

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.W.P. No.21461 of 2015 (O&M)

Date of Decision:- 08.08.2017

Khem Kaushal and others

....Petitioners

vs.

High Court of Himachal Pradesh and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Gurminder Singh, Sr. Advocate with
Ms. Harpriya Khaneka, Advocate,
for the petitioners.

Mr. Vikas Suri, Advocate,
for respondent No.1.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. A.S. Kalram, Advocate,
for respondents No.3 and 5 to 10.

Sudhir Mittal, J.

By this common judgment, we propose to dispose of two writ petitions i.e. CWP Nos.21461 and 21463 of 2015 as common issues of fact and law are involved in both the writ petitions.

2. The petitioners are working as Stenographers/Junior Scale Stenographers in the Himachal Pradesh High Court, Shimla (in short 'the High Court'). An advertisement dated 18.9.2010 was issued by the said High Court for filling up 9 posts of "Judgment Writer". The relevant part of the advertisement is reproduced herein-below:-

“Applications for filling up *nine posts of Judgment Writer, on regular basis, in the Pay Band of Rs.10300-34800 + Rs.4200/- Grade pay with initial pay of Rs.16290/-* and usual allowances on the Establishment of this Registry are invited from desirous graduate Stenographers and Junior Scale Stenographers working in the High Court and Senior Scale Stenographers/Junior Scale Stenographers/Judgment Writers (on contract basis) and Steno-Typist working in the Subordinate Courts in the State of H.P., having speed *of 120 words per minute in English Stenography* with proficiency to transcribe the dictated matter within a period five times more than the period allotted for dictation, and *speed of 40 words per minute in English typewriting*, on the following format:-

- i) Name:
- ii) Father's/Husband Name:
- iii) Permanent Address:
- iv) Post being presently held with pay scale, and Court in which working as such:
- v) Qualification (attested copy of the certificate be annexed):
- vi) Address for correspondence:

The eligible candidates should submit their applications through their Controlling Authority. Applications, complete in all respects, should reach this Registry on or before 30.09.2010 and those found incomplete or received after 30.09.2010 will not be entertained.”

3. Prior thereto, as is clear from the record produced by respondent No.1 (Himachal Pradesh High Court, Shimla), there were five vacant posts of “Judgment Writer” in the said High Court in the year 2009.

Attempt was made to fill up the said posts by selection from amongst the Stenographers in the High Court. However, none of the persons employed as such fulfilled the conditions of 3 years' service. Therefore, applications were invited from Senior Scale Stenographers working in the subordinate Courts but none applied in pursuance thereof. Four persons namely S/Sh. Virender Bahadur, Rajiv Kumar, Smt. Rajni Devi and Khem Chand Kaushal submitted representations for permission to apply for the vacant posts by taking the test prescribed therefor and by relaxing the criteria of length of service. Their representations were rejected by the Acting Chief Justice and the posts remained vacant. Meanwhile, two more posts fell vacant due to promotion and, thus, seven posts were available for being filled up. Thereafter, three more posts became available due to promotion and as on 4.8.2010, a total of 10 posts of "Judgment Writer" were vacant. Since the Stenographers working on the Establishment of the High Court did not have the requisite length of service and nobody from the subordinate Courts had applied for the vacant posts, noting dated 21.6.2010 was initiated for filling up the vacant posts either by seeking special reports of in-service Stenographers in the order of seniority or by subjecting them to stenography test as provided in the relevant Recruitment Rules. This mode was proposed because past experience had shown that suitable candidates were not available from amongst Stenographers working in Government offices or through direct recruitment. This proposal was approved by the then Chief Justice and it was directed that the vacant posts may be filled up through Stenography test.

4. The Stenography test was held on 16.8.2010, in which, only Smt. Rajni Devi passed both the typing as well as Stenography test.

Accordingly, Smt. Rajni Devi was promoted vide Notification dated 20.8.2010 after relaxation of requirement of length of service. It is pertinent to note here that the petitioners were also applicants for the test held on 16.8.2010 but they failed to qualify.

5. Since 9 posts were still vacant and in the background referred to above i.e. the recruitment from amongst employees of the High Court as well as of the subordinate Courts had failed to provide adequate number of candidates and since suitable candidates were not available from amongst Stenographers working in Government offices, the Chief Justice approved the noting dated 15.9.2010 for issuance of an advertisement for the vacant posts, by restricting the candidature to the Stenographers employed in the High Court and the subordinate Courts only. Thus, advertisement dated 18.9.2010 mentioned herein-above was issued. Last date for submission of applications mentioned in the advertisement was 30.9.2010. A total of 92 applications were received and respondents No. 2 to 10 in CWP No.21461 of 2015 were ultimately selected.

6. It is also relevant to mention at this stage that the instant writ petitions were filed in the High Court of Himachal Pradesh but were transferred to this Court by Hon'ble the Supreme Court vide order dated 21.8.2015 for the reason that most of the Hon'ble Judges of the Himachal Pradesh High Court had dealt with this recruitment process on the administrative side due to which they recused when the matter was taken up on judicial side.

7. Relevant Rules of the Himachal Pradesh High Court Officers and the Members of the Staff (Recruitment, Conditions of Service, Conduct

and Appeal) Rules, 2003 (hereinafter referred to as 'the 2003 Rules') referred to by the parties and being relevant to resolve the controversy are reproduced herein-below:-

Rule 5 of the 2003 Rules

“5. Recruitment of persons on the Establishment of the Court:

Recruitment of members of the Establishment and members of the staff, meaning thereby, various classes and categories on the Establishment of the Court, shall be made:-

- (a) by posting of members of Himachal Pradesh Judicial Service or Himachal Pradesh Higher Judicial Service,
 - (b) by direct recruitment,
 - (c) by selection,
 - (d) by promotion, or
 - (e) by absorption
- in the manner as indicated against every such post, class or category of posts in the Schedule.”

8. Relevant part of the Schedule referred to in the above Rule is given below:-

Class-II

Sr. No.	Name of the post	No. of posts	Mode of appointment	Qualification	Experience/length of service in feeder cadre	Scale of pay
1	2.	3.	4.	5.	6.	7.
1 & 2	Xx	Xx	Xx	Xx	Xx	Xx

3.	Personal Assistants/Judgment writers.	11	By selection on the basis of merit-cum-seniority, from amongst (a) Stenographers working in the High Court. (b) Failing which by direct recruitment from amongst Senior Scale Stenographers working in Subordinate Courts. (c) Further, failing which by direct recruitment from Senior Scale Stenographers working in Government Offices. (d) Further, failing which by direct recruitment. Selection of candidates mentioned at (b), (c) and (d) above shall be made on the basis of performance in shorthand and typing test, the minimum speed for which will be 120 words per minute to be transcribed in a period four times more than the time taken for dictation and 40 words per minute, respectively.	Graduation	Three years in case of (a) and five years in cases of (b) and (c).	Rs. 6400-200-700-220-8100-275-10300-340-10640+ S.A Rs.300/-.
----	---------------------------------------	----	--	------------	---	--

9. There is yet another set of Rules known as the High Court of Himachal Pradesh Absorption and Conditions of Service etc. of Officers and Employees of the erstwhile Himachal Pradesh State Administrative Tribunal (since abolished) Rules, 2010 (hereinafter referred to as '2010 Rules'), which too have a bearing on the controversy and the relevant parts thereof are reproduced herein-below:-

“Rule 2 (f)

2. Definitions:- In these Rules, unless the

context otherwise requires-

(a) to (e) xxxx xxxx xxxx

(f) 'Establishment' means and includes all Offices, Departments, Sections, Branches and other ancillary Units and Wings of the High Court of Himachal Pradesh.

Rule 6

“6. The existing vacant posts of different cadres and the posts which will fall vacant due to retirement, promotion, resignation etc. in different cadres, will be first filled up by selection/promotion as per these Rules and thereafter, the vacant post which will be available at the entry level in different cadres, will be merged in the establishment of the High Court and will be filled up as per the provisions of 'The Himachal Pradesh High Court Officers and the members of the Staff (Recruitment, Conditions of Service, Conduct and Appeal) Rules, 2003'. However, as and when a vacancy in Class-IV i.e. of Peon, Mali, Chowkidar and Frash arises in the first instance the same will be filled up from amongst Part Time Workers (Class-IV) of the abolished Himachal Pradesh State Administrative Tribunal.”

Rule 8

“8. The Officers and Employees of the Abolished Himachal Pradesh State Administrative Tribunal will form part of the Establishment of the Court and shall

continue on their respective posts held by them on the date of abolition of the Himachal Pradesh State Administrative Tribunal and will be governed by these rules.

Provided that Officers and Employees who were initially appointed on 'ad hoc basis' against regular posts and have completed three years of satisfactory service shall be regularised after considering their service record, if otherwise found eligible.”

Rule 11

Powers of Chief Justice

11. Nothing in these Rules shall be construed to limit or abridge the powers of the Chief Justice to deal with Officers and Employees of the Abolished Himachal Pradesh State Administrative Tribunal.

Provided that the service conditions of the Officers and Employees of the abolished Himachal Pradesh State Administrative Tribunal as were applicable to them at the time of abolition of the said Tribunal will not be varied to their detriment.

Rule 13

13. Postings and Transfers:

(1) Notwithstanding the initial appointment of any person on any particular post or in any particular class or category, the Chief Justice may in the interest of administration, transfer any such person to any

other post, or in any other class or category of the employees of the Abolished Himachal Pradesh State Administrative Tribunal, but such transfer or posting shall not affect his/her seniority as originally fixed or determined.

(2) The Chief Justice may owing to exigencies of service or in public interest or in the interest of Administration, transfer any employee of the Abolished Himachal Pradesh State Administrative Tribunal outside the Establishment to a subordinate court for such period as may be specified. During the period of transfer the transferred officer/employee of the Establishment shall retain his/her lien in all respects on his/her post on the Establishment and shall not affect his seniority and other rights, including the right to be considered for promotion to the higher post, in any manner whatsoever.

(3) To remove any hardship, owing to transfer under sub rule (2), the Chief Justice may order the payment of compensatory allowance to the transferred officer/employee of the Abolished Himachal Pradesh State Administrative Tribunal which, however, shall not exceed the amount payable on deputation, in normal course.”

10. The first contention of the learned Senior Counsel for the petitioners is that Smt. Rajni Devi was appointed in violation of the 2003

Rules because the said Rules do not provide for appointment from amongst in-service candidates of the High Court by holding a test.

11. On the contrary, learned counsel for the respondents have submitted that there was no violation of the Rules as is evident from the background in which the mode of recruitment was evolved and followed. A reference has been made to the original record in support of their respective submissions.

12. We have gone through the record produced by counsel for respondent No.1. The process of recruitment commenced in the year 2009. At that point of time, none of the Stenographers working in the High Court had 3 years' qualifying service. When applications were invited from amongst Stenographers working in the subordinate Courts, none applied. Past experience had shown that good material was not available from amongst mode (c) and (d) (refer to Schedule mentioned above in Rule 5 of the 2003 Rules). Thus, there was nothing unfair or arbitrary about the decision taken to subject the in service Stenographers of the High Court to the test prescribed in the 2003 Rules. The employer has the right to select the best candidates from amongst the material available save that the process should be transparent and non-discriminatory. None of the sources of recruitment provided in the 2003 Rules, had yielded any positive results. The High Court was, thus, completely justified in adopting the method of selection by way of type test and Stenography test for filling up the vacant posts. The petitioners also subjected themselves to the said selection process and, therefore, they cannot now be permitted to say that the method adopted was either violative of the Rules or arbitrary or unfair.

13. With reference to the appointment of Smt. Rajni Devi, it has

further been contended on behalf of the petitioners that a new criteria, not provided for in the Rules, was evolved while evaluating the answer sheets. It is the submission of learned counsel for the petitioners that the only thing required to be seen was whether the candidates had been able to take dictation at a speed of 120 words per minute with proficiency to transcribe the same within a period of 4 times to the period prescribed for taking the dictation and were able to type at the speed of 40 words per minute. The evaluation could not have been made by checking the mistakes committed during the process of transcription. This argument has been rebutted by the learned counsel for the respondents and rightly so by stating that if mistakes are not taken into consideration, the accuracy of transcription within the prescribed time cannot be evaluated. The prime requirement of transcription is accuracy, without which the stenography test would be meaningless. It was aptly urged that the requirement of accuracy is inbuilt in the stenography test.

14. There is a merit in the submission made by learned counsel for the respondents. Unless a candidate is able to accurately transcribe the dictation taken by him within the prescribed time, the test would be an exercise in futility. Further, a candidate has to pass not only the stenography test but also the type test. Having seen the original record, we are satisfied that no error has been committed in evaluation. Only Smt. Rajni Devi had committed less than 10% mistakes and was the only one who qualified the stenography test along with the type test. Thus, Smt. Rajni Devi was rightly selected and appointed after relaxing the requirement of length of service. It is not in dispute that the Chief Justice had the powers to relax the requirement of length of service. Such a power

was indeed exercised in the interest of the Institution and not to favour an individual.

15. It was next contended on behalf of the petitioners that the advertisement dated 18.09.2010 (Annexure P-1) and the consequent appointment of respondents No. 2 to 10, is illegal for the following reasons:-

(i) While issuing advertisement dated 18.9.2010, the High Court should have first taken recourse to mode (a) as prescribed in the Schedule referred to in Rule 5 of 2003 Rules.

(ii) Restricting mode (d) alone as prescribed in the 2003 Rules to employees of the High Court and the subordinate Courts was illegal.

(iii) Out of the 92 candidates, those at serial nos.78 to 80 had submitted unattested certificates and, therefore, were ineligible to apply;

(iv) Candidate Nos.81 to 91 had submitted their applications after the cut-off date and the same should have been rejected. Yet, respondents No.7 and 8 (who were the candidates at serial Nos.81 to 91) were appointed;

(v) As per the advertisement, only employees of the High Court or the subordinate Courts could apply but the candidature of applicant No.92, who was an employee of the Himachal Pradesh State Consumer Disputes Redressal Commission was also accepted. He was subsequently appointed and is respondent No.5 in the writ petition.

(vi) The appointment of respondent No.10 is illegal because he was appointed by way of lateral transfer from amongst employees of the erstwhile State Administrative Tribunal. The appointment was contrary to the advertisement.

16. The above arguments were strenuously rebutted by learned

counsel for the respondents by reference to the record and various judgments, which are being explained in the succeeding paragraphs while dealing with the respective arguments.

Contentions (i) and (ii)

17. We have referred to the original record in the preceding paragraphs. It is clear from perusal of the same that the modes (a) and (b) had been exhausted before the advertisement dated 18.9.2010, was issued. Modes (c) and (d) were not adopted because past experience had shown that the said modes did not yield good material. Therefore, the mode of direct recruitment alone was left to be adopted and it was restricted to employees of the High Court and subordinate courts only. The petitioners are all employees of the High Court. They cannot raise any grievance against the mode adopted by respondent No.1. Only the persons working in Government offices or the general public could have raised such a grievance. Further, the petitioners are estopped from challenging the selection process after having participated in the same more so when no prejudice was caused to them.

18. We may cite a Division Bench decision of this Court in **Mohinder Pal Singh vs. Punjab State Electricity Board, 1994 (2) SLR 438**, which holds that direct recruitment can be made from amongst in-service candidates only. This judgment fully applies to the facts of the present case. The arguments of the petitioners' counsel are thus without any merit and are rejected.

Contention (iii)

19. This contention need not detain us for long. Applicants, who had submitted unattested certificates, have not been selected and, therefore,

such a grievance cannot be raised and is rejected outrightly.

Contention (iv)

20. Respondents No. 7 and 8 were employees of the subordinate Courts and had submitted their applications before the cut-off date to the concerned District Judge as they applied through proper channel. Their service rules do not permit them to submit applications directly to the High Court. Delay, if any, was only on account of the time spent in transmitting their applications by the District Judge to the High Court. Thus, there is no illegality in accepting the applications of respondents No. 7 and 8.

Contention (v)

21. So far as the appointment of respondent No.5 is concerned, the petitioners have no *locus standi* to challenge the same. Only aspirants from the general public could have challenged his appointment. Moreover, a reference to the record reveals that respondent No.5 was permitted to compete by the Chief Justice in the interest of selecting the best possible candidates and such a decision was taken in exercise of the power vested under Article 229 of the Constitution of India. The only irregularity to be attributed is the non-issuance of a corrigendum so as to enable other similarly placed candidates to apply. As observed earlier, such a plea cannot be taken by the petitioners who were given and have availed the opportunity to compete for the advertised posts.

Contention (vi)

22. The last plea taken on behalf of the petitioners is to be dealt with reference to the 2010 Rules reproduced herein-above, which do suggest that employees of the abolished Himachal Pradesh State Administrative Tribunal, form part of the establishment of the High Court.

The Chief Justice of the High Court has the power to transfer such an employee to any other post in exercise of powers conferred on him by Rule 13 of 2010 Rules. Rule 11 of the said Rules empowers the Chief Justice to deal with employees of abolished State Administrative Tribunal in the manner as he deems fit. Thus, it is clear that respondent No.10 was appointed by way of transfer and not pursuant to the advertisement dated 18.9.2010. The same is also borne out from his letter of appointment dated 22.10.2010. Further, the record reveals that only 8 persons were appointed pursuant to the advertisement dated 18.9.2010 and, thus, one post was available for appointment of respondent No.10 by way of transfer. The last contention is also thus devoid of any merit.

23. For the reasons stated above, we do not find any merit in the writ petitions and the same are accordingly dismissed, however, without any order as to costs.

(SUDHIR MITTAL)
JUDGE

(SURYA KANT)
JUDGE

August 08, 2017
poonam

Whether speaking/Reasoned **Yes**

Whether Reportable **Yes**