

RAMESH KUMAR & ORS. ETC.

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v.

STATE OF HIMACHAL PRADESH & ORS. ETC.

(Civil Appeal Nos. 6649-6650 of 2021)

NOVEMBER 13, 2021

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[M. R. SHAH AND SANJIV KHANNA, JJ.]

Service law: Promotion – Post of Accounts Officer(AO) – Promotion to the post of AO sought by direct recruits to the post of Assistant Accounts Officer (AAO) – Requirement of passing SAS Part II exam for promotion – Held: What is not required for the lower post, cannot be made applicable to the promotional post – When there was no requirement of passing SAS Part II examination for the lower post, i.e., post of AAO so far as direct recruits is concerned, there cannot be any requirement of passing of the SAS Part II exam for the promotional post of AO – After the appointment as AAO either as a promotee or as a direct recruit, all shall be at par – Thus, the requirement of passing of SAS Part II exam as per the amended notification dated 02.01.2010 for the promotion to the post of AO is arbitrary and illogical and rightly read down by the High Court – High Court justified in holding that such a requirement shall be for the promotion from the post of Superintendent (D/A) to the post of AAO only and thus, not to be applicable for promotion to the post of AO – Also, the High Court rightly set aside the promotions of the AAOs junior to the direct recruits-AAO and issued directions to the State Electricity Board to consider them for promotion to the post of AO from the dates the persons junior to them in the cadre of AAO were promoted to the post of AO – Furthermore, on facts, there was no delay in filing the writ petitions and also the prayer of the appellant, promotees to the post of AOs to not to revert them cannot be accepted.

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Dismissing the appeals, the Court

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HELD: 1.1 Even as per the Regulation dated 01.11.2006, there was no requirement of passing SAS Part II examination for the direct recruit AAOs. The requirement of passing SAS Part II examination was for the promotion from the post of Superintendent (D/A) to the post of AAO and for the promotion

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- A in the promotion quota. However, when the amended notification dated 02.01.2010 came to be issued, it provided passing of SAS Part II examination for the post of AO and the eligibility criteria was minimum two years service as AAO and must have passed SAS Part II examination. As such for the post of AAO and as per the Regulation dated 01.11.2006 as such there was no requirement of passing SAS Part II examination so far as direct recruits to the post of AAO are concerned. Requirement of passing SAS Part II examination was only for promotion to the post of AAO from the post of Superintendent (D/A). For direct recruits as AAO, the only requirement was postgraduate degree in commerce. Therefore, it is not understandable requirement of passing of the SAS Part II examination for promotion to the post of AO. When there was no requirement of passing SAS Part II examination for the lower post, i.e., post of AAO so far as direct recruits is concerned, there cannot be any requirement of passing of the SAS Part II examination for the promotional post of AO.
- D As such after the appointment as AAO either as a promotee or as a direct recruit, all shall be at par. Therefore, the requirement of passing of SAS Part II examination as per the amended notification dated 02.01.2010 for the promotion to the post of AO can be said to be arbitrary and illogical and the same is rightly read down by the High Court. What is not even required for the lower post, i.e., for the post of AAO so far as the direct recruits is concerned, the same cannot be made applicable to the promotional post of AO. The High Court is absolutely justified in holding that such a requirement shall be for the promotion from the post of Superintendent (D/A) to the post of AAO only and consequently shall not be applicable for promotion to the post of AO. [Para 8.1][344-G-H; 345-A-F]
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- 1.2 As regards the submission on behalf of the appellants that they were promoted to the post of AO in the year 2010 onwards and their promotions have been set aside after long time and therefore in a petition filed in the year 2017, i.e., after approximately a period of 6-7 years, the High Court ought not to have set aside the promotions of the appellants to the post of AO is concerned, it is required to be noted that till 2015, a litigation was pending before this Court at the instance of the direct recruits and their status as regular employees as AAOs came to be
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determined by this Court pursuant to the decision of this Court dated 13.01.2015 in Civil Appeal No. 390 of 2015. Only thereafter they were issued the regular appointment orders and their seniority was fixed and only thereafter the cause of action has arisen to claim further promotion to the post of AO. Even while allowing the appeals filed by the direct recruits, this Court specifically directed that they shall be treated as regularly appointed AAOs w.e.f. the date of their initial appointment and this Court specifically directed to provide the direct recruits with consequential benefits including seniority etc. Thus, as such there was no delay at all. [Para 8.2] [345-F-H; 346-A-B]

1.3 The prayer on behalf of the appellants that they may not be reverted is concerned, cannot be accepted. If such a prayer is granted in that case, the effect of the impugned judgment and order passed by the High Court which has been upheld would be nullified. As a necessary consequence to the impugned judgment and order passed by the High Court, now the entire list for the promotion to the post of AO will have to be re-shuffled and the cases of the direct recruits are required to be considered for promotion to the post of AO from the date on which their junior came to be promoted on the post of AO. Therefore, necessary consequences will have to be followed. If the prayer of the appellants not to revert them and to continue them on the promotional post is accepted, in that case, there may arise many complications including the effect on the further promotional posts from the post of AO to Senior AO and thereafter to the post of Dy. CAO/Dy. CA/Dy. FA, therefore, the said prayer is rejected. [Para 8.3][346-C-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6649-6650 of 2021.

From the Judgment and Order dated 04.03.2020 of the High Court of Himachal Pradesh, Shimla in CWPOAs Nos.11 and 12 of 2019.

With

Civil Appeal Nos. 6652 and 6651 of 2021.

P. S. Patwalia, Sr. Adv., Abhinav Mukerji, Ms. Pratishtha Vij, Mrs. Bihu Sharma, Akshay C. Shrivastava, Ms. Harshika Verma, Tushar Bakshi, E. C. Agrawala, Abhinav Agrawal, Rajiv K. Virmani, Rajesh

A Kumar, Ms. Swati Bhardwaj, D. Bharat Kumar, Tadimalla Bhaakar Gowtham, Aman Shukla, Gopal Jha, Rahul G Tanwani, Siddhartha Sinha, Hatindra Manda, Dasari Muralee Mohan, Rajesh Kumar Gautam, Anant Gautam, Nipun Sharma, Ravi Solanki, Manish Kumar, Vijay Kumar, Rahul Dev, Advs. for the appearing parties.

B The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Himachal Pradesh dated 04.03.2020 passed in CWP No. 11 of 2019 and CWP No.12 of 2019 by which the High Court has allowed the said writ petitions preferred by the private respondents herein – original writ petitioners by which the High Court has set aside the promotions of the Assistant Accounts Officers junior to the original writ petitioners and has directed the Himachal State Electricity Board Limited (hereinafter referred to as “the Board”) to consider the original writ petitioners for promotion to the post of Accounts Officers from the dates from which the persons junior to them in the cadre of Assistant Accounts Officers (hereinafter referred to as “AAO”) were promoted to the post of Accounts Officers (hereinafter referred to as “AO”), the original private respondents as well as the Board have preferred the present appeals.

2. That the dispute is related to the promotion to the post of A.O. Once again the dispute is between the direct recruits and the promotees. That earlier the post of AAO was a promotional post to be filled up 100% by promotion from Superintendent (D/A), who have cleared SAS Part-II examination. Similarly, the post of AO was a promotional post to be filled up 100% by promotion from the post of AAO. In the year 2006 the Regulations came to be amended and a provision was made for direct recruitment for the post of AAOs. The respondents herein – original writ petitioners were the direct recruits to the post of AAO. Initially, they were appointed on contract basis though their appointments were after following due procedure of selection. The appellants herein – original respondents are the promotees to the post of AAO.

2.1 As per the amended Regulations dated 01.11.2006, for the post of AAOs 30% posts were reserved for direct recruits and 70% for promotion. The educational qualification required for the direct recruits for the post of AAO reads as under:-

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7.	Minimum Educational and other qualification required for direct recruits	<p>Essential Post Graduate degree in Commerce, MBA(Fin.)/MFC with minimum 55% marks or having degree of Chartered Accountants/ICWA from recognised University/Institute.</p> <p>Desirable Knowledge of customs, manners & dialects of Himachal Pradesh & suitability for appointment in the peculiar conditions prevailing in the Pradesh.</p>
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2.2 Thus, there was no requirement of passing SAS Part II exam so far as the direct recruits for the post of AAO is concerned. The dispute arose as to whether the direct recruits though they were appointed after following all procedure of selection including recommendation of the Public Service Commission and were continuing in service since long, they can be said to be regularly appointed or not. The dispute ended in the year 2015 in view of the decision of this Court in Civil Appeal No. 390 of 2015 in which this Court directed the Board to provide letter of regular appointment to those direct recruits – original writ petitioners herein w.e.f. the date of their initial appointment treating the initial two years as on probation with further direction to provide them with consequential benefits including regular scale of pay, increment, arrears of pay, seniority etc. to which they were entitled under the law.

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2.3 That vide amendment notification dated 02.01.2010, the R&P Regulations to the post of Superintendent (D/A), Assistant Accounts Officer, Accounts Officer etc. came to be issued and so far as the post of Accounts Officer is concerned, it provided as under:-

3.	Accounts Officer (8550-14500) with initial start of 9400/-	HPSEB/Sectt/1-06-10/75-59814-904 dated 29.10.1975 and further amendment vide notification No. HPSEB (Sectt)/106-10/R&E/96-11671-871 dated 10.10.1996	Column No. 6	Should minimum service of three years as Asstt. Accounts Officer.	<p>(i) 80% from amongst the AAO who have rendered minimum two years service as AAO & must have passed SAS Part-II</p> <p>(ii) 20% by method of direct recruitment having degree of ICWA/ CA from recognizer Institute or on secondment basis.</p>
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A 2.4 On the basis of the aforesaid amended Regulation issued vide
notification dated 02.01.2010, the appellants herein came to be promoted
to the post of AO and thereafter to the post of Sr. AO. In view of the
amended notification dated 02.01.2010, under which one of the
B requirement was that for the promotion to the post of AO (for 80%
posts of AO), the AAOs must have passed SAS Part II exam, the direct
recruits AAOs were not promoted and/or their cases were considered
on the ground that they have not passed the SAS Part II exam. After
C decision of this Court dated 13.01.2015 in Civil Appeal No. 390 of 2015
by which the status of the private respondents herein the original writ
petitioners – direct recruits came to be cleared, the private respondents
herein – direct recruits AAO filed the writ petition before the High Court
D challenging the amendment notification dated 02.01.2010 under which it
was provided that for promotion to the post of AO, 80% promotional
quota was to be from AAOs, who have rendered minimum two years
service as AAO and must have passed SAS Part II exam. A consequential
relief was also sought. By impugned judgment and order, the High Court
E has allowed the said writ petitions and read down the words “must have
passed SAS Part II” prescribed against 80% promotion quota for
promotion to the post of Accounts Officer and directed that the same be
made applicable to the category of Superintendents (D/A) promoted as
AAOs against 20% promotion quota prescribed for promotion from the
F post of Superintendent (D/A), who could not pass SAS Part II
examination. Consequently, the High Court quashed the promotions of
the AAOs - junior to the original writ petitioners – direct recruits and
directed the Board to consider the direct recruit AAOs for promotion to
the post of AOs from due dates from which persons junior to them in the
cadre of AAOs were promoted.

F 2.5 The impugned judgment and order passed by the High Court
is the subject matter of the present appeals.

G 3. We have heard Shri P.S. Patwalia, learned Senior Advocate
appearing on behalf of the appellants herein – promoted AAOs, who
subsequently came to be promoted as AOs and learned counsel appearing
on behalf of the Board and learned counsel appearing on behalf of the
original writ petitioners – direct recruit AAOs.

H 4. Shri Patwalia, learned Senior Advocate appearing on behalf of
the promotee AAOs, who subsequently came to be promoted to the post
of AOs pursuant to the amendment notification dated 02.01.2010 has

vehemently submitted that the High Court has not properly appreciated the object and purpose of providing passing of SAS Part II examination for promotion to the post of AO. A

4.1 It is submitted that being a higher post, after due deliberation, a decision was taken by the Board to provide for passing of SAS Part II examination for the promotion to the post of AO. B

4.2 It is submitted that initially the appointment to the post of AAOs/AOs were by way of promotion only and for the post of AAO, the requirement of passing of SAS Part II examination was mandatory. It is submitted that thereafter when the Regulations came to be amended by providing the quota for direct recruits, the Board thought it fit to also provide for passing of the SAS Part II examination for promotion to the post of AO from the post of AAO. It is submitted that number of chances were given to the direct recruits to pass the SAS Part II examination and many of them cleared also. It is submitted therefore the requirement of passing SAS Part II examination for promotion to the post of AO ought not to have been set aside by the High Court. C D

4.3 It is further submitted by Shri Patwalia, learned Senior Advocate appearing on behalf of the appellants-promotees that the appellants got the promotion in the year 2010/2012 pursuant to the amendment notification dated 02.01.2010 and even thereafter they got their further promotion and the writ petition was filed in the year 2017 and therefore the High Court ought not to have set aside their promotions to the post of AO and Senior AO after such a long time, more particularly, when they have worked on the promotional post for number of years. It is submitted that as the appellants herein are working on the promotional post of AO since long, they may not be directed to be reverted and their promotions to the post of AO and their further promotion be protected. E F

5. Learned counsel appearing on behalf of the Board has supported the submissions as advanced by Shri Patwalia, learned Senior Advocate appearing on behalf of the appellants – promotees.

6. Present appeals are vehemently opposed by learned counsel appearing on behalf of the direct recruits. It is submitted that as rightly held by the High Court, the amendment notification dated 02.01.2010 under which it is provided that for promotion to the post of AO, the passing of SAS Part II examination is must, is arbitrary. It is submitted that the qualification required for the post of AAO, i.e., passing of SAS Part II examination cannot be made applicable for promotion to the post G H

- A of AO more particularly when there is no requirement of passing of SAS Part II examination for direct recruit AAO. It is submitted that after appointment as AAO, either as promotee or direct recruits, all AAOs shall be at par. It is submitted that even there was no requirement of passing SAS Part II examination for direct recruits as AAOs. It is submitted that therefore even when for appointment as direct recruits as AAOs, there was no requirement of passing SAS Part II examination, no such qualification of passing SAS Part II examination for promotion to the post of AO could have been imposed. It is submitted that therefore the High court has rightly read down the amendment notification dated 02.01.2010 by holding that the passing of SAS Part II examination shall be restricted for the promotion from the post of Superintendent (D/A) to AAO and shall not be applicable for promotion to the post of AO.
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- 6.1 It is further submitted that as such if the amendment notification dated 02.01.2010 as stood is made applicable, in that case, no direct recruits would get the promotion to the post of AO, as per the Regulation unless they work for a particular period, they shall not be entitled to appear in the examination of even SAS Part II.
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- 6.2 So far as the submission on behalf of the appellants that there was a delay and therefore the High Court ought not to have set aside the promotions is concerned, it is submitted that as such the direct recruits were litigating before this Court and their appointments as regular appointments came to be made final pursuant to the judgment and order dated 13.01.2015 passed by this Court in Civil Appeal No. 390 of 2015 and thereafter the seniority list was prepared. It is submitted that immediately thereafter they filed the petitions. It is submitted that therefore there was no delay at all.
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7. We have heard the learned counsel appearing for the respective parties at length.

8. The issue which poses for consideration before this Court in this case is the dispute with respect to the promotion to the post of AO. Once again the dispute is between the direct recruits and the promotees.
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- 8.1 It is required to be noted that even as per the Regulation dated 01.11.2006, there was no requirement of passing SAS Part II examination for the direct recruit AAOs. The requirement of passing SAS Part II examination was for the promotion from the post of Superintendent (D/A) to the post of AAO and for the promotion in the promotion quota.
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However, when the amended notification dated 02.01.2010 came to be issued, it provided passing of SAS Part II examination for the post of AO and the eligibility criteria was minimum two years service as AAO and must have passed SAS Part II examination. As observed hereinabove, as such for the post of AAO and as per the Regulation dated 01.11.2006 as such there was no requirement of passing SAS Part II examination so far as direct recruits to the post of AAO are concerned. Requirement of passing SAS Part II examination was only for promotion to the post of AAO from the post of Superintendent (D/A). For direct recruits as AAO, the only requirement was postgraduate degree in commerce (reproduced hereinabove). Therefore, it is not understandable requirement of passing of the SAS Part II examination for promotion to the post of AO. When there was no requirement of passing SAS Part II examination for the lower post, i.e., post of AAO so far as direct recruits is concerned, there cannot be any requirement of passing of the SAS Part II examination for the promotional post of AO. As such after the appointment as AAO either as a promotee or as a direct recruit, all shall be at par. Therefore, the requirement of passing of SAS Part II examination as per the amended notification dated 02.01.2010 for the promotion to the post of AO can be said to be arbitrary and illogical and the same is rightly read down by the High Court. What is not even required for the lower post, i.e., for the post of AAO so far as the direct recruits is concerned, the same cannot be made applicable to the promotional post of AO. The High Court is absolutely justified in holding that such a requirement shall be for the promotion from the post of Superintendent (D/A) to the post of AAO only and consequently shall not be applicable for promotion to the post of AO.

8.2 Now, so far as the submission on behalf of the appellants that they were promoted to the post of AO in the year 2010 onwards and their promotions have been set aside after long time and therefore in a petition filed in the year 2017, i.e., after approximately a period of 6-7 years, the High Court ought not to have set aside the promotions of the appellants to the post of AO is concerned, it is required to be noted that till 2015, a litigation was pending before this Court at the instance of the direct recruits and their status as regular employees as AAOs came to be determined by this Court pursuant to the decision of this Court dated 13.01.2015 in Civil Appeal No. 390 of 2015. Only thereafter they were issued the regular appointment orders and their seniority was fixed and

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- A only thereafter the cause of action has arisen to claim further promotion to the post of AO.

At this stage, it is required to be noted that even while allowing the appeals filed by the direct recruits, this Court specifically directed that they shall be treated as regularly appointed AAOs w.e.f. the date of their initial appointment and this Court specifically directed to provide the direct recruits with consequential benefits including seniority etc. Thus, as such there was no delay at all as sought to be contended on behalf of the appellants.

- 8.3 Now, so far as the prayer on behalf of the appellants that they may not be reverted is concerned, the aforesaid cannot be accepted. If such a prayer is granted in that case, the effect of the impugned judgment and order passed by the High Court with which we agree shall be nullified. As a necessary consequence to the impugned judgment and order passed by the High Court, now the entire list for the promotion to the post of AO will have to be re-shuffled and the cases of the direct recruits are required to be considered for promotion to the post of AO from the date on which their junior came to be promoted on the post of AO. Therefore, necessary consequences will have to be followed. If the prayer of the appellants not to revert them and to continue them on the promotional post is accepted, in that case, there may arise many complications including the effect on the further promotional posts from the post of AO to Senior AO and thereafter to the post of Dy. CAO/Dy. CA/Dy. FA, therefore, the aforesaid prayer is rejected.

9. In view of the above and for the reasons stated above, all these appeals fails and are deserve to be dismissed and accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs. Pending applications, if any also stand disposed of.

Nidhi Jain

Appeals dismissed.

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