IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1515 of 2019 a/w CWP No. 4502 of 2020 and CWPOA No. 6741 of 2020
Reserved on: 04.11.2020
Decided on: 12. 11.2020.

1. **CWP No. 1515 of 2019**

Parkash Chand ...Petitioner.

Versus

State of H.P. and others ....Respondents.

2. **CWP No.4502 of 2020**

Dharam Singh ..Petitioner

Versus

State of H.P. and others ...Respondents.

3.**CWPOA No. 6741 of 2020**

Parkash Chand ...Petitioner

Versus

State of H.P. and others ...Respondents.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting? [1] Yes

For the Petitioner(s) : Ms. Archana Dutt, Advocate, for the petitioner(s) in CWP No. 1515 of 2019 & CWPOA No. 6741 of 2020.

For the Respondents: Mr. Kul Bhushan Khajuria, Advocate, for the petitioner in CWP No. 4502 of 2020.

Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur, Mr. Shiv Pal Manhans, Addl. A.Gs., Mr. Bhupinder Thakur, Ms. Seema Sharma and Mr. Yudhvir Thakur, Dy. A.Gs.

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

Justice Tarlok Singh Chauhan, J.

Aggrieved by non-consideration of the candidature for the post of Forest Guard under 10% quota kept for Class-IV employees as per the Recruitment and Promotion Rules notified vide notification dated 20.09.2014, the petitioner Parkash Chand preferred Original Application No. 1756 of 2019(now registered as CWPOA No. 6741 of 2020) before the erstwhile H.P. State Administrative Tribunal (for short 'Tribunal'), for the grant of following substantive reliefs:

> *i) That the respondents may kindly be directed to promote the applicant to the post of Forest Guard.*
> *ii) That the respondents may kindly be directed to grant promotion as Forest Guard from the date his junior Sh.Dinesh Kumar is promoted as Forest Guard with all consequential benefits.*
> *Iii) That the respondents may kindly be directed to grant seniority to the applicant from the date applicant is granted work charge status."*

2. However, since no interim relief was granted by the Tribunal, the petitioner Parkash Chand approached this Court by filing fresh petition being CWP No. 1515 of 2019 wherein he then claimed the following reliefs:

i) That the respondents may kindly be directed to promote the petitioner to the post of Forest Guard.

ii) That the respondents may kindly be directed to grant promotion to the petitioner as Forest Guard from the date his junior Sh.Dinesh Kumar is promoted as Forest Guard with all consequential benefits.

Iii) That the respondents may kindly be directed to grant seniority to the petitioner from the date the petitioner has been granted work charge status."

3. This Court vide order dated 11.07.2019 passed interim orders in favour of the petitioner by directing the respondents to consider his case also in the DPC provided he falls within the zone of consideration.

4. Since the results of the selection were not being declared, the petitioner in the third petition Dharam Singh then filed petition being CWP No. 4502 of 2020 for the grant of following substantive reliefs:

I) That in view of the facts and circumstances mentioned hereinabove in this writ petition, the writ petition may kindly be allowed and the respondent No.3 may kindly be directed to declare the result of written test which were held on 12.7.2019 for the post of Forest Guard amongst the Class-IV under 10% quota.

ii) That the respondent department further may kindly be directed to make the appointment of Forest Guard on the basis of the written test against 05 notified posts."

5. From the aforesaid narration of facts, it would be noticed that insofar as the petition filed by Dharam Singh case is concerned, the same is not directly dependent upon the outcome of the two cases filed by the petitioner Parkash Chand because in any event the results have to be declared.

6. Now, adverting to the claims of petitioner Parkash Chand, it would be noticed that he was engaged as Forest Worker on daily wage basis in Forest Department w.e.f. January, 1990 and thereafter his services were regularised as Chowkidar w.e.f. 15.05.2003.

7. In the Recruitment and Promotion Rules, 2003, Rules 10 and 11 provide 90% by way of direct recruitment and 10% by way of promotion amongst the Class-IV employees of Forest Department, who were matriculate with five years services. It is apt to reproduce Rules 10 and 11 which read as under:

"10. Method of recruitment whether by direct recruitment or by promotion, deputation, transfer and the percentage of posts to be filled in by various methods.	i) 90% by direct recruitment ii) 10% by promotion.

11. In case the recruitment by promotion, deputation, transfer, grade from which promotion/ deputation/transfer is to be made.	By promotion from amongst Class-IV employees of Forest Department who are Matriculate with five years or Middle pass with ten years regular service or regular combined with continuous adhoc service in the grade respectively. Provided that the promotion shall be made on the basis of limited competitive test.

8. It is not in dispute that these Rules were thereafter amended in the year 2014 vide notification dated 20.9.2014 and now the eligibility for the post of Forest Guard in terms of Rules 10 and 11 of the Recruitment and Promotion Rules, is as under:

"10. Method(s) of recruitment whether by direct recruitment or by promotion, deputation, secondment, transfer and the percentage of post(s) to be filled in by various methods.	i) 90% by direct recruitment on a regular basis or by recruitment on contract basis, as the case may be. ii) 10% by promotion on the basis of Limited Competitive Test.
11. In case of recruitment by promotion, deputation, transfer, grade from which promotion/deputation/ transfer is to be made.	By promotion from amongst Class-IV officials i.e. Resin Watcher, Timber Watcher, Depot Watcher, Malies, Sweepers, Peons, Chowkidars, Dak Runners and Forest Workers possessing the recognized 'Matric/10+2 or its equivalent qualification' with 05 (five) years regular service or regular combined with continuous adhoc service, if any, in the grade. Provided that a Class-IV official possessing 'Matric' qualification shall have to acquire the recognized qualification of 10+2 within a period of 03 (three) years. If the candidate fails to

	acquire the 10+2 qualification by 31.12.2017, then he/she shall be reverted to the parent Class-IV post. Provided that the above proviso shall not render such Class-IV officials having qualification of Matric or its equivalent, ineligible for promotion to the post of Forest Guard against 10% quota, who were in the cadre of Class-IV after attaining the age of 50 years.

9. The grievance of the petitioner Parkash Chand is that he has illegally not been considered for promotion to the post of Forest Guard only because he is matriculate, whereas, as per the Rules, he can acquire the qualification within three years and moreover, the respondents cannot deny the petitioner's promotion on the basis of amended Rules.

10. This petitioner further claimed that he was fully eligible for promotion in the year 2012 when there was no amendment in the Recruitment and Promotion Rules and only matriculates were eligible for promotion. Now, therefore the impugned action of the respondents ignoring the candidature of the petitioner is wrong and illegal and the petitioner deserves to be promoted as Forest Guard, as he is senior to one Dinesh Kumar.

11. We have heard learned counsel for the parties and have gone through the material available on records.

12. At the outset, it needs to be observed that in **P.U. Joshi and others** vs. **Accountant General, Ahmadabad and others (2003) 2 SCC 632),** the Hon'ble Supreme Court held as under:

> *"10……Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State.*
>
> *Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time,as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into*

more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

13. In **Official Liquidator** vs. **Dayanand and others (2008) 10 SCC 1),** the Hon'ble Supreme Court held as under:

"59. The creation and abolition of posts, formation and structuring/restricting of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying

down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by malafides."

14. In **Chandigarh Administration through the Director Public Instructions (Colleges) Chandigarh** vs. **Usha Kheterpal Wale and others (2011) 9 SCC 645)**, the Hon'ble Supreme Court held as under:

"22. *It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. (See J. Ranga Swamy v. Govt. of A.P. and P.U. Joshi v.*

Accountant General). In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Phd is unreasonable."

15. In **State of Gujarat and others** vs. **Arvindkumar T. Tiwari and another (2012) 9 SCC 545**), the Hon'ble Supreme Court held as under:

"10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the

Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: State of Haryana v. Subhash Chandra Marwaha, J.C. Yadav v. State of Haryana, and Ashok Kumar Uppal v. State of J & K.)

11. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. & Anr. v. Dharam Bir, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under: (SCC p. 175, para 31)

> *"31..... The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution."*

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial

review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion,unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of 'fair play', 'good conscious' and 'equity'. (Vide: State of J & K v. Shiv Ram Sharma and Praveen Singh v. State of Punjab.)

14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be

enforced through court. (See: Prit Singh v. S.K. Mangal and Pramod Kumar v. U.P. Secondary Education Services Commission.)"

16. Adverting to the facts, it would be noticed that it is Rule of 2014 that governs the field with respect to the promotion to be made under 10% quota by way of promotion from Class-IV employees to the post of Forest Guard in the Forest Department.

17. Amended Rules 10 & 11 of the Recruitment and Promotion Rules, provide 90% by direct recruitment and 10% by promotion on the basis of limited competitive test amongst Class-IV officials i.e. Resin Watcher, Timber Watcher, Depot Watcher, Malies, Sweepers, Peons, Chowkidars, Dak Runners and Forest Workers possessing the recognized Matric/10+2 or its equivalent qualification with 05 (five) years regular service or regular combined with continuous adhoc service, if any, in the grade.

18. It is the case of petitioner Parkash Chand himself that he is simply matriculate and has not acquired 10+2 qualification within three years or upto the cut off date i.e. 31.12.2017 and is therefore not entitled to be considered much less promoted to the post of Forest Guard.

19. In view of the aforesaid discussions and for the reasons stated hereinabove, we find no merit in the petitions filed by the petitioner Parkash Chand being CWP No. 1515 of 2019 and CWPOA No. 6741 of 2020 and the same are dismissed.

20. Now that the petition filed filed by the petitioner Dharam Singh, being CWP No. 4502 of 2020, there is no legal impediment in declaring the result. Accordingly, the petition filed by petitioner Dharam Singh, being CWP No. 4205 of 2020, is ordered to be allowed and the respondents are directed to declare the result of the petitioner.

21. Since the result of petitioner Dharam Singh has not been declared for no fault on his part, therefore, the petitioner shall be entitled for all benefits except monetary benefits from the date of declaration of the results of similarly situated persons.

22. The petitions stand disposed of in the aforesaid terms, so also the pending application(s), if any.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

12th November, 2020.
(GR)