

K.S. YADAV

v.

STATE OF HIMACHAL PRADESH AND ORS.

NOVEMBER 28, 1997

[SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

Service law—Recruitment and Promotion Rules for Class-II posts (Gazetted) in the School and Inspection cadre, 1980 (Himachal Pradesh)—Promotion from Non Gazetted Posts of Headmasters/Headmistresses of Govt. High School and lecturers of Higher Secondary Schools to Class II (Gazetted) Posts—Promotional Posts—Availability of—Held, until the promotional posts become vacant they are not available for promotion from the feeder category—Reversion and fresh promotion not provided for in the Recruitment Rules of 1980.

Promotion of the Headmasters / Headmistresses of Govt. High Schools and lecturers of Higher Secondary Schools to Class II (Gazetted) posts in the school and Inspection Cadre of the State of Himachal Pradesh are governed by the Recruitment and Promotion Rules for class II posts (Gazetted) in the School and Inspection Cadre, 1980 (Himachal Pradesh), (the Recruitment Rules of 1980). As per the Rules of 1980 the promotional posts are all Class II (Gazetted) Posts. The feeder category for these promotional posts is non-gazetted Headmasters/Headmistresses of Govt. High Schools carrying pay scale of Rs. 300-600 and lecturers of Higher Secondary Schools in the pay scale of Rs. 300-600 with five years of service in the grade. The posts which are available as promotional posts are to be distributed between these two feeder categories in the ratio of 55 per cent for non-gazetted Headmasters/Headmistresses of Govt. High Schools and 45 per cent for Lecturers of Higher Secondary schools.

At the time when the Recruitment Rules of 1980 came into force there were three sets of pay scales in the cadre of Headmasters/Headmistresses: (i) 700-1100 (gazetted); (ii) 400-800 (gazetted) and (iii) 300-600 (non-gazetted). The cadre strength of the class II (gazetted) posts in the School and the Inspection Cadre of the Education Department existing prior to the coming into force of the Recruitment Rules of 1980 was as follows: (1) 15 percent of the posts in the pay scale of Rs. 700-1100 amounting to 92 posts (2) 25 percent of the posts in the pay scale of Rs 400-800 amounting to 142

A posts. These 234 posts in the pay scale of Rs. 700-1100 and Rs. 400-800 were filled over the years between 1966 and 1980 long before the coming into force of the Recruitment Rules of 1980.

B The number of promotional posts available, as per the Recruitment Rules of 1980 were 237 posts in the pay scale of Rs. 400-800 and 142 posts in the pay scale of Rs. 700-1100 making a total of 379 posts. The dispute arose with regard to 234 posts which were held in the pay scale of Rs 400-800 or Rs. 700-1100 by Headmasters of High Schools at the time when the Recruitment Rules of 1980 came into force. The case of the appellant was that these 234 occupied posts of Headmasters/Headmistresses in Class II
C (Gazetted) category should also be treated as available for promotion immediately after the coming into force of Rules of 1980. It was further the case that the directions of the Supreme Court in the case of the *Sunita Sharma and Ors. v. State of Himachal Pradesh & Ors.*, [1993] Supp. 4 SCC 686 have not been carried out. The appellant moved the Himachal Pradesh
D Administrative Tribunal which by its order dated 6.7.1994 held that until the posts became vacant, they were not available for promotion from the feeder category and further that there has been no violation of the directions given in the case of *Sunita Sharma*. Aggrieved, the appellant preferred this appeal.

E On behalf of the appellant, it was contended that on 7/6/1980 when the new Recruitment Rules of 1980 come into force the posts of Headmasters/Headmistresses which were Gazetted Posts were, for the first time, put in the category of promotional posts available to Non Gazetted Headmasters/Headmistresses of High Schools as also to Lecturers of Higher Secondary Schools. Prior to this, the Headmasters who were originally in lower Pay Scale were never promoted to these Class II (Gazetted Posts). They were
F merely given the higher pay scales and Gazetted status.

G On behalf of the respondents it was contended that since the disputed 234 posts were already filled at the time when 1980 Recruitment Rules came into force, the persons occupying these posts could not be reverted and the posts could not be filled afresh by application of the roster.

Dismissing the appeal, the Court

H HELD : 1. The Tribunal was right in holding that there has been no violation of the directions given by this Court in the case of *Sunita Sharma*. The School Lecturers are eligible for promotion to the Gazetted

posts of Headmasters/Headmistresses of High Schools and for other promotional posts enumerated therein and they are being so promoted in accordance with the 1980 Rules. Their contention that 234 occupied posts of Headmasters/Headmistresses in the Class II (Gazetted) category should also be treated as available for promotion immediately after the coming into force of 1980 Rules cannot be accepted. The Tribunal has rightly held that until these posts become vacant they are not available for promotion from the feeder category. [592-F-G]

2. On 7.6.1980 when the new Recruitment Rules of 1980 came into force, the posts of Headmasters/Headmistresses which were gazetted posts were, for the first time, put in the category of promotional posts available to non-gazetted Headmasters/Headmistresses of High Schools as also to lecturers of Higher Secondary Schools. The existing posts of Headmasters/Headmistresses in class II (Gazetted) posts were also included in the number of 379 posts which were available for promotion. If the posts of Headmasters/Headmistresses of High Schools in Gazetted Class II category were already occupied, there would be no question of any promotion to these occupied posts until they become vacant. The Recruitment Rules of 1980 do not provide for reversion of Headmasters/Headmistresses occupying Class II (Gazetted) posts and their fresh promotion to the same posts in 1980. [591-F-H]

Sunita Sharma v. State of Himachal Pradesh, [1993] Supp. 4 SCC 686, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6932 of 1995.

From the Judgment and Order dated 6.7.94 of the Himachal Pradesh State Administrative Tribunal at Shimla in O.A.No. 2278 of 1993.

Rakesh Dwivedi, Rajesh Kumar, Ms. Smita Shanker and Rajiv Dutta for the Appellant.

Shiv Pujan Singh, Tufail A.Khan and T. Sridharan for the Respondents.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR. J. This appeal is from an order of the Himachal Pradesh Administrative Tribunal dated 6th of July, 1994. It pertains to the promotion of Headmasters/Headmistresses of Government High Schools and Lecturers of Higher Secondary Schools to Class II (Gazetted) posts in the School and Inspection cadre of the State of Himachal Pradesh under the

A Recruitment and Promotion Rules of 1980.

B Prior to the coming into force of the Recruitment and Promotion Rules for Class II posts (Gazetted) in the School and Inspection cadre (hereinafter referred to as 'the Recruitment Rules of 1980') in the Department of Education, Himachal Pradesh, which Rules came into force on 7.6.1980, the relevant Rules in force were the Rules of 1968. It seems that there were irregularities in complying with the Rules of 1968. After the Recruitment Rules of 1980 came into force, these Rules were also not being properly implemented. The Education Department, State of Himachal Pradesh had, from time to time, after 1980, entered into various agreements with Headmasters/Headmistresses of Government High Schools or Lecturers of Higher Secondary Schools, and/or other employees for the purpose of granting them promotions. The disputes ultimately came before the Supreme Court in the case of *Sunita Sharma & Ors. v. The State of Himachal Pradesh & Ors.*, [1993] Supp. 4 SCC 686. This Court observed that the State Government's action in keeping the said Recruitment Rules of 1980 in cold storage, and with no regard to them entering into *ad hoc* agreements with its employees from time to time, was unjustifiable and had resulted in the disputes between the Headmasters and School Lecturers (*inter alia*) with regard to promotional posts coming before it. The Court observed that the Recruitment Rules of 1980 provide for promotion to the class II posts from the feeder posts of Headmasters and School Lecturers according to a roster system which gives 55 per cent of promotional posts to Headmasters and 45 per cent of the promotional posts to School Lecturers. It directed the enforcement of Recruitment Rules of 1980 for promotions to Class II posts and for further promotions thereafter in the cadre. It directed that all agreements entered into by the State Government after 1980 with the employees were quashed except for the creation of additional posts of Deputy Director of Education from time to time. It also directed that the promotions should be made in accordance with the Rules of 1980. On promotion to class II posts, there should be prepared a common seniority list of promotees for the purpose of further promotion in the cadre. It also gave certain other directions including directions for protection of the salary received and so on.

G It is the grievance of the School Lecturers in the present proceeding that the directions so given by this Court in the case of *Sunita Sharma* (supra) have not been carried out. This contention has been negated by the Tribunal after examining the steps taken by the State of Himachal Pradesh pursuant to the directions given in the case of *Sunita Sharma*, (supra). Being dissatisfied with this finding of the Tribunal the appellant has filed the

present appeal.

This Court in the case of *Sunita Sharma* (supra) has not disturbed the position prevailing at the time when the said Recruitment Rules of 1980 came into force on 7.6.1980 on the ground that it would be undesirable to upset a position which was been settled a long time ago. It has directed proper implementation of the Recruitment Rules of 1980.

Under the said recruitment Rules 1980 the promotional posts which are clubbed together are those of Assistant Director of Education, District Education officer, Deputy District Education Officer, Audio Visual Education Officer, Evaluation Officer, Officer on Special Duty, Principal Basic Training School, Principal Higher Secondary School, Counsellor Incharge, State Bureau of Vocational and Educational Guidance and Headmasters/Headmistresses of High School (Gazetted). The number of promotional posts which are available are also enumerated. In this category there are 237 posts in the pay scale of Rs. 400-800 and 142 posts in the pay scale of Rs. 700-1100 making a total of 379 posts. It is further stated that the number of posts in each of these scales shall be as may be fixed in the cadre strength on percentage basis from time to time. The promotional posts are all class II (Gazetted) posts. Since the posts of Headmasters/Headmistresses of High Schools are promotional posts, these posts are Class II (Gazetted) posts carrying the pay scale of Rs. 400-800 or Rs. 700-1100.

The feeder category for these posts is non-gazetted Headmasters/Headmistresses of Government High Schools carrying pay scale of Rs. 300-600 and Lecturers of Higher Secondary Schools with five years of service in the grade. The latter are in the same pay scale of Rs. 300-600. The posts which are available as promotional posts are to be distributed between these two feeder categories in the ratio of 55 per cent for non-gazetted Headmasters/Headmistresses of Government High Schools and 45 per cent for Lecturers of Higher Secondary Schools. There is also a roster provided in the said Rules for the allocation of posts to both these feeder categories. Note 1 and 2 at the bottom at the roster state as follows :-

Note 1 : Since the pay scales of Rs. 400-900 and Rs. 700-1100 have been determined as a result of revision of pay scales w.e.f. 1.11.66 onwards, the Headmasters/Headmistresses of State and provincialised Cadres will get the above scales on the basis of their position in the final seniority list as a revised pay scales.

Note 2 : As regards School Lecturers, it will be a promotion in Rs. 400-800 (gazetted) for all intents and purposes. Provided that officers on

A their initial appointment shall be placed in the scale of Rs. 400-800 and thereafter the grant of the higher pay scale of Rs. 700-1100 would depend upon availability of posts on percentage basis (as indicated against Col. 2 and seniority and fitness etc.)

B Provided further that the senior most incumbents in the cadre shall be posted as Assistant Director of Education/District Education Officer/Officer on Special Duty.”

As a result of these Rules the School Lecturers were given the avenue of promotion as Headmasters/Headmistresses in Government Schools (Gazetted).

C The dispute in the present case relates to 234 posts which were held in the pay scale of Rs. 400-800 or Rs. 700-1100 by Headmasters of High Schools at the time when the Recruitment Rules of 1980 came into force. According to the appellants these 234 posts which form a part of 379 posts which are enumerated as promotional posts, should be filled in afresh by promotion in the manner prescribed in the roster; while the respondents contend that since these 234 posts were already filled at the time when 1980 recruitment Rules came into force, the persons occupying these posts could not be reverted and the posts filled afresh by the application of the roster. The contention of the respondents has been rightly accepted by the Tribunal.

E Prior to the coming into force of the Recruitment Rules of 1980 the Government of Himachal Pradesh, Education Department by order dated 19.1.78 had fixed the cadre strengths of the School and the Inspection cadre of the Education Department as on 1st of November 1977 as under :-

	Permanent	Temporary	Total
F 15% of the posts in the pay scale of Rs.700-1100	85	-	85 (Gazetted)
(2) 25% of the posts in the pay scale of Rs. 400-800	142	-	142 (Gazetted)
G (3) 60% of the posts in the pay scale of Rs. 300-600	219	120	339 (Non-Gazetted)
Total	446	120	566

Under Clause 2 of the order it was stated as follows :-

H “The Governor, Himachal Pradesh, is further pleased to declare all the

posts in the pay-scale of Rs. 400-800 borne on the School and Inspection Cadre, as indicated above as Gazetted.” A

As a result of this order 25 per cent of the posts in the pay scale of Rs. 400-800 amounting to 142 posts became gazetted posts in Class II. Similarly, 15 per cent posts in the pay scale of Rs. 700-1100 were also gazetted posts. The persons who were then occupying the posts of Headmasters in this 25 per cent category in the pay scale of Rs. 400-800 came to occupy class II Gazetted posts. It is an accepted position that on the date when the 1980 Recruitment Rules came into force, 142 posts in the pay scale of Rs. 400-800 and 92 posts in the pay scale of Rs. 700-1100 were in the gazetted Class II category and were occupied by Headmasters/Headmistresses of High Schools. Thus in the cadre of Headmasters/Headmistresses there were three sets of pay scales : (1) 700-1100, (2) 400-800, and (3) 300-600, the grant of the pay scales depending upon seniority and the prescribed percentage of posts. This was the position when the Recruitment Rules of 1980 came into force. B C

The appellant contends that Headmasters who were originally in a lower pay scale were never *promoted* to these Class II (Gazetted) posts. They were merely given the higher pay scale and gazetted status. The appellant has pointed out that prior to the 1980 Rules coming into force, the Government itself had not treated the granting of these higher pay scales and gazetted status as promotions. He pointed out, for example, a letter dated 14th July, 1985 from the Joint Secretary (Personnel) addressed to the General Secretary, Himachal Pradesh and Central Scheduled Castes/Tribes Government and Semi-Government Employees Association, Mandi, Himachal Pradesh, in which it is stated that the grant of revised scales to the incumbents of the posts have not been treated as promotion. D E

However, on 7.6.1980 when the new Recruitment Rules of 1980 came into force, the posts of Headmasters/Headmistresses which were Gazetted posts were, for the first time, put in the category of promotional posts available to non-gazetted Headmasters/Headmistresses of High Schools as also to Lecturers of Higher Secondary Schools. The existing posts of Headmasters/Headmistresses in Class II (Gazetted) posts were also included in the number of 379 posts which were available for promotion. Therefore, at the time when the Rules came into force for the purposes of granting fresh promotions under the Rules it was necessary to examine which of these 379 posts were vacant and were available for promotion to the feeder cadres. If the posts of Headmasters/Headmistresses of High School in Gazetted Class II category were already occupied, there would be no question of any promotion to these occupied posts until they became vacant. The recruitment Rules of 1980 do F G H

A not provide for reversion of Headmasters/Headmistresses occupying Class II (Gazetted) posts and their fresh promotion to the same posts in 1980.

B The respondents have set out a table showing when these posts came to be filled. Out of these 142 posts in the pay scale of Rs. 400-800 and 92 posts in the pay scale of Rs. 700-1100, 37 posts had been filled as far back as in 1966 while 72 posts were filled during the period 1975 to 1980. We need not set out the entire year-wise table which merely indicates that these 234 posts were filled over the years between 1966 and 1980, mostly long prior to the coming into force of the Recruitment Rules of 1980. The Tribunal has rightly held that until these posts become vacant they are not available for promotion from the feeder category.

C In the feeder category, for the first time, School Lecturers have been included along with non-gazetted Headmasters/Headmistresses because both these categories had the same pay scale of Rs. 300-600 or its revised equivalent. The order of this Court in *Sunita Sharma's* case (supra) does not set aside what had happened prior to the coming into force of the Recruitment Rules of 1980. It directs implementation of the Recruitment Rules of 1980 from the date when they came into force and has directed that all subsequent agreements between the State and its employees must be cancelled. An order has accordingly been issued by the State of Himachal Pradesh cancelling all agreements and withdrawing all orders issued after 7.6.1980. In the available promotional posts, promotions have been made in accordance with the roster prescribed. It has also pointed out that a common seniority list in the promotional Class II cadre has been prepared for the purposes of further promotions.

D The Tribunal was, therefore, right in holding that there has been no violation of the directions given by this court in the case of *Sunita Sharma* (supra). The School Lecturers are eligible for promotion to the Gazetted posts of Headmasters/Headmistresses of High Schools and for other promotional posts enumerated there and they are being so promoted in accordance with the 1980 Rules. Their contention that 234 occupied posts of Headmasters/Headmistresses in Class II (Gazetted) category should also be treated as available for promotion immediately after the coming into force in 1980 Rules cannot be accepted. These posts are certainly available for promotion under the 1980 Rules when a vacancy occurs in those posts after 7.6.1980.

E In the premises the appeal is dismissed. There will, however, be no order as to costs.

H M.P.

Appeal dismissed.