

Supreme Court of India

Ishwari Kumar vs State Of H.P on 29 March, 1994

Equivalent citations: 1994 AIR 2173, 1994 SCC Supl. (2) 217

Author: J S Verma

Bench: Verma, Jagdish Saran (J)

PETITIONER:

ISHWARI KUMAR

Vs.

RESPONDENT:

STATE OF H.P.

DATE OF JUDGMENT 29/03/1994

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

KULDIP SINGH (J)

CITATION:

1994 AIR 2173

1994 SCC Supl. (2) 217

JT 1994 (4) 141

1994 SCALE (2) 596

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by VERMA, J.- Civil Appeal No. 4258 of 1992 by special leave is against the order dated 1-8-1991 passed by the Himachal Pradesh Administrative Tribunal allowing the application of Respondent 5, Prem Nath Sud and directing his confirmation as Excise and Taxation Inspector from the due date with corresponding seniority and other consequential benefits. Similar relief has been granted to Mohan Lal and others who also were applicants before the Tribunal, in the connected appeal. Both appeals are disposed of by this judgment.

2.Prem Nath Sud, a permanent Clerk in the Excise and Taxation Department was officiating as Assistant on the recommendation of the Departmental Promotion Committee having opted for the post of Excise and Taxation Inspector. Sud was promoted along with three others as Excise and Taxation Inspector, vide order dated 4-7-1979 made by the Excise and Taxation Commissioner, Himachal Pradesh and he joined as Inspector on 9-7-1979. The appointment of Sud as Inspector was on probation for a period of two years subject to passing of the departmental examination failing

which he was liable to be reverted. Sud passed the departmental examination within the period of probation in April 1981 and his work was also found to be satisfactory. Accordingly, Sud was continued as Excise and Taxation Inspector. On 19-4-1983, 19 Inspectors were confirmed but Sud's name was not included therein. On 28-6-1984, the Excise and Taxation Commissioner granted selection grade to another 41 officiating Excise and Taxation Officers holding the substantive post of Inspector even though most of them had not passed the prescribed departmental examination but Sud's name was not included therein. The department directly recruited 64 Excise and Taxation Inspectors in 1970 whose appointment was challenged in the High Court. The writ petition challenging their appointment was allowed by the Single Judge and the Letters Patent Appeal which was filed was later withdrawn. These direct recruits, however, continued in service and were given seniority over Sud. The claim of seniority made by Sud in his application before the Tribunal has been upheld. The material facts in the connected appeal are similar.

3.The Tribunal has held that the appointment of Sud was against an existing substantive vacancy inasmuch as there were only 38 confirmed Inspectors against the available 139 permanent posts; and Sud had satisfactorily completed his probation as also satisfied the condition of passing the prescribed departmental examination within the period of probation. The Tribunal has held that the work and conduct of Sud also having been found satisfactory, he had to be confirmed as an Excise and Taxation Inspector from the due date and given the consequential benefits. It is this relief which has ultimately been granted by the Tribunal. The Tribunal has further held that the continuance in service of persons who did not pass the prescribed departmental examination within the specified period was in violation of the rules since there was no order granting exemption to any of them from passing the examination as contemplated by the rules. The Tribunal has come to the conclusion that the rules which applied had been violated in several ways as indicated in its order. Similar order has been passed by the Tribunal on the application of Mohan Lal and others in the connected matter.

4.The Tribunal's order consists of two parts. One part relates to acceptance of the claim of Sud, Mohan Lal and others for confirmation as Excise and Taxation Inspector from the due date with corresponding seniority and consequential benefits. The other part relates to the legality of continuance in service of some other persons without passing the prescribed departmental examination in accordance with the rules. It is clear that the Tribunal's order accepting the claim of Sud, Mohan Lal and others can stand by itself and it does not require the support of the other part for its sustenance.

5.Having heard learned counsel for the parties we are satisfied that the Tribunal's order relating to acceptance of the claim of the applicant, Sud is fully justified and does not call for any interference. The findings of fact are that Sud was promoted to officiate as Excise and Taxation Inspector on probation for two years against a substantive vacancy subject to the condition of passing the prescribed departmental examination within the period of probation; and he completed the period of probation satisfactorily passing also the departmental examination within that period. These findings of fact justify acceptance of Sud's claim for confirmation from the due date with corresponding seniority and other consequential benefits. This alone being sufficient to sustain grant of relief to Sud by the Tribunal, it was unnecessary for the Tribunal and so also for us to examine whether the continuance in service of other persons without passing the prescribed

departmental examination was contrary to rules or not. Similar is the position in the connected matter.

6.It is submitted that it was the inaction of the Government due to which the examinations were not held at the proper time and, therefore, many persons could not appear and pass the examination within time. This controversy not having arisen directly before the Tribunal, the same could not have been examined in extenso and need not, therefore, have formed part of the Tribunal's order, being unnecessary. We were informed at the hearing that several further promotions have been given thereafter to many and upholding the other part of the Tribunal's order would not only disturb the placement of several persons but also dislocate the functioning of the department. That part of the Tribunal's order is unnecessary for sustaining the relief granted to the applicants before the Tribunal. We are of the opinion that this part of the submission made on behalf of the appellants deserves acceptance. Accordingly, the Tribunal's order in that part needs to be declared inoperative.

7.For the aforesaid reasons, we uphold the Tribunal's order and direction insofar as it grants relief to the applicants before the Tribunal. However, the other part of the order of the Tribunal which is not necessary for sustaining the relief granted to the applicants before the Tribunal relating only to the validity of appointments etc. of other persons including any promotions given to them, will not be given effect to or affect the career and prospects of those persons. In short, the reliefs granted to the applicants before the Tribunal, namely, P.N. Sud, Mohan Lal and others is upheld and has to be given effect to without disturbing the appointments of, and promotions including any officiating or 'ad hoc' arrangements of the others in implementation of the Tribunal's orders.

8. Both these appeals are disposed of in these terms. No costs.