

(2024) 10 SHI CK 0033

High Court Of Himachal Pradesh

Case No: LPA No.256 Of 2024

Sewak Ram And Others

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision: Oct. 16, 2024

Hon'ble Judges: Rajiv Shakhder, CJ; Satyen Vaidya, J

Bench: Division Bench

Advocate: Prem Chand Verma, Varun Thakur, Aakash Thakur, Anup Rattan, Pranay Pratap Singh, Mukul Sood

Final Decision: Dismissed

Judgement

Satyen Vaidya, J

1. By way of this Letters Patent Appeal, the appellants have assailed judgment dated 28.8.2024 passed by learned Single Judge of this Court in CWP

No. 9441 of 2023, whereby the writ petition filed by the appellants has been dismissed.

2. The appellants had made following prayers in the writ petition:

(i) That the respondents be directed to issue appointment/promotion orders of the petitioners with all consequential benefits as recommended by the Departmental Promotion Committee on 25.08.2023.

(ii) That the respondents be directed to pay arrears of the pay of the petitioners with interest at the market rate.â€

3. The facts as projected by the appellants before the writ court were as under:

3.1 That the appellants were employees of 3rd respondent (for short, 'the Corporation');

3.2 The posts of Senior Assistants and Superintendent Grade-II had fallen vacant in the Corporation;

3.3 Appellants No. 1 to 6 were eligible for being considered for promotion to the posts of Senior Assistants and 7th appellant was eligible for being considered for promotion to the post of Superintendent Grade-II;

3.4 the Corporation had initiated process for filling up above posts by way of promotion in the month of July, 2023 and on 03.08.2023, the Commissioner of the Corporation had accorded his approval;

3.5 the meeting of Departmental Promotion Committee (for short, "the DPC") was held on 25.8.2023 and names of the appellants for promotion to the posts of Senior Assistants and Superintendent Grade-II, respectively, were recommended.

3.6 in the meanwhile on 23.8.2023, an amendment had been carried in the Himachal Pradesh Municipal Services Act, 1994 (for short, "the Act"), through Ordinance No.3 of 2023, whereby State Level Municipal Corporation Service was created and the posts to which petitioners were recommended for promotion were also included therein;

3.7 though the 3rd respondent sought approval of 2nd respondent for promoting the petitioners, who further sent the matter for approval of the 1st respondent, but as no result yielded, petitioners preferred the petition before the writ court.

4. Aggrieved against the hindrance caused in their way of promotion by the amendment incorporated in Act, the appellants had raised following grounds before the writ Court:

4.1 That the amendment in the Himachal Pradesh Municipal Services Act, 1994 was prospective and since, the vacancies existed prior to the date of amendment and the process for filling up such vacancies had already been initiated, the amended provisions of the Act (supra) could not be applied retrospectively to the detriment of the appellants;

4.2 that the notification of amendment was silent as to the date of its implementation and for such reason also the same could not affect the rights of the appellants;

4.3 that the appellants had acquired indefeasible right after having been found fit for being promoted to the notified vacant posts;

4.4 that the appellants were at the fag end of their careers and hence their rights were seriously prejudiced by denying them the promotion. The appellants also pleaded hardship and oppression; and

4.5 that though the Commissioner of the Corporation had accorded approval for filling up of the vacancies on 03.08.2023, but the DPC was convened on 25.8.2023 and

the delay had occurred on account of natural calamity that had struck the State of Himachal Pradesh by incessant rains.

5. The Corporation did not dispute the factual position. It came up with the plea that the State Government had denied the permission to promote the appellants.

6. The 1st and 2nd respondents by way of their separate reply submitted that the amendment in the Himachal Pradesh Municipal Services Act, 1994

had come into force w.e.f. 23.08.2023 i.e. the date of its publication in the official gazette and for such reason the DPC convened on 25.08.2023 had

lost its relevance. The competent authority had conveyed its disapproval to the Director Urban Development vide communication dated 28.12.2023.

7. Learned Single Judge has held that the posts of Senior Assistants and Superintendent Grade-II in the Corporation had been included in the State

Level Municipal Services w.e.f. 23.08.2023 and thereafter the DPC of the Corporation ceased to have jurisdiction to take decision on filling up of said

vacant posts. On the premise that the rules in vogue at the time of consideration for promotion would apply, the claim of the appellants has been

rejected.

8. We have heard learned counsel for the parties and have also gone through the records of the case carefully.

9. The following few facts are not in dispute:

9.1 The posts of Superintendent Grade-II had fallen vacant in the Corporation on 01.08.2023.

9.2 The appellants No. 1 to 6 had become eligible for being considered for promotion to the posts of Senior Assistants in July, 2023.

9.3 The Commissioner of the Corporation accorded his approval for filling up of the vacant posts of Senior Assistants and Superintendent Grade-II, respectively by way of promotion on 03.08.2023.

9.4 The date for convention of DPC was fixed and DPC was convened on 25.08.2023.

9.5 The amended H.P. Municipal Services Act, 1994 came into force w.e.f. 23.08.2023.

9.6 The Commissioner of the Corporation had sought approval from 2nd respondent to promote the appellants and 2nd respondent, who further had forwarded the

case to 1st respondent.

9.7 The appellants had also preferred representation to the 2nd respondent.

9.8 The appellants had preferred writ petition with the grievance that their representation had remained unanswered.

10. Keeping in view the facts in hand, no fault can be found with the impugned judgment. The principle "old post old rules", as enunciated in Y.V.

Rangaiah and others vs. J. Sreenivasa Rao and others (1983) 3 SCC 284h as undergone a sea change. In Union of India and others vs.

Krishna Kumar & others (2019) 4 SCC 319, after discussing the fruition of law on the subject from Y.V. Rangiah (supra), Deepak Agarwal and

another vs. State of Uttar Pradesh and others (2011) 6 SCC 725 and State of Tripura and others vs. Nikhil Ranjan Chakraborty and others

(2017) 3 SCC 646, the Hon^{ble} Supreme Court expounded that the right to be considered for promotion has to be in accordance with the rules as

they existed when the exercise is carried out for promotion.

11. In State of Himachal Pradesh and others vs. Raj Kumar and others (2023) 3 SCC 773, a three Judge Bench of the Hon^{ble} Supreme

Court while over-ruling the statement in Y.V. Rangaiah (supra) has held that the rights and obligation of persons serving the Union and the States are

to be sourced from the rules governing the service and approved the declaration in Union of India and others vs. Krishna Kumar & others (supra)

to the effect that right to be considered for promotion is in accordance with the rules which prevail on the date on which the consideration for

promotion takes place.

12. In the case in hand, the appellants were considered for promotion on 25.08.2023 when the DPC was convened. The contention of the appellants

that the consideration for promotion in their case related back to 03.08.2023 when the Commissioner of the Corporation had accorded approval for

filling up of vacant posts is nothing but specious. Reference in this regard can be made to the following passage from the judgment in Deepak

Agarwal and another vs. State of Uttar Pradesh and others (2011) 6 SCC 725:

“26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the ‘rule in force’

on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the

date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be

considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the

applicable rule, as in Y.V. Rangaiah's case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case,

consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants

have been taken away by the amendment.”

13. We have also not found any force in another contention of the appellants that the notification notifying the amendment did not mention the date of

implementation and as such, the amendment in the Act would not affect their right of promotion. Indisputably, the amendment has taken effect from

the date it was notified i.e. 23.08.2023 and since there was no consideration for promotion of the appellants prior to said date, the argument raised by

the appellants simply requires rejection.

14. In result, the appeal is dismissed being without merit.

15. All pending miscellaneous application(s), if any, also stand disposed of.