

Ashok Kumar Vs. Administrator Himachal Pradesh

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Court : Delhi

Decided On : Oct-06-1967

Reported in : 4(1968)DLT82

Judge : I.D. Dua and; S.N. Shanker, JJ.

Acts : [Delhi High Court Act, 1966](#) - Sections 3

Appeal No. : Letter Patent Appeal No. 4 of 1967

Appellant : Ashok Kumar

Respondent : Administrator Himachal Pradesh

Advocate for Pet/Ap. : Sushil Malhorta and; Chabildas, Advs

Judgement :

S.N. Shanker, J.

(1) This Letters Patent appeal is directed against the order of a learned Single Judge of this Court holding that no right of the petitioner had been violated and that the writ petition filed by him deserved to be dismissed.

(2) Briefly stated the facts of the case are that on 15th February, 1957, the petitioner joined service in the office of the Inspector General of Police, Himachal Pradesh as a junior clerk. On 1st of June, 1959, he was confirmed in that post. In August 1963 a vacancy of senior clerk arose in the office and the petitioner even though he continued to hold the post of the junior clerk was assigned the duties of the senior clerk. On 1st of June 1964, however, on the recommendation of the Departmental Promotion Committee, he was promoted to officiate as a senior clerk with effect from August, 1963, in the same office.

(3) It appears that at this very time when the petitioner was appointed as a senior clerk, respondent No. 4, Shesh Kumar, held the post of a stenotypist in the same office but was on deputation with some other Department and it is not disputed that this substantive post of stenotypist was senior to the post held by the petitioner. Shesh Kumar, therefore, made a representation to the Inspector General of Police against the appointment of the petitioner as a senior clerk in his officiating capacity. This representation was rejected by the Inspector General of Police, but an appeal filed by him before the Lieut. Governor was accepted on the ground that Shesh Kumar even though working as a stenotypist was not considered for promotion to the post of senior clerk and as a consequence the petitioner who was junior to him got his promotion to the higher scale of clerks and therefore Shesh Kumar should be

promoted in place of the petitioner from the date the promotion was due to him (vide copy of the order Annexure 'A' filed with the return). This conclusion of the Lieut. Governor was evidently based on the assumption that on 1st June, 1964, when the petitioner was promoted, a stenotypist could be considered for promotion to the post of a senior clerk.

(4) The joint Secretary Home by his notice dated 22nd February, 1966 (Annexure 'B'), however, brought to the notice of the Lieut. Governor that the petitioner had been promoted on 1st of June, 1964, whereas the amendment in clause (ii) of rule 7 of the Himachal Pradesh Police Class (iii) Clerical Service (Recruitment, Promotion and Certain Conditions of Service) Rules, 1962, hereinafter called 'the Rules', was made by the Himachal Pradesh Government with effect from 27th June, 1964, and that the promotion of the petitioner had not been made in August, 1964 as had been mentioned in the Police Department's letter included in the file placed before him. The Lieut. Governor took notice of these facts, but by his order recorded on 4th of March, 1966, declined to change the order previously passed by him accepting the appeal of Shesh Kumar.

(5) The petitioner, therefore, filed this writ petition praying in effect for the issuance of a writ for quashing this order of the Lieut. Governor. The petition was dismissed by the Learned Single Judge.

(6) The learned counsel for the respondents placing reliance on *Garikapati Veeraya v. N. Subbiah Choudhry* has urged that this Letters Patent appeal is not maintainable. The contention being that this writ petition was filed on 8th of October, 1966, when the Delhi High Court Act had not come into force and the 'lis' having stated then would all through be governed at all its stages by the law then existing. It is urged that in October, 1966, when this petition was filed in the Court of Judicial Commissioner, no right vested in an aggrieved party to file a Letters Patent appeal to the Division Bench from an order passed by him, and thus an attribute finality attached to the order of the Judicial Commissioner which cannot now be taken away.

(7) This submission has no merits. Delhi High Court was constituted by the [Delhi High Court Act, 1966](#) (Act No. 26 of 1966). Section 3 of this Act provided that as from such date as the Central Government may, by notification, in the Official Gazette, appoint, there shall be a High Court for the Union territory of Delhi and the principal seat of the High Court of Delhi will be at Delhi or at such other place as the President may, by notified order, appoint. That Delhi High Court now has jurisdiction over the territory of Himachal Pradesh is not disputed. Under sub-clause (2) of section 10 of the Act it has specifically been provided that the law in force immediately before the appointed day relating to the powers of the Chief Justice, Single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi. It is, therefore, clear that the power of a Division Bench conferred by clause 10 of the Letters Patent of the Punjab High Court to entertain an appeal from the order of a learned Single Judge has expressly been reserved. The list between the parties for purposes of this case started when this Court became seized of the jurisdiction. The Letters Patent appeal is, therefore, clearly maintainable.

(8) It is further not correct to say that any finality attached to the order of the learned Judicial Commissioner in Himachal Pradesh in so far as an order passed by him was subject to a further appeal to Supreme Court. There was no vested right in favor of

the respondents at any time to obtain adiocation from the Court of Judicial Commissioner with an attribute of finality attaching to it and, therefore, the conferment of an additional right of appeal on a party aggrieved from an order of the learned Single Judge of this Court did nto in any way cuttail any right vesting in the respondents. In Garikapati Veeraya's case their Lordships of the Supreme Court have nto held that it was nto possible for the Legislature to confer an additional light of appeal during the pendency of the proceedings. All that has been held is that the institution of the suit carried with it the implication that all rights of appeal then in force were preserved to the parties thereto till the rest of the career of the suit and could nto be taken away. This case, therefore, docs nto help the respondents. Under these circumstances, we are of the view that this Letters Patent appeal is maintainable.

(9) Coming to the merits of the case, the learned counsel for the appellant has very strongly urged that rule 7 of the Rules as it stood before 27th of June, 1964, did nto envisage promoion of a stentoyapist to the post of a senior clerk He contends that thr amendment made thereafter, in the relevant clause of the rule enabling such a promoion was made only on 27th of June, 1964 alter the petitioner had been promoied on 1st of June, 1964 and contends that this amendment was nto given a retrospective effect and, therefore, the Lieut. Governor misconstrued this rule to hold that respondent No. 4 was entitled to be considered and promoied to the post of a senior clerk.

(10) The relevant part of rule 6 of the Rules which provides (or the education and technical qualifications of candidates to be appointed to the various posts mentioned in this rule is as under : -

'(II)Senior Clerk '. He has passed the metriculation Examination of a recognised University or above with 3 years office experience in case of promoion from the post of Junior Clerk/Stentoyapist or has passed the Intermediate/Higher Secondary Examination of a recognised university in case of direct recruitment.'

This very clearly shows that the post of the junior clerk and of the stentoyapist were equated by the framers of the hules for the purpose of promoion to the post of senior clerk. It is undoubtedly true that while laying down the method of promoion in rule 7, it was provided that 3/4th posts will be filled by promoion from amongst the junior clerks on the basis of seniority subject to the rejection of unfit and 1/4th posts will be filled by direct recruitment through a competitive examination and that in this part of the rule no mention was made of the stentoyapist. But this very obviously was an accidental omission. In face of the provisions in rule 6 as it stood prior to June 27, 1964, there can be no manner of doubt that a stentoyapist also was eligible for appointment to the post of a senior clerk and for this purpose the post of junior clerk and stentoyapist had been equated. The omission of the mention of the latter post in clause (ii) of rule 7 could nto. but be an inadvertent omission. The subsequent amendment dated 27th June, 1964, simply clarified the position and removed this ambiguity. In this view when the matter came up before the Lieut. Governor he was fully justified in maintaining the previous order passed by him and no question of giving a retrospective operation to the amendment of sub-clause (ii) of rule 7 at all arose.

(11) It is admitted by the petitioner as stated earlier that the substantive post of respondent No. 4 was senior to the petitioner. The impugned order dated 19th July,

1966, has simply directed the officiating promotions of the petitioner as well as respondent No. 4 from the post of the junior clerk to officiating senior clerk. It is true that respondent No. 4 has been shown in order of seniority at No. 1 whereas that petitioner has been shown in this order at Serial No. 2. But that is in consonance with the position as it was before the promotion. They have both been promoted with effect from 3rd of August, 1963, and before their promotion, the substantive post held by Shesh Kumar was admittedly senior to that of the petitioner. No prejudice has thus been caused to the petitioner in the instant case to entitle him to invoke the extraordinary powers of this Court under the provisions of Art. 223 of the Constitution.

(12) It may also be stated here that the promotion of the petitioner on 1st of June, 1964, was only on an officiating basis. He had acquired no right to the post and looked at from this angle also there is hardly any prejudice that has been caused to him. A senior clerk working in officiating capacity could certainly without infringement of any rule or Article of the Constitution be brought back to the substantive position and then reappointed to the same post and this is precisely what has been done by means of the impugned order.

(13) The learned counsel for the petitioner lastly urged that no statutory right of appeal to the Lieut. Governor had been provided under the Rules and, therefore, it was not competent for him to pass the impugned order. This is a new point which was neither urged by the petitioner before the learned Single Judge nor has it been taken in the grounds of appeal filed before us. In the facts and circumstances of the case we do not think it is open to the petitioner to raise this contention at this stage.

(14) In the result we find that there is no substance in this appeal and the same is dismissed with no order as to costs.