

(2011) 11 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 63 of 2004 CMP No. 96 of 2004

Ab. Rashid Kaloo

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Citation : (2011) 4 JKJ 129

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, Judge

1. Vide Order No. 1912 DSEK of 1998 dated 14th August, 1989, issued by respondent no. 2, the petitioner was adjusted as Chief Librarian in

his own pay and grade with charge allowance as admissible under rules against the vacant post of Chief Librarian in Education Department. The

order was made subject to clearance by the Departmental Promotion Committee.

2. It is claim of the petitioner that his case was considered by the Departmental Promotion Committee and the action taken by the Director in terms

of aforementioned order was confirmed. Petitioner is aggrieved of the Order No. 6005 DSEK of 2003 dated 29th December, 2003, whereunder

he was transferred from SIE, Srinagar to Higher Secondry School, Shopian on the available post of librarian. The petitioner challenged the same,

inter-allia, on the ground that he having been appointed by way of promotion on the post of Chief Librarian, the impugned order would result in his

reversion.

3. The petitioner, filed representations seeking benefits of grade attached to the post of Chief Librarian. While the matter was pending before the

authorities and also before this court, it is submitted at the Bar that the petitioner retired on superannuation rendering the writ petition infructuous to the extent challenge is thrown to order No. 6005 DSEK of 2003 dated 29th December, 2003.

4. Learned counsel for the petitioner submitted that the petitioner was appointed by way of promotion on the post of Chief Librarian which was confirmed by the Departmental Promotion Committee, but nothing is brought on writ record to indicate that the recommendations of the

Departmental Promotion Committee resulted in issuance of the government order.

5. Respondents in their reply affidavit have stated that the claim of the petitioner for his appointment by way of promotion on the post of Chief

Librarian will be considered by the competent authority and appropriate orders will be passed in accordance with the law.

7. The petitioner has now retired on superannuation. The only claim which survives for consideration is, as to whether he was appointed by way of

promotion on the post of Chief Librarian and if the answer is affirmative, then direction is to be issued to the respondents to give all the service

benefits to the petitioner which are attached to the post of Chief Librarian. After the Departmental Promotion Committee of the School Education

Department, Kashmir, met on 7th November, 1998, it confirmed the action of the Director, School Education for placing the petitioner as

Incharge Chief Librarian. It appears that no government order has been issued to give effect to the recommendation made by the Departmental

Promotion Committee. Untill such time the recommendations of the Departmental Promotion Committee are accepted by issuance of government

order, no right would flow from mere recommendations. The respondents in their reply affidavit have stated that the petitioner continued to work

on the post of Chief Librarian.

8. A duty is cast on the respondents to consider the claim of the petitioner in accordance with the rules and take a decision thereon within some

reasonable time. The respondents have failed to consider the claim and take a decision in accordance with the rules.

9. The petitioner, who has now retired on superannuation and has worked on the post of Chief Librarian till date he retired on superannuation,

would call for issuance of direction to the respondents to consider his claim for

being appointed by way of promotion on the post of Chief

Librarian from the date he would be found entitled to such promotion.

10. For the above stated reasons, this petition is disposed of in the following manner:-

The respondents are directed to consider and take a decision on the recommendation of the Departmental Promotion Committee dated 7th

November, 1998 and pass appropriate orders in accordance with rules. In the event, the recommendation of the Departmental Promotion

Committee dated 7th November, 1998 are not acted upon, the respondents to convene the Departmental Promotion Committee for consideration

of the case of the petitioner for being appointed by way of promotion on the post of Chief Librarian and thereafter the competent authority will

pass appropriate orders in accordance with rules.

11. The respondents to convene the Departmental Promotional Committee within a period of two weeks from the date copy of this order is

served, the competent authority thereafter will pass orders within a period of two weeks in accordance with rules. In the event, the exercise

aforementioned resulted in regular promotion of the petitioner on the post of Chief Librarian, then the respondents to take steps for payment of

retiral benefits to the petitioner on the basis of such promotion.

12. Disposed of alongwith connected CMP(s).