

MRS. SHAKUNTALA SHARMA

v.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA AND
ANR.

FEBRUARY 2, 1994

[P.B. SAWANT AND N.P. SINGH, JJ.]

Service Law: The High Court of Himachal Pradesh Recruitment(Conditions of Service) Rules, 1992.

R.10—Promotion—Superintendent—Appointment by promotion—Eligibility—Three years service as Deputy Superintendent/Revisor, failing which persons with 6 years service as Senior Assistant/Translator—Held, r.10 is violative of Article 14 of the Constitution—If incumbents of both sets of posts are to be made eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for incumbents of posts of Deputy of Superintendents/Revisors—Directions given to frame an equitable rule in place of r. 10.

Constitution of India, 1950: Article 14—Rule 10 of Himachal Pradesh Recruitment(Conditions of Service) Rules, 1992—Whether violative of.

In the respondent-High Court, there were two sets of equivalent hierarchical posts, namely, Clerks, Translators and Revisors, on the one hand and Clerks, Senior Assistants and Deputy Superintendents, on the other, leading to a common promotional post of Superintendent.

The appellant, who was working as Revisor, was senior to respondent no.2 at every stage. In the combined seniority list, the appellant stood at serial no. 13 whereas respondent no. 2 at 17. However, since the appellant had not completed three years' service as Revisor and there was no other Deputy Superintendent or Revisor with a minimum three years' service in the respective posts, respondent no. 2, who was working on the post of Senior Assistant - a post one grade below to that held by the appellant - was promoted to the post of Superintendent, as envisaged by r. 10 of the High Court of Himachal Pradesh Recruitment(Conditions of Service) Rules 1992. The said Rule provided for appointment to the post of Superintendent by promotion from amongst graduate Deputy Superinten-

A dents/Revisor with minimum three years of service as such in the ratio of 4:1, failing which by promotion from amongst Senior Assistants/Translators with minimum six years service in the same ratio.

B The appellant filed a writ petition before the High Court challenging the validity of Rule 10 of the High Court of Himachal Pradesh Recruitment(Conditions of Service) Rules 1992. She claimed her promotion to the post of Superintendent in place of respondent no. 2. The High Court held r.10 as valid and dismissed the writ petition. Hence the appeal, by special leave.

C Allowing the appeal, this Court

HELD: 1.1. Rule 10 of the High Court of Himachal Pradesh Recruitment(Conditions of Service) Rules 1992 violates Article 14 of the Constitution since it treats unequals as equals and even gives unwarranted advantage to the incumbents of the lower posts over the incumbents of the higher posts. The Rule is inequitable, indefensibly unjust and is, therefore, struck down. The promotion given to respondent no. 2 stands quashed.

[528-F, H; 529-A]

E 1.2. The basic weakness in r. 10 is that it places two unequal sets of posts on par with each other and also prescribes qualifying service for the higher posts. The posts of Deputy Superintendents and Revisors are posts higher than those of Senior Assistants and Translators respectively. If the incumbents of both the sets of posts are to be made eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for the incumbents of the posts of Deputy Superintendents and Revisors. [528-B, C]

G 2.1. If Senior Assistants and Translators are to be provided with promotional avenue, more posts of Deputy Superintendents and Revisors which are above the posts of Senior Assistants and Translators respectively, should be created, and first the Senior Assistants and Translators have to be promoted to the said posts. [528-D]

H 2.2. The High Court should frame an equitable rule for promotion to the post of Superintendent in place of r. 10, in a manner which would not deny to the incumbents of the higher posts promotion and would not give advantage over them to those holding lower posts. [528-H; 529-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 532 of 1994. A

From the Judgment and Order dated 4.1.1993 of the Himachal Pradesh High Court in C.W.P. No. 1055 of 1993.

Rama Jois, B. Rajani and K.R. Nagaraja for the Appellant. B

A.K. Ganguli, A Mariaputham, Ms. Aruna Mathur and Ranjit Kumar for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. 1. Leave granted. In the establishment of the respondent-High Courts there are two sets of equivalent hierarchical posts, viz., Clerks, Translators and Revisors on the one hand and clerks, Senior Assistants and Deputy Superintendents on the other. Above the posts of Revisors and Deputy Superintendents is the post of Superintendent which is common promotional post to both the sets. C D

2. The appellant was appointed as a Clerk on 24.7.1972 and was promoted as Translator on 30.7.1979. The pay-scale of the Translator at the relevant time was Rs. 600-1120. It was revised to Rs. 1800-3200 w.e.f. 1.1.1986. Thereafter she was promoted to the post of Revisor on 26.2.1992 which carried the pay-scale of Rs. 2000-3500. E

3. As against this, respondent 2 was appointed as a Clerk on 7.1.1974. He was promoted to the post of Senior Assistant on 14.8.1986. The post of Senior Assistant earlier carried the pay-scale of Rs. 600-1120 and w.e.f. 1.1.1986 the pay-scale was revised to Rs. 1800-3200. F

4. It is thus apparent that the post of Translator and the post of Senior Assistant were on par. There is also no dispute that the post of Revisor is on par with the post of Deputy Superintendent which carried the same pay-scale as that of the Revisor, viz., Rs. 2000-3500. G

5. Both as Clerk and as Translator (which is the post equivalent to that of Senior Assistant), the appellant was senior to respondent 2. Further, although the appellant was promoted to the post of Revisor (which post is equivalent to the post of Deputy Superintendent), respondent 2 was not promoted to the post of Deputy Superintendent in that line of promotion. H

A There is no dispute that there was a combined seniority list maintained and the appellant stood at Sl. No. 13 whereas respondent 2, at Sl. No. 17. It is also not in dispute that the post of Superintendent is the next promotional post available both to Revisors and Deputy Superintendents.

B 6. On 3.12.1992 overlooking the claim of the appellant, respondent 2 was promoted as Superintendent which post carries the pay-scale of Rs. 2200-4000. The High Court relied upon the High Court of Himachal Pradesh Recruitment (Conditions of Service) Rules, 1992 (the '1992 Rules') for effecting the said promotion. Rule 10 of the 1992 Rules which provides for the appointment to the post of Superintendent reads as follows:

C

"By promotion from amongst graduate Deputy Superintendents/Revisors with minimum 3 years of service as such in the ratio of 4:1, failing which by promotion from amongst Sr. Assistants/Translators with minimum 6 years service as such in the same ratio.

D

Explanation: After promoting 4 Deputy Superintendents/Senior Assistants as Superintendents from general category... One Revisor/Translator shall be promoted as Superintendent from amongst Revisor/Translators' category."

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7. The substance of the Rule is that the appointment to the post of Superintendent is to be made by promotion from amongst the graduate Deputy Superintendents and Revisors with a minimum of three years of service, in the ratio of 4:1, i.e., four from Deputy Superintendents and one from Revisors. The appointment from Revisor to the post of the Superintendent is to be made only after four from Deputy Superintendents are promoted to the said post. If none from the Deputy Superintendents and Revisors with the minimum of three years' service is available, the appointment is to be made from amongst the Senior Assistants and Translators with minimum service of six years in the said posts.

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8. The result of the Rule was that since the appellant had not put in three years' service as Revisor, she was disentitled to the post of Superintendent. The position further was that on the relevant date, i.e., 3.12.1992, there was no Deputy Superintendent or Revisor with minimum three years' service in the respective posts. Hence the post was given to respondent 2,

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as he was Senior Assistant with more than six years' service. The consequence of the Rule was that had she continued as Translator, being senior to respondent 2, she would have got the post of the Superintendent. She lost the same because she was promoted to the post of the Revisor only a few days earlier to the appointment of respondent 2 to the post of the Superintendent which in effect was a double promotion to him. Since the two events, viz., her promotion to the post of Revisor and that of respondent 2 to the post of Superintendent were close in proximity, a legitimate contention was advanced on her behalf that she was "kicked up" to the post of the Revisor only to facilitate the promotion of respondent 2 to the post of the Superintendent and thus to deny her the said post.

9. The appellant, therefore, approached the High Court by way of a writ petition challenging the validity of the said Rule 10 and for quashing the promotion of respondent 2, and also for her promotion in his place. The Division Bench of the High Court held that Rule 10 of the 1992 Rules was valid and dismissed the petition. It is aggrieved by the said decision that the present appeal has been preferred.

10. What is pointed out to us on behalf of the respondent-High Court, is that the said Rule 10 had become necessary because there were more Deputy Superintendents than Revisors and the Senior Assistants and Translators were stagnated for want of a promotional post. Hence the said Rule was framed by a Committee of Judges to provide suitable avenues of promotion to both Deputy Superintendents and Revisors on the one hand, and Senior Assistants and Translators on the other. It was also pointed out that even the earlier Rule 11 of the 1990 Rules was almost on the same pattern. In fact, by the said earlier Rule, all graduate Court employees who had put in minimum of six years' service in the grade of not less than Rs. 1800-3200 were eligible on merit for promotion to the post of the Superintendent. Under the 1990 Rules, therefore, all Senior Assistants and Translators as well as Deputy Superintendents and Revisors were eligible for being considered on merit for promotion to the post of Superintendent. The only two differences which the 1992 Rules brought about in the earlier situation were that they provided firstly, that the Deputy Superintendents and Revisors who carried the pay-scale of more than Rs. 1800-3200 with a minimum of three years' service, were eligible to the post of Superintendent and it is only failing the availability of the eligible candidates from the said two categories, that the Senior Assistants and the Translators should be

A considered for the said post. Secondly, a proportion between Deputy Superintendents and Revisors was laid down for promotion to the post of the Superintendent.

B 11. In this case, it is not necessary for us to go into the question whether Rule 11 of 1990 Rules which provided for the promotion to the post of the Superintendent was valid or not. Even assuming that the validity of the 1990 Rules was not challenged, that fact by itself would not validate the present Rule 10 if it suffers from an inherent infirmity. The basic weakness in the present Rule 10 is that it places two unequal sets of posts on par with each other and also prescribes qualifying service for the higher post as well. The posts of Deputy Superintendents and Revisors admittedly are posts higher than those of Senior Assistants and Translators respectively. If the incumbents of both the sets of post are to be made eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for the incumbents of the posts of Deputy Superintendents and Revisors. If Senior Assistants and Translators are to be provided with promotional avenue, more posts of Deputy Superintendents and Revisors which are above the posts of Senior Assistants and Translators respectively, should be created, and first the Senior Assistants and Translators have to be promoted to the said posts. In fact, the appellant who was a Translator was first promoted to the post of Revisor. We are informed that no eligible Deputy Superintendent was available for being considered to the post of Superintendent and hence respondent 2 who was holding the post of Senior Assistant (post below that to Deputy Superintendent) had to be promoted to the said post as he had put in six years' service as required by the said Rule 10. Rule 10 of the 1992 Rules is thus inequitable and indefensibly unjust. It violates Article 14 of the Constitution since it treats unequals as equals and what is more gives unwarranted advantage to the incumbents of the lower posts over the incumbents of the higher posts.

G 12. We, therefore, strike down Rule 10 of the 1992 Rules and direct the High Court to frame an equitable rule for promotion to the post of Superintendent in place of the said Rule.

H 13. We have no doubt that whatever the anxiety of the High Court to provide promotional avenues to those who are stagnated, the promotion Rule will not be made in a manner which would deny to the incumbents

of the higher posts promotion while giving unmerited advantage over them A
to those holding lower posts. The necessary consequence is that the promo-
tion given to respondent 2 stands quashed.

14. The appeal is allowed accordingly. In the facts and circumstances
of the case, however, there will be no order as to costs.

R.P.

Appeal allowed.