IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No.646 of 2019
Decided on: 21.11.2025

Indu Sharma ...Petitioner

Versus

State of Himachal Pradesh & Others ...Respondents

CORAM
Hon'ble Mr. Justice Ranjan Sharma, Judge
[1]*Whether approved for reporting?. Yes*

For the petitioner: Mr. Bharat Bhardwaj, Advocate vice Dr. Lalit Kumar Sharma, Advocate.

For the respondents: Mr. Hemant K. Verma, Deputy Advocate General, for respondents No.1 & 2-State.

Name of respondent No.3 stands deleted, vide order dated 23.11.2009.

Mr. Adarsh K. Vashisht, Advocate, for respondent No.4.

Mr. Vipin Kumar, Senior Assistant, Language & Culture Department, Himachal Pradesh, Shimla, present in person along with case records.

Ranjan Sharma, Judge *[Oral]*

Petitioner, Indu Sharma, having retired from the post of Junior Assistant had filed Original Application No.878 of 2005 before the Himachal Pradesh

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

Administrative Tribunal, and upon abolition of Tribunal, the matter stood transferred to this Court, as CWPOA No.646 of 2019, wherein, the petitioner has sought the following relief(s):—

> "(i). That office order No.Bhasni-115/01-Satha-dated 03.09.2004 Annexure A-3 and office order No.Bhasni-115/85-Satha-dated 13.01.2005 Annexure A-4 may kindly be set aside and quashed and the promotion of respondents No.3 & 4 to the post of Senior Assistant may kindly be set-aside and quashed.
>
> (ii). That respondents may be directed to consider the case of the applicant for promotion to the post of Senior Assistant as per Annexure A-1 as Annexure A-2 has not been accepted by respondent till date.
>
> (iii). That respondents may be directed to convene the fresh D.P.C. for the purpose of reviewing of the promotion order of Respondent No.3 & 4 and the case of the applicant may be considered for promotion from the day when she got eligible."

FACTUAL MATRIX:

3. Grievance of the petitioner [Indu Sharma] is that she joined services as Clerk on 21.01.1985 and after promotion as Senior Clerk she joined on 01.03.1988 under the respondents. Petitioner was promoted as Junior Assistant w.e.f. 21.01.1995 in the pay scale of Rs.1500-2700/-. It is averred that the petitioner was promoted as Senior Assistant on 02.08.2001, but on account of certain exigencies she had foregone the

said promotion. The petitioner was again promoted as Senior Assistant by the Director, Language & Culture on 29.06.2004 *[Annexure A-1]* but the petitioner did not join her promotion.

3(i). The claim of the petitioner is that the Respondent No.3-Kuldeep Singh, was promoted as Senior Assistant on 03.09.2004 *[Annexure A-3]* and though the petitioner despite being senior and eligible was not considered. Likewise, it is averred that The Respondent No.4-Amit Kumar Sharma, was promoted as Senior Assistant in 2005 and despite the fact that petitioner was senior and eligible she was not considered for promotion at the relevant time. Petitioner submitted a representation on 03.03.2005 *[Annexure A-6]* on which no decision was taken.

In these circumstances, the instant petition has been filed assailing the alleged promotion order dated 03.09.2004 *[Annexure A-3]* and 13.01.2005 *[Annexure A-4]* promoting the Respondents No.3 & 4 as Senior Assistant with the direction to the State Authorities, to convene a Review DPC and to promote the petitioner as Senior Assistant, from the date the

private Respondents 3 & 4 were promoted as such, with all consequential benefits.

STAND OF STATE AUTHORITIES:

4. Pursuance to the issuance of notice, on 18.04.2005, State Authorities filed a Reply-Affidavit on 08.07.2005 of Director, Language and Culture, Himachal Pradesh.

4(i). Perusal of reply-affidavit indicates that the Respondent No.3-Kuldeep Singh was never granted the benefit of promotion as Senior Assistant. Reply-affidavit states that respondent No.3-Kuldeep Singh was only given placement as Senior Assistant. So far as, respondent No.4-Amit Kumar is concerned, the State Authorities have stated in the reply-affidavit that on recommendations of Departmental Promotion Committee meeting held on 07.01.2005 Amit Kumar was promoted as Senior Assistant on 14.01.2005 and his posting was stayed by the State Authorities on representation being made by him on 21.04.2005. Reply-Affidavit further indicates that respondents No.3 & 4 who are claimed to be juniors were given benefit of placement in case of respondent No.3 as Senior Assistant

on 03.09.2004 *[Annexure A-3]* and the Respondent No.4 was promoted as Senior Assistant on 14.01.2005.

4(ii). Reply-affidavit states that at the time of placement and promotion of respondents No.3 & 4, the petitioner was not considered in view of Government Instructions dated 27.08.2004 [as reproduced in Para 6(iii) of the reply-affidavit] that in case an employee who is promoted but forgoes or refuses his promotion then, the aforesaid employee shall not be considered for promotion/re-promotion for a period of one year from the date of refusal of his first promotion or till a date vacancy arises whichever is later. Reply-Affidavit indicates that the representation submitted by the petitioner was rejected on 21.04.2025 *[Annexure RA-1],* with the stand that as per the Instructions dated 27.08.2004, the petitioner was not required to be considered by the DPC while giving placement to respondent No.3 as Senior Assistant on 03.09.2004 *[Annexure A-3]* and while promoting respondent No.4-Amit Kumar as Senior Assistant on 14.01.2005. In above backdrop, the prayer has been made for dismissal of the writ petition.

SEPARATE REPLY BY RESPONDENT NO.4:

5. Respondent No.4-Amit Kumar has filed a separate reply which contain *pari materia* averments as in Reply-Affidavit of official respondents. Respondent No.4 has placed on record the Recruitment and Promotion Rules dated 26.09.1998 for the post of Senior Assistant as per *Annexure R4/2*. Respondent No.4 had also placed on record the Instructions dated 27.08.2004 *[Annexure R4/4]*, on which reliance was placed by the official respondents, in Para 6(iii) of their reply-affidavit which disentitles the petitioner for being considered for promotion within one year of having foregone or having refused to accept-join the promotion earlier granted to her. In these circumstances, the private respondent had prayed for dismissal of the writ petition.

6. Records have been perused. Photocopy of Office Order dated 03.09.2004 granting placement to Kuldeep Singh as Senior Assistant is taken on record. Similarly, Office Order dated 14.01.2005, issued pursuant to the DPC held on 07.01.2005 promoting Amit Kumar Sharma as Senior Assistant, is taken on record.

Original records seen and returned.

7. Heard, Mr. Bharat Bhardwaj, Learned Vice Counsel for the petitioner and Mr. Hemant K. Verma, Learned Deputy Advocate General for the respondent-State and Mr. Adarsh K. Vashisht Advocate, for private respondents and have gone through the material available on record.

ANALYSIS:

8. Taking into account the entirety of the facts and circumstances, this Court is of the considered view that the claim of the petitioner for promotion as Senior Assistant when, the private respondent No.3-Kuldeep Singh was promoted as Senior Assistant on 03.09.2004 *[Annexure A-3]* and also when, the Respondent No.4-Amit Kumar was promoted as Senior Assistant on 31.01.2005 *[Annexure A-4/T]*, *does not call for any interference for the following reasons:*

8(i). Perusal of *Annexure A-3*, dated 03.09.2004 indicates that respondent No.3-Kuldeep Singh was never promoted as Senior Assistant by the State Authorities. Scanning of Hindi Version of *Annexure A-3 [at page 15 of Paper-Book]* indicates that respondent No.3 was only

given placement as Senior Assistant. The English Version of the order of placement of Respondent No.3 i.e. *Annexure A-3/T [at Page 16 of the Paper-Book]* does not spells out the correct position. Once, the foundational facts asserted by the petitioner are incorrect then, the claim of the petitioner that the Respondent No.3 was promoted as Senior Assistant is falsified whereas the aforesaid private respondent was only given placement by the respondents. In this backdrop, the claim of the petitioner against the private respondent No.3 being misconceived and based on incorrect and distorted facts is turned down.

8(ii). Now coming to the challenge laid to the promotion of the Respondent No.4-Amit Kumar, as Senior Assistant as in the orders dated 13.01.2005 *[Annexure A-4/T]* the claim of the petitioner falls to the ground *for the reason* that the respondent No.4 was promoted as Senior Assistant on the recommendations of DPC held on 07.01.2005, leading to the issuance of promotion order on 14.01.2005. At the time of promotion of private respondent No.4, the Instructions dated 27.08.2004 [as spelt out in Para 6(iii) of the reply-

affidavit and have been annexed as *Annexure R-4/4*] was in vogue dispels the claim of right of the petitioner. Perusal of the Instructions dated 27.08.2004 *[Annexure R-4/4]* indicates that if an employee was promoted to a higher post and such an employee refuse or foregoes his promotion then, the said employee is not to be considered for promotion again for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. Based on the above Instructions, once the petitioner was promoted as Senior Assistant on 29.06.2004 *[Annexure A-1]* and had foregone her promotion then, during the period of one year upto 29.04.2005 [which includes the date of promotion of respondent No5 on the basis of DPC on 14.01.2005] the petitioner was not eligible to be considered for promotion by the DPC held on 07.01.2005, when, the private respondent No.4 being eligible, was promoted as Senior Assistant. In this backdrop the contention of the petitioner is devoid of any merit and is rejected.

8(iii). Petitioner has not laid a challenge to the Instructions dated 27.08.2004 *[as reproduced in Para*

6(iii) of the reply of official respondents and annexed as Annexure R-4/4] with the reply-affidavit of private respondent. In absence of any challenge to aforesaid Instructions, this Court has no hesitation to hold that non-consideration ad resultant non-promotion of the petitioner as Senior Assistant, while giving placement to private respondent No.3 on 03.09.2004 and while promoting the private respondent No.4 as Senior Assistant on 14.01.2005 does not warrant any interference in the instant case.

8(iv). Petitioner had submitted a representation on 03.03.2005 *[Annexure A-6]* against the promotion of private respondent with the request for promoting her as Senior Assistant. This representation was rejected on 21.04.2005 *[Annexure RA-1]* on the basis of the Instructions dated 27.08.2004, which render the petitioner ineligible for consideration for one year. Even, this rejection order dated 21.04.2005 *[Annexure RA-I]* has not been assailed by the petitioner. Not laying a challenge to the rejection orders dated 21.04.2005 *[Annexure RA-I]* which has attained finality also dis-entitles the petitioner for relief in these proceedings.

DIRECTIONS:

10. In view of the above discussion and for the reasons recorded hereinabove, the instant petition is ***dismissed*** in the following terms:

(i). Challenge to promotion of Respondents No.3 & 4 is rejected;

(ii). Claim of petitioner for promotion as Senior Assistant at the time of giving placement to respondent No.3 and giving promotion to respondent No.4 does not call for any interference;

(iii). Not laying challenge to the rejection orders dated 21.04.2005 *[Annexure RA-1],* and Instructions dated 27.08.2004 *[Annexure R-4/4]* dis-entitles the petitioner for any relief;

(iv). Denial of consideration and promotion to the petitioner as Senior Assistant, on the basis of Instructions dated 27.08.2004 *[Annexure R-4/4]* is upheld;

(v). Costs made easy for the parties.

In aforesaid terms, the instant petition along with pending miscellaneous application(s), if any, stand disposed of, accordingly.

(Ranjan Sharma)
Judge

November 21, 2025
[Shivender]