

SHISH RAM AND ORS.

v.

THE STATE OF HIMACHAL PRADESH AND ORS.

JULY 19, 1996

[DR. K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

*Constitution of India, 1950 : Article 309.*

*Service Law—Promotion—State of Himachal Pradesh Class II Gazetted posts—Head Clerks and Accountants—Pay scale of former lower than that of latter—Creation of posts of Assistants with higher pay scale by an Executive Order—Grant of higher scale to Head Clerks under statutory rules than that of Accountants—Promotions of Accountants and Head Clerks fused together—Rules making Accountants and Head Clerks eligible for promotion as Superintendent—Creation of gazetted Class II post by Government—Eligibility to such posts confined only to Head Clerks and Assistant Superintendents—Accountants not included therein—Held in spite of superiority of Accountants over Head Clerks in the pay scale at initial stage Administrative Tribunal committed error in directing that Accountants should be considered senior to Head Clerks and given promotion to class II gazetted posts.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9853 of 1996.

From the Judgment and Order dated 25.5.93 of the Himachal Pradesh Administrative Tribunal, Shimla in T.A. No. 90 of 1987.

H.S. Gururaja Rao, Devendra Singh and Ms. Deeva Singh for the Appellants.

K.R. Nagaraja for the Respondent.

Om Parkash Vashisht (In-Person) for Respondent.

J.S. Attri for the Respondent Nos. 1-2.

The following Order of the Court was delivered :

Leave granted.

A We have heard learned counsel on both sides and also respondent No. 8 in person.

B The undisputed facts are that while the appellants were working as Head Clerks and respondent Nos. 3 and 4, Gulzari Ram and Ram Lal were working as Accountants, the scale of pay of the Head Clerks was 160-400 while that of the Accountants was 160-450. Later by executive order dated November 11, 1976 the Government had created 10 temporary posts of Assistants and upgraded them to the scale of Rs. 225-500 and some senior candidates came to be appointed to those posts. Subsequently, statutory rules under proviso to Article 309 of the Constitution came to be made, increasing the number of posts and scale of pay of all the Head Clerks, Assistants, Stenographers etc. to Rs. 225-500. By proceedings of the Government dated November 2, 1979 with effect from January 1, 1978 promotions of Accountants and Head Clerks were fused together, Pay of Assistants, Head Assistants etc. was revised to Rs. 620-1200, while that of the junior Auditors and Accountants was revised to Rs. 570-1080. Similarly, for the promotion of the Accountants and Head Clerks statutory rules came to be made under proviso to Article 309 of the Constitution which came into force from June 13, 1978 enabling the Accountants and Head Clerks to be eligible for promotion as Superintendents. The Government have created promotional avenues to the posts of gazetted class II and the Head Clerks, Assistant Superintendents were made eligible for promotion to the said posts of Gazetted Grade II in the scale of Rs. 500-900. The Accountants were not included therein. The respondents 3 and 4 filed representations claiming promotion to these posts but their claims were rejected. When they filed the writ petition in the High Court, Shimla which was transferred to the Administrative Tribunal, which by the impugned in T.A. No. 90/87, dated May 25, 1993 directed the Government to consider their claims with effect from 1977 and also their entitlement for promotion as Gazetted Class II. Calling those directions in question, the above appeal has come to be filed.

G Shri Gururaja Rao, learned senior counsel for the appellants, contended that though respondent Nos. 3 and 4 were initially drawing higher scale of pay of Rs. 160-450 and the appellants as Head Clerks were drawing pay scale of Rs. 160-400, by statutory orders their scale of pay was increased to Rs. 225-500 and later to Rs.620-1200 and thereby the appellants H scaled a march over the respondents whose scale of pay remained constant

at Rs. 160- 450 which was increased to Rs. 570-1080 as referred to herein- A  
 before. As a consequence, they cannot be made senior to the appellants. Shri K.R. Nagaraja, learned counsel appearing for the respondents contended that they were recruited initially as clerks in November 1960 and May 1962; they were promoted as Junior Accountants in 1964-65 and they were further promoted as Accountants in April 1973 and July 1973. They B  
 always were treated to be seniors to the appellants who joined the service subsequent to their entry into the initial service. As per the executive instructions issued by the Government, a note was appended under which it was stated that when combined seniority for the purpose of promotion to the Superintendents was to be maintained from amongst the Assistants, Head Clerks, Stenographers and Accountants, the direction was to keep C  
 the Accountants *en block* seniors to all others. In other words, he contends that they were drawing higher scale of pay and they were treated seniors to the appellants and others; as a consequence, when the revised rule came to be made under the fortuitous circumstances, their scale of pay was not to be on par with the appellants and they cannot be denied of their D  
 legitimate right to promotion to the post of gazetted class II.

Having given our anxious consideration to the respective contentions, we think that the case of the appellants is founded on a sounder footing than that of the respondents. It is true that the respondents were drawing higher pay-scale than that of the appellants at the initial stage. But, later, E  
 when the statutory rule came to be made, there was a jump in the scale of pay of the appellants from Rs. 160-400 to Rs. 225-500 while the scale of pay of the respondents remained stagnant at Rs. 160-400. Even in the subsequent revision in the ministerial cadre, the appellants' scale of pay was higher than that of the respondents. They were treated two separate F  
 entities as indicated earlier. When the statutory rules came to be made increasing their scale of pay and making them eligible for promotion directly to the post of gazetted cadre class II from Assistants, Head Accountants, Stenographers etc. to a pay-scale of Rs. 500-900, it would be obvious that the executive instructions issued earlier had to yield place to the statutory rules made under proviso to Article 309. It is equally true that G  
 in the subsequent rules made on June 13, 1978 under proviso to Article 309 of the Constitution fusing Accountants and Head Clerks as eligible for promotion to the post of Superintendent, it would be obvious that in view of the fact that higher scale of pay was given to Assistants, Head Clerks in the scale of pay of Rs. 620-1200 which that of the respondents remained H

- A to be Rs. 570-1080, by necessary implication they cannot be treated to be of the same class for the purpose of enabling them to seek promotion to the post of Gazetted Class II. Moreover, the statutory rules do not include Accountants as a feeder post for promotion as Gazetted Class II. Considered from these perspectives, we are of the view that the Tribunal was in clear error in directing the Government to consider Respondent Nos. 3 and 4 as senior to the appellants and in giving promotion over the appellants.
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The appeal is accordingly allowed and the T.A. of the respondents stands dismissed. No costs.

- C T.N.A.

Appeal allowed.