

**HIGH COURT OF HIMACHAL PRADESH****Bench : Vivek Singh Thakur, J.****Date of Decision : 04-03-2024**

C.W.P.O.A No. 904 of 2019

**Sandeep Kumar****Vs.****State of H.P. and Others****Legislation:**

Article 226 of the Constitution of India

**Subject:** Challenge against the rejection of promotion to the post of Law Officer, claiming promotion with consequential benefits and interest on arrears.

**Headnotes:**

Promotion Claim to Law Officer – Rejection by Principal Secretary – Petitioner, Sandeep Kumar, working in clerical cadre, challenges the rejection of his promotion to Law Officer under Himachal Pradesh Department of Irrigation and Public Health Legal Assistants (Class-III Non-Gazetted) Recruitment and Promotion Rules, 1996 and subsequent amendments. Petitioner sought promotion from 7.9.2009 after completing LLB during service. [Para 1, 3-10]

Requisite Qualification and Service Length – Petitioner argued that he fulfilled the required qualification and had over 13 years of service, exceeding the 10-year service requirement for promotion as per amended R&P Rules. Respondents' reliance on past judgments to justify rejection based on lack of minimum post-qualification service was contested. [Paras 11-14, 21-22]

Legal Interpretation of Service Length – Supreme Court precedents cited by petitioner to argue that service length should count from the date of acquiring essential qualification, not necessarily post-qualification. Reliance on Government instructions emphasizing promotion based on rules existing at the time of vacancy. [Paras 20-26]

High Court Decision – The court held that the petitioner was eligible for consideration for promotion to Law Officer as of 25.10.2010, the date of the Departmental Promotion Committee meeting. Directed respondents to consider his promotion from that date with all benefits and seniority, ruling that service length should include tenure prior to acquiring the LLB degree. [Paras 28-31]

#### **Referred Cases:**

- Shailender Dhaniala and others Vs. S.P. Dubey and others (2007) 5 SCC 535
- S.S. Kutehria Vs. State of H.P., CWP No. 1358 of 2008, decided on 8.1.2010
- D. Stephn Joseph Vs. Union of India and others, (1997) 4 SCC 753
- Ajit Singh and others Vs. State of Punjab and others, (1999) 7 SCC 209
- A.K. Raghumani Singh and others Vs. Glopal Chandra Nath and others, (2000) 4 SCC 30
- T. Valsan (dead) through Legal Representatives and others Vs. K. Kanagaraj and other, (2023) 8 SCC 614

#### **JUDGMENT**

**Vivek Singh Thakur, J. (Oral)** - Petitioner, invoking provisions of Article 226 of the Constitution of India, has approached this Court against order dated 16.5.2011 (Annexure P-5) issued by Principal Secretary, Irrigation and Public Health Department (now Jal Shakti Vibhag) to the Government of Himachal Pradesh, whereby his claim to consider him for promotion to the post of Law Officer has been rejected. Petitioner is seeking direction to promote him to the post of Law Officer as per Recruitment and Promotion Rules (R&P Rules), existing on relevant point of time w.e.f. 7.9.2009 with all consequential

benefits and also to pay interest @ 18% per annum to him for arrears payable to him on his promotion.

2. Petitioner has been working in clerical cadre in Irrigation and Public Health Department since 8th March, 1999 and at the time of filing petition on 16.11.2011 he had put 13 years of service and was working as Senior Assistant.

3. There were non-selection posts of Legal Assistants in the Department. Recruitment/appointment to the said posts was governed by Himachal Pradesh Department of Irrigation and Public Health Legal Assistants (Class-III Non-Gazetted) Recruitment and Promotion Rules, 1996 (Rules 1996), framed by respondents. According to those Rules, these posts were to be filled 100% by promotion failing which by deputation and failing both by direct recruitment.

4. As per Rule 7 of Rules 1996, for direct recruitment essential qualification was that the candidate should possess a professional degree in law or its equivalent from any recognized University in India with 3 years experience as a practicing Advocate or 5 years experience while working in a Government/Semi Government Institutions.

5. As per Rule 11 of the Rules 1996, by promotion, essential qualification was as under:-

"By promotion from amongst the incumbents of clerical cadre (including Clerks/Senior Clerks/Junior Assistants) subject to fulfilling the Educational qualification prescribed in Col. No. 7 above with 5 years regular service or regular combined with continuous adhoc (rendered upto 31.3.1991) service failing which by deputation from amongst the Legal Assistants working in the identical pay scales of this post in other Government Departments."

6. The aforesaid Rules 1996 were amended vide Notification dated 18.8.2006, whereby provision against Column No. 11 were substituted as under:-

"(a) For the existing provisions against Col. No. 11, the following shall be substituted:-

(i) By promotion from amongst the Senior Assistants/Senior Scale Stenographers/Statistical Assistants subject to fulfilling the educational

qualification prescribed in Col. No. 7 with 5 years regular service or regular combined with continuous adhoc service rendered, if any, in the grade.

(ii) By promotion from amongst the (Clerical cadre (which includes Clerks/Junior Assistants/Steno typist and Junior Scale Stenographers) subject to fulfilling the educational qualification prescribed in Col. No. 7 with 10 years regular or regular combined with continuous adhoc service rendered, if any, in the grade. ...."

7. Vide Notification dated 4.12.2006, Government of Himachal Pradesh had decided and ordered to convert posts of Legal Assistants in all Departments to the Posts of Law Officers.

8. Vide Notification dated 6.9.2007 amendment was carried out in Recruitment and Promotion Rules, 1996 substituting nomenclature of the post of Legal Assistant to Law Officers.

9. Government of Himachal Pradesh vide Notification dated 19.9.2007 issued by Law Department had ordered that classification of Law Officers of various Departments designated as such vide aforesaid Notification as Class-II Gazetted.

10. Petitioner had completed his Degree in LLB Course during his service, with due permission from the concerned authority, in session 20062009.

11. Petitioner preferred a Writ Petition, CWP No. 7114 of 2010, titled as Sandeep Kumar Verma Vs. State of H.P. & others with prayer to issue writ of mandamus to respondents by directing them to promote him as Law Officer w.e.f. 7.9.2009 as per Recruitment and Promotion Rules, existing at that time.

12. CWP No. 7114 of 2010 was decided on 15.11.2010 directing the first respondent/competent authority to take appropriate action on the representation submitted by petitioner pending before the respondents, in accordance with law within a period of two months from the date of production of copy of judgment alongwith copy of Writ Petition.

13. Petitioner had submitted fresh representation dated 18.11.2010 to the Principal Secretary, Irrigation and Public Health Department, to the Government of Himachal Pradesh. For omission on the part of concerned authority, for not deciding the representation of the petitioner, he had also preferred Contempt Petition COPC No. 109 of 2011. During pendency of Contempt Petition, claim of the petitioner was considered and rejected on

16.5.2011 by Principal Secretary, Irrigation and Public Health Department whereafter COPC No. 109 of 2011 was disposed of on 29.8.2011 with liberty to the petitioner to pursue the matter in appropriate proceedings for his claim.

14. Claim of the petitioner was rejected by respondents on 16.5.2011 by referring judgment of the Supreme Court in **Shailender Dhania and others Vs. S.P. Dubey and others (2007) 5 SCC 535** and decision of this High Court in **S.S. Kutlehria Vs. State of H.P., CWP No. 1358 of 2008, decided on 8.1.2010**, by assigning reason that petitioner was required to possess minimum qualifying service of at least 3 years or that the prescribed in the R&P Rules for the post, whichever is less, but the petitioner was not having such requisite length of service after passing the examination of LLB Course.

15. For rejection claim of petitioner it was also recorded by Principal Secretary, I&PH that process for carrying out necessary amendment in Recruitment and Promotion Rules was under process and for promotion to the posts of Law Officers being Class-II Gazetted posts, as notified by Law Department vide Notification dated 19.9.2007, the Departmental Promotion Committee (DPC) proceedings, would be held only in the H.P. Public Service Commission and as the process for amending Recruitment and Promotion Rules had been initiated, convening of DPC would be against the provisions of R&P Rules.

16. During 2010, Department had started process of filling up the posts of Law Officers by promotion under the existing R&P Rules and information was called from the field Officers. Memorandum was prepared as per existing R&P Rules and sent to H.P. Public Service Commission to convene meeting of DPC to the post of Law Officers, but the Commission returned the whole matter with observation that since promotion to the post of Law Officer (Class-II Gazetted) in the Department of I&PH involved the promotion to a non-selection post, therefore, as per item No. 5(C) of HPPSC (Exemption from Consultation) Regulation 1973 the said promotion was out of purview of Commission.

17. Thereafter a meeting of DPC was fixed on 25.10.2010, but during DPC it was found that post of Legal Assistant was firstly redesignated as Law Officer and lateron post of Law Officer in all Departments was directed to be classified as Class-II Gazetted vide Notification dated 19.9.2007 issued by Law Department, but the said status was not incorporated in the R&P Rules of the IPH (Jal Shakti Vibhag) and in view of Notification changing

classification of the post, meeting of DPC was to be convened in the H.P. Public Service Commission because there was change in class i.e. from Class-III Non-Gazetted to Class-II Gazetted and thus it was found that Department was not competent to hold DPC due to change of status from Legal Assistant Class-III to Law Officer Class-II Gazetted and it was observed that R&P Rules were to be amended to upgrade the status of the post of Law Officer. In this backdrop claim of petitioner was rejected vide communication dated 16.5.2011.

18. Vide Notification dated 31.12.2012 R&P Rules for the post of Law Officer in I&PH Department were notified by repealing earlier R&P Rule, whereby post of Law Officer was declared Class-II Gazetted and selection post.

19. During pendency of Writ Petition petitioner has been promoted vide Notification dated 29.12.2015. Petitioner, by filing rejoinder, has asserted his claim for his promotion from due date, claimed by him i.e. 7.9.2009.

20. To substantiate the claim of petitioner, learned counsel for the petitioner has placed reliance upon instructions issued by the H.P. Government, Department of Personnel letter No. Karmik (Ni-II)B(19)-7/91, dated 5.12.1991, whereby it has been communicated that annual meetings of DPC for promotion should be convened without any delay regularly and such meetings, for formation of R&P Rules or amendment therein, should not be deferred because amendment in Rules, normally, is from respective date and till the R&P Rules are amended previous Rules remain in force and available vacancies should be filled by promotion according to the Rules/directions in vogue at the time of availability of vacancy and, therefore, through these instructions decision of Government has been communicated that where Departmental Promotion Committee could not convene its meeting and in subsequent meetings vacancies of previous years are to be filled, then, the Rules/directions applicable and existing at the time of availability of vacancy are to be considered, but not Rules and directions existing on the date of meeting of DPC. Copy of instructions has been placed on record as Annexure RJ-1.

21. In the light of aforesaid instructions, it has been contended that vacancy was available in the year 2009 and after completion of LLB Degree, petitioner had become eligible to be promoted on 7.9.2009 by acquiring requisite qualification and at that time, he was having 13 years length of service, whereas as per R&P Rules person with 10 years length of service was

required to be considered for promotion and thus it has been contended that rejection of claim of petitioner for proposal to amend the R&P Rules and also for not having requisite length of service or at least three years service after acquiring the LLB Degree, is illegal and unjust.

22. It has been contended on behalf of petitioner that R&P Rules does not say that experience/length of service of 7 years or 3 years, as the case may be, should be after acquiring the LLB Degree, rather it requires possession of academic qualification, i.e. LLB Degree with requisite length of service which may be prior to acquiring the degree or after the degree.

23. To substantiate his claim, petitioner has placed reliance upon judgment of the Supreme Court in **D. Stephn Joseph Vs. Union of India and others, (1997) 4 SCC 753**, wherein it has been observed as under:-

"5. It appears to us that the State Government is labouring under a wrong impression as to the applicability of the past practice as indicated that past practice should not be upset provided such practice conforms to the rule for promotion and consistently for some time past the rule has been made applicable in a particular manner. In our view, the decision in Nathan's case only indicates that past practice must be referable to the applicability of the Rule by interpreting it in a particular manner consistently for some time. Any past practice dehors the Rule cannot be taken into consideration as past practice consistently followed for long by interpreting the Rule. It may be indicated here that a similar question also came up for consideration before this Court in **M.B. Joshi and Ors. Vs. Satish Kumar Pandey and Ors. (1993 Suppl. (2) SCC 419)**. The decision in Suresh Nathan's case was distinguished in the facts of that case and it was indicated that when the language of the Rule is quite specific that if a particular length of service in the feeder post together with educational qualification enable a candidate to be considered for promotion, it will not be proper to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the employee to acquire higher education. "

24. Further reliance has been placed on **Ajit Singh and others Vs. State of Punjab and others, (1999) 7 SCC 209**, wherein it has been observed as under:-

"22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not

deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that

"there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State".

It has been held repeatedly by this Court that sub-clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said sub-clause particularizes the generality in Article 14 and identifies, in a constitutional sense "equality opportunity" in matters of employment and appointment to any office under the State. The word 'employment' being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and 'seniority' attached to such promotion are facets of fundamental right under Article 16(1)"

25. Judgment of the Supreme Court in **A.K. Raghmani Singh and others Vs. Gopal Chandra Nath and others, (2000) 4 SCC 30**, has been referred, wherein it has been observed as under:-

"7. The word "with" has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means "Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense 'and'-' as well'."

8. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years' experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word "subsequent" after the word "with".

9. Even on a point of principle it would be unreasonable to distinguish between the nature of the regular service required, as if the service in the grade subsequent to the obtaining of the necessary educational qualification



were qualitatively different from the service in the grade prior thereto. In fact no such case has been made out. "

26. Reliance has also been placed on **T. Valsan (dead) through Legal Representatives and others Vs. K. Kanagaraj and other, (2023) 8 SCC 614**, wherein it has been observed as under:

"23. In Shailendra Dania's case, it was noticed in para 36 that the past practice would be a relevant aspect while construing the service rule. The aforementioned judgment distinguished itself from D. Stephen Joseph case on the ground that the interpretation of the rules would be determined on a case-to-case basis, and the wordings of the rules as well as past practices are important criteria. Similarly, in the present case, the Electricity Department has a past practice of considering the years of service prior to the acquisition of the degree.

24. The principle of past practice being of significance has also been noticed in **M.B. Joshi Vs. Satish Kumar Pandey, 1993 Supp (2) SCC 419**. This judgment also discusses the aspect where there are two channels for promotion (as in the present case) and illustrates that if the total time period of service was not to be counted, then there could not be said to be any incentive to acquire the higher degree except as an academic pursuit. The incentive is that if you acquire a higher degree as compared to a diploma, you come into a channel which entitles consideration, albeit on merit, in a fast lane with less number of years of service required in the cadre.

25. In our view, one of the important aspects is the wording of the Rule itself. According to the Rules, 50% of the promotion quota is from Junior Engineers with three years of regular service in the grade "and" possessing a degree in (supra) Electrical Engineering. The Rule does not say from which date the time period of regular service has to be counted, but there is a twin requirement of three years of regular service as also a degree. As against this, the second scheme of 50% promotion from Junior Engineers uses the word "with" seven years of regular service in the grade and possessing a diploma in Electrical Engineering. Thus, the distinction is between the diploma holder and the degree holder and the period of service rendered as a Junior Engineer without any distinction between the years served prior to or after having obtained the degree. Accepting the plea of the Appellant would amount to insertion into the requirement of the Rules, which is not stipulated. Further, this is how the Rule has been understood by the Department, the

framers of the Rules, and accordingly, the Rules have been uniformly implemented in the Electricity Department over a period of time. In view of the above, due weightage must be given to the view of the framers of the Rules.

**Conclusion:**

26. In view of the aforesaid, we uphold the view taken by the High Court opining that there is no distinction between the time period served before or after the acquisition of the degree so long as the degree is acquired and is the basis for consideration of the promotion. We are, thus, of the view that for all the aforesaid reasons for the Department in question, the view taken in D. Stephen Joseph is held to be applicable law, and we answer the reference accordingly."

27. Respondents have placed reliance on judgment in **Shailendra Danias Vs. S. P. Dubey (2007) 5 SCC 535** and judgment dated **8.1.2020 in CWP No. 1358 of 2008, titled as S.S. Kutlehria Vs. State of H.P.** to substantiate their plea.

28. In the given facts and circumstances of present case in comparison with facts to **Shailendra Dania's** case, judgment in the said case is not applicable to the present case, as has been held in **T. Valsan's case** referred supra, interpretation of Rules is to be determined on a case to case basis and with consideration that weightage of the Rules as well as past practice are important criteria.

29. In **S.S. Kutlehria's case**, relied upon by the respondents to reject the claim of the petitioner, there was specific note under the eligibility clause/Rules wherein it was mentioned as under:-

"Note: For purpose of promotion 3 years regular or ad hoc service rendered up to 31.12.83 shall be counted from the date of appointment of the Graduate Junior Engineer and from the date of passing sections A&B of AMIE Examination by inservice Junior Engineer, respectively."

30. There is no such provision of note in the R&P Rules in reference in present case, therefore, after the word "experience", as has been observed in **A.K. Raghmani Singh's case**, is to be read 'and', thus it cannot be read to imply the word 'subsequent' after the word 'with'.

31. Taking into consideration the facts of the present case, R&P Rules in existence at relevant point of time and instructions issued by the Government

of Himachal Pradesh, I am of the considered opinion that petitioner was entitled to be considered for promotion to the post of Law Officer after acquiring academic qualification of LLB Degree with requisite length of service in the year 2009 or at least at the time when DPC meeting was convened on 25.10.2010, as referred in the reply and, therefore, respondents are directed to consider the candidature of the petitioner for promotion to the post of Law Officer w.e.f. 25.10.2010 with all consequential benefits including seniority and monetary benefits by applying R&P Rules existing on the said date and calculation of length of service of the petitioner at that time. Needful be done by convening review DPC as expeditiously as possible, latest by 31st March, 2024.

Petition is allowed and disposed of in aforesaid terms, so also pending application(s), if any.

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