectively. It is also not in dispute that services of the private respondents were also placed on deputation with respondent No. 2. Petitioner as also the private respondents were absorbed on 1.5.2001. On 11.2.2002 respondent No. 2 issued a tentative seniority list. The seniority list was prepared by counting the length of service in the grade which also included the service rendered in the parent department. Consequently petitioner was placed higher than the private respondents in the said tentative seniority list.

4. It appears that midway respondent No. 2 adopted a different procedure and issued a revised tentative seniority in terms of order dated 7.2.2005. In this list petitioner was placed lower than the private respondents. Apparently the length of service rendered by petitioner in his parent department was ignored and the date on which the parties joined respondent No. 2 was taken as a criteria for determining inter se seniority of Senior Assistants. Aggrieved of the

same petitioner made a representation which did not find favour with the authorities and the impugned final seniority list (Annexure A-6) was issued.

5. Respondents have opposed the petition primarily on the ground that since their date of joining respondent No. 2 is prior in point of time therefore they are senior to petitioner. Hence there was nothing wrong with the impugned order. It is further urged that as on the day when petitioner was promoted as a senior assistant in his parent department, in the Board no equivalent post was in existence.

6. The contention needs to be rejected for the reason that the respondents themselves have issued office memorandum dated 27.3.2001 which reads as under:-

"Subject: Seniority of persons absorbed after being on deputation.

The undersigned is directed to say that according to our O.M.No.20020/7/80 –Estt.(D), dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer") his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation,

OR

the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department,

whichever is later.

2. The Supreme Court has in its judgement dated December 14, 1999 in the case of Shri S.I. Roop Lal & others vs. Lt. Governor through Chief Secretary, Delhi, JT 1999(9) SC 597 has held that the words "whichever is later" occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed, from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substituted the term "whichever is later" occurring in the Office Memorandum dated May 29, 1986 by the term "whichever is earlier".

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75-Estt(D)(pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from December 14, 1999 which is the date of the judgment of Supreme Court referred to above.

5. In so far as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India. However, these orders (in keeping with paragraph 4 of the Office Memorandum dated May 29, 1986 as referred to above ) will not be applicable to transfers within

the Indian Audit and Accounts Department which are governed by orders issued by the C&AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action."

7. The Apex Court in *S.I. Rooplal and another versus Lt. Governor through Chief Secretary, Delhi and others*, JT 1999(9) SC 597 has held that the words "whichever is later" is to be substituted with the words "whichever is earlier". On the basis of the memorandum itself seniority had to be determined from the date on which petitioner was appointed on regular basis in the equivalent grade in his parent department. Annexure A-6 has been issued ignoring the service rendered by the petitioner in his parent department. As mentioned earlier there can not be any dispute that petitioner stood promoted in his parent cadre much prior to the private respondents. Consequently the same needs to be quashed. Ordered accordingly.

8. As a consequence thereof respondents are directed to take all consequential action, in accordance with law within a period of three months from the date of receipt of the certified copy of the order. Petition stands disposed of accordingly.

(Sanjay Karol),  
Judge.

August 31, 2010  
(PK)