

## **Subhash Chand Dhrupta And Anr. vs State Of Himachal Pradesh And Ors. on 17 September, 1999**

**Equivalent citations: JT1999(10)SC296, 1999(7)SCALE221, (2000)10SCC82, AIRONLINE 1999 SC 650**

**Bench: B.N. Kirpal, S. Rajendra Babu**

### **ORDER**

1. Special leave granted.

2. The question arises is as to whether for the purpose of promotion to the post of Assistant in the office of the Advocate General of Himachal Pradesh it is necessary for a candidate to have the minimum educational qualification of being a graduate.

3. It is not in dispute that the post of Assistant is to be firstly filled only by promotion. The only question which arises for consideration in these appeals is the interpretation of Rule 7. Rule 7, which deals with the posts of Assistant, Stenographer and Clerk, reads as follows:

No person shall be appointed to the service unless in case of appointment to the post if.

7. (i) Assistant. He is a graduate of a recognised University or above, with knowledge, experience of accounts matters. Preference will be given to Law Graduate with legal background.

(ii) Stenographers. He has passed Matriculation/Higher Secondary (Part-I) examination and possesses a speed of 40 W.P.M. in type-writing and 100 W.P.M. in shorthand.

(iii) Clerk He has passed Matriculation/Higher Secondary (Part-I) examination from a recognised University and possesses 35 W.P.M. speed in typewriting.

Provided that the conditions as prescribed above may be relaxed by order of the appointing authority in case the person of requisite qualifications for appointment to class-III service are not available through the Employment Exchange.

4. Respondent No. 2 Sukh Dev is a person who is Matriculate while the appellants are Graduates. The contention of the appellants, which did not find favour with the High Court, in a writ petition filed by Sukh Dev, was that for the purpose of promotion to the post of Assistant a candidate must atleast be a graduate. The High Court came to the conclusion that this was not necessary and a non-graduate could also be promoted.

5. It appears to us that the said Rule 7 is very clear and unambiguous. The opening part of the Rule states that no person is to be appointed to the service unless in the case of appointment to the post of Assistant he is a graduate from a recognised University with knowledge experience of accounts matters. It is essential for any candidate to be appointed as Assistant to have this qualification. Rule 7(i) further provides that preference will be given to law graduates with legal background. The proviso to the Rule no doubt talks of the power being given to the prescribed authority to relax the requisite qualification for appointment to class III service if candidates are not available through employment exchange. But it is more than doubtful whether such a proviso would be applicable in the case of promotion to the post of Assistant. It is clear that the proviso would apply for such appointment where names have to be sponsored by employment exchange. It is only if requisite candidates are not available through the employment exchange that relaxation can be ordered. Names through employment exchange are sought for only at the time of making direct recruitment. This being so the said proviso would apply, if at all, only to such cases where the appointment has to be made by direct recruitment. As already indicated hereinabove it is the admitted case of the parties that the post of Assistant, with which we are concerned in the present case, has to be filled by promotion and not by direct recruitment. It is submitted that the posts of assistants are to be filled 100 per cent by promotion. At the time of making promotion the proviso would therefore not be applicable and the essential qualification of graduate could not be dispensed with.

6. This being so, the High Court was in error in coming to the conclusion that respondent Sukh Dev who was only a Matriculate could be considered for promotion to the post of Assistant.

7. For the aforesaid reasons, these appeals are allowed and the judgment of the High Court is set aside. Consequently, the writ petition filed in the High Court by respondent Sukh Dev stands dismissed. The appellants will be entitled to all the consequential reliefs as a result thereof.