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**(2019) 12 J&K CK 0002**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 1624 Of 2017, MP No. 01 Of 2017

Abdul Majid Tak

APPELLANT

Vs

State Of Jammu And Kashmir And Ors

RESPONDENT

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**Date of Decision :** 02-12-2019

**Acts Referred:**

**Citation :** (2019) 12 J&K CK 0002

**Hon'ble Judges :** Ali Mohammad Magrey, J

**Bench :** Single Bench

**Advocate :** Bikramadeep Singh, Azhar-ul-Amin, Bhat Fayaz Ahmad

**Final Decision :** Disposed Of

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## **Judgement**

Ali Mohammad Magrey, J

1. Through the medium of the instant petition, the petitioner has implored for the grant of following relief(s) in his favour:

"A writ, order or direction including one in the nature of Certiorari, quashing the impugned orders-Annexures P3, P4, P5, P6 and P7 as also the seniority lists-Annexure P8 and the recommendations-Annexure-P13 so far as the same reflect the respondent No.4 ahead of the petitioner in the order of preference/ seniority.

A writ, order or direction including one in the nature of Mandamus, commanding upon the respondents to treat the respondent No.4 as junior to the petitioner, he being not possessed the requisite qualification of MSc (Zoology) with specialization in Ichthyology and thus a graduate with BSc Medical (Zoology) and refix his dates of promotion to the posts of Inspector, FDO, Assistant Director accordingly in accordance with rules after the petitioner and also consequent promotion to the post of Dy. Director below the petitioner.

A writ, order or direction including one in the nature of Mandamus, commanding upon the respondents to consider and issue the orders of promotion to the post of Dy. Director/ Chief Project Officer in favour of the petitioner w.e.f. 17-7-2014,

ahead of the promotion of respondent No.4 to the post of Dy. Director and grant him all the benefits of pay and grade and allowances alongwith arrears as also seniority w.e.f. the said date.

A writ, order or direction including one in the nature of Prohibition, commanding upon the respondents to forebear from giving effect to the recommendations of respondent No.2 with reference to promotion of respondent No.4 to the post of Dy. Director.

A writ, order or direction including one in the nature of Mandamus, commanding upon the respondents to complete the enquiry/ investigation into the claims of respondent No.4 as being MSc Zoology with specialization in Ichthyology as ordered by respondent No.1."

2. The brief facts leading to the filing of the petition, as come to fore from a reading of the petition itself, are that the petitioner claims that he and respondent No.4 are Officers of the J&K Fisheries Department; substantively holding the posts of Assistant Directors, Fisheries and functioning as Incharge Deputy Directors. It is stated that the petitioner is a well-qualified person having successfully undergone and passed, inter alia, Masters' Degree in Science (MSc) Zoology with specialization in the discipline of Ichthyology through the University of Kashmir way back in the year 1993. By virtue of Fisheries order No. 216 of 1996 dated 1st of February, 1996, the petitioner claims that pursuant to selection conducted by JK SSRB, he came to be appointed as Surveyor in the Fisheries Department in the pay scale of 1400-2600 (unrevised). Besides having successfully completed the period of probation, the petitioner has as well undergone and completed one years' Postgraduate Certificate course in Inland Fisheries Development and Administration at Inland Fisheries Training Centre (CIFE- ICAR), Calcutta. The petitioner's aforesaid appointment order was followed by his placement in the post of Inspector, Fisheries on incharge basis in the year 1997 which was followed by his regular promotion in the said post on the recommendations of the Departmental Promotion Committee vide Fisheries order No. 136 of 1999 dated 8th of January, 1999. By Government Order No. 72-FST of 2004 dated 4th of February, 2004, the petitioner, pending clearance by the Departmental Promotion Committee, was further promoted to the Gazetted post of Fisheries Development Officer on adhoc basis in his own pay and grade which was followed by his order of regularization vide Government Order No. 404-FST of 2013 dated 29th of November, 2013 w.e.f. 1st of April, 2004. The petitioner further proceeds that in terms of Government order No. 131-FST of 2014 dated 1st of April, 2014, on the basis of the recommendations of Public Service Commission/ Departmental Promotion Committee, sanction was accorded to his regularization/ promotion on the post of Assistant Director on substantive basis. The petitioner contends that the said promotion was followed by Government order No. 231-FST of 2014 dated 17th of July, 2014 assigning the charge of the post of Deputy Director/ Chief Project Officer to the petitioner, which position, as per the petitioner, continues to be held by him till date. The

respondent No.4, claiming to have secured Masters' Degree in Zoology (MSc) with specialization of Ichthyology, also appears to have been initially appointed in Jammu Division in the post of Surveyor on 1st of February, 1996. The petitioner pleads that the said respondent, too, was promoted to the post of Inspector alongwith the petitioner vide Fisheries order dated 8th of January, 1999 followed by his promotions to the post of Fisheries Development Officer, Assistant Director (Fisheries) and as Incharge Deputy Director/ CPO. In terms of the aforesaid orders, the respondent No.4 was reflected as senior to the petitioner and the same position was reflected by the respondents in terms of the seniority lists as issued by them from time to time, also specifically reflecting the qualification of respondent No.4 as MSc Zoology (Ichthyology). The petitioner submits that as per his information, the aforesaid appointments/ promotions were made by the respondents in favour of respondent No.4 on his representation of having passed Masters' Degree in Zoology with specialization in Ichthyology and that, in fact, the respondent No.4, in connivance with respondents 1 to 3, appears to have produced the relevant marks certificates purportedly issued by Ch. Charan Singh University, Meerut, evidencing the fact that the respondent No.4 has passed MSc Zoology specialization with name of course-Fish and Fisheries (Gen) and Fish and Fisheries (Applied) during the session 1993-95 under enrolment No. 9213335. It appears that the promotion of the respondent No.4 to the post of Inspector in the year 1997-98 was considered and ordered by the respondent No.3 on the assumption of the said respondent having passed MSc Zoology with specialization in Ichthyology as was represented by him. This has been done by the respondents without considering whether the alleged specialization was specialization in Ichthyology. It is further stated that in connection with the clearance of the promotion of the petitioner and the respondent No.4 on the post of Deputy Director/ CPO, it transpired that the respondent No.4 has undergone and passed Masters' Degree in Zoology with specialization in Entomology from Ch. Charan Singh University, Meerut, in the year 1994 and not in Ichthyology as was fraudulently and mischievously misrepresented by him before the respondent No.3 at the relevant time. The petitioner contends that at the time of his appointment to the post of Surveyor followed by his promotion to the post of Inspector, the respondent No.4, withholding the degree certificate and the relevant statement of marks of MSc Part-II (final) Examination, has produced the statement of marks of Part-I examination of 1993 and a fictitious and manipulated statement of marks of MSc Part-II (final) examination 1995, reflecting his qualification as MSc Zoology specialization with name of the courses as Fish and Fisheries (Gen) and Fish and Fisheries (Applied). It is submitted that in terms of the regulations of the University Grants Commission, being the apex body of all the Universities in India, the course of study of Masters' Degree in any discipline including Zoology with whatever specialization is comprised of two years duration. In the said context, assuming though denying that the respondent No.4 after having genuinely passed MSc Zoology with specialization in Entomology, it is not all comprehensive as to how he could obtain admission for undergoing another specialization in the Third year of the

same Masters' Degree, without obtaining fresh admission/ enrolment as a student of MSc degree course comprised of two years course of study with specialization in the field of Ichthyology. The testimonials reflecting the respondent No.4 as having passed MSc Zoology with specialization in Fish and Fisheries (Gen) and Fish and Fisheries (Applied) ex-facie appear to be obtained through fraud and misrepresentation. In this backdrop, the petitioner submits that in the year 1999 at the time of his promotion to the post of Inspector, the respondent No.4, admittedly, was not possessed of Masters' Degree in Zoology (MSc) with specialization in Ichthyology and, therefore, was required to be treated as having done BSc Zoology and, thus, attaining service of five years in the relevant category and consequential eligibility for promotion to the post of Inspector on 1st of February, 2001, i.e., much after the promotion of the petitioner in the said post on 1st of April, 1999. It is stated that in this behalf the respondent No.4 could not have been granted promotion to the post of Fisheries Development Officer ahead of the petitioner inasmuch as by reckoning his experience on the post of Inspector w.e.f. 1st of February, 2001, he would secure seven years substantive service as Inspector on 1st of February, 2008, much later to the promotion of the petitioner to the post of Fisheries Development Officer granted to him w.e.f. 1st of April, 2004. It is further stated that the respondent No.4 was not at all eligible for such promotion as on 1st of January, 2004 as reflected in Government order dated 29th of November, 2013. The petitioner further submits that the respondent No.4, being junior to the petitioner, could not and cannot be accorded any consideration for his promotion to the post of Deputy Director ahead of the petitioner, however, on the aforesaid assumption of the respondent No.4 having passed the Masters' Degree in Zoology (MSc) with specialization in Ichthyology, the respondent No.2 have accorded consideration for the promotion of respondent No.4 to the post of Deputy Director w.e.f. 17th of July, 2014 as against the petitioner showing his clearance for regularization w.e.f. 1st of November, 2016 vide their recommendations dated 16th of June, 2017 forwarded to respondent No.1. Faced with the above recommendations of the respondent No.2, the petitioner, immediately, claims to have tendered a detailed representation dated 9th of July, 2017 before the respondent No.1 requesting therein for thorough investigation in the matter so as to ascertain the genuineness or otherwise of the claim of respondent No.4 having done MSc Zoology with specialization in the subject of Ichthyology in accordance with rules. It is stated that acting upon the said representation, the respondent No.1, vide communication dated 21st of July, 2017 has directed the respondent No.3 to enquire/ examine the matter and submit detailed/ factual report in the case and to furnish Bachelors/ Masters degrees of the concerned officers including the respondent No.4. It is submitted that despite the aforesaid position obtaining in the matter, the respondents are seeking to issue consequential orders on the recommendations of respondent No.3 in favour of respondent No.4, which is not only illegal, but also prejudicial to the rights and interests of the petitioner. This action in declaring the respondents No.4 as senior to the petitioner, on the part of the official

respondents, is assailed by the petitioner in the instant petition.

3. Objections stand filed on behalf of respondent Nos. 1 to 4.

3.1. The respondent Nos. 1 and 3, in the objections so filed by them, claim that the petition of the petitioner is not maintainable as being premature for the reason that on the representation of the petitioner against the respondent No.4, the department has already initiated an enquiry which is pending. It is contended that the petitioner, on the one hand, is seeking the indulgence of this Court to declare the respondent No.4 as ineligible for the post he is holding and, on the other hand, he has sought a direction for enquiry/ investigation into the eligibility of the respondent No.4 which, in law, is not permissible.

3.2. In his objections, the respondent No.2 submits that as per the minutes of the Departmental Promotion Committee meeting held on 23rd of March, 2017, in the office chambers of Mr S. K. Sharma, Member (Chairman, DPC), the petitioner was cleared as Deputy Director, Fisheries w.e.f. 1st of November, 2016 and that, accordingly, recommendations were forwarded to the concerned Administrative Department, vide Commission's letter dated 16th of June, 2017. On perusal of the eligibility proforma and seniority list issued by the Animal and Sheep Husbandry Department, vide Government order No. 116-ASH of 2016 dated 11th of November, 2016, the respondent No.5 figures at S. No.2 and the petitioner figures at S. No. 3, as such, the petitioner is junior to the respondent No.4. It is contended that at the time of the Departmental Promotion Committee meeting held on 23rd of March, 2017, the regularization of the petitioner was considered in terms of Government order No. 743-Gad of 2007 dated 28th of June, 2007, according to which promotion is to be effected from the date of eligibility, date of vacancy or date of placement, whichever is later and, thus, in his case, the promotion was recommended w.e.f. 1st of November, 2016, i.e., later of the three.

3.3. The respondent No.4 has also filed his objections stating therein that whatever has been done by the official respondents from time to time, including promotions, seniority lists, etc., are based on record strictly in tune with the recruitment rules and that the respondent No.4 has the qualification of post-graduation with specialization of Fish and Fisheries for all practical purposes duly verified from the concerned university.

4. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

5. When this matter was taken up for consideration on motion hearing, i.e., on 17th of August, 2017, while issuing notice to the other side, this Court directed that no promotion in favour of respondent No.4 to the post of Deputy Director, Fisheries, shall be made till final culmination of the enquiry.

6. The petitioner has filed CM No.6339/2019, whereby he has placed certain documents on record, including the communication bearing No. DF/

Adm/2017/5378 dated 27th of October, 2018 issued by the Director, Fisheries, regarding the subject 'Enquiry report on the Court direction passed in writ petition SWP No. 2820/2017 on 18.09.2018 & 1624/2017 on 19.08.2017', operative portion whereof reads thus:

"Now, therefore, in view of the verification reports submitted by the University and the report submitted by the Committee constituted by the Department for the said purpose, it is established beyond any ambiguity that the qualification possessed by respondent No.4 is only M. Sc Zoology with Specialization in Entomology having being awarded to him in the year 1994 by the concerned University under R. No. H668126, Enrolment No: 92133354 and Sr. No: 2077179. The incumbent has been allowed to appear in two specialization paper Fish & Fisheries bearing Roll No. H-665109, M-921335 and passed in the year 1995 while as the said university has already communicated that the university does not conduct any crash course in specialization in Fish and Fisheries to any specialization in Fisheries/ Ichthyology. Therefore, in view of clear assertion of the University the claim of respondent No.4 of having purportedly passed two papers in Fish and Fisheries in 1995 cannot be taken equivalent specialization with Fish and Fisheries in the Degree until rules for same is specified by the concerned University."

7. A bare perusal of the communication aforesaid records reveal that in compliance of the directions of this Court, the Department has constituted a committee vide Fisheries Order No. 330-Fisheries of 2018 dated 20th of October, 2018 to scrutinize/ examine the qualification credentials of respondent No.4 in light of the verification report received from the Ch. Charan Singh University with the rules governing the field. It is also forthcoming that the said committee has, vide its report bearing No. JDF/P/Sgr/2018/1628 dated 25th of October, 2018, opined that the Directorate of Fisheries has genuinely pursued the matter with the concerned University which has time and again furnished dubious, concocted and evasive replies to further drag the matter to the prejudice of genuine incumbents of the Department, moreso, to the interests of the Department. The Committee has further unanimously opined that the matter be settled by the Directorate of Fisheries/ Competent authority in the light of facts and circumstances of the case and verified, established qualification of respondent No.4 as MSC Zoology with specialization in Entomology and that there is no rule known till date of clubbing, substitution, etc. Accordingly, the respondent No.3, having regard to the enquiry report so submitted by the committee, has observed that in view of clear assertion of the University, the claim of respondent No.4 of having purportedly passed two papers in Fish and Fisheries in 1995 cannot be taken equivalent specialization with Fish and Fisheries in the Degree until rules for same is specified by the concerned University.

8. Given the above fact situation obtaining in the matter, since the enquiry has been culminated resulting in certain findings, it is for the respondent Department to accordingly pass necessary consequential orders with respect to the issue

involved in the present petition in keeping with the findings of the enquiry conducted by the Committee so constituted by the respondents as well as the observations made by the Director, Fisheries-respondent No.3 in his communication dated 27th of October, 2018. In absence of any decision taken by the Department on the basis of the findings of the enquiry committee as well as of the Director, Fisheries/ respondent No.3, this Court, at this stage, cannot make any observations as regards the merits of the case which may prejudice the rights and interests of the parties.

9. In the above background, this writ petition, at this stage, is disposed of with a direction to the respondent Nos. 1 and 3 to examine the findings submitted by the enquiry committee vide their communication dated 25th of October, 2018 with reference to the issue involved in the instant petition and, accordingly, pass appropriate consequential orders thereon in accordance with the law and the rules governing the field. Since, the matter has remained pending for almost two years before this Court, therefore, let the aforesaid exercise be concluded by the respondent Nos. 1 and 3 expeditiously, preferably within a period of one month from today. In case any of the party is aggrieved of the decision to be taken by the respondents, the said party shall be at liberty to approach this Court again in appropriate proceedings.

10. Writ petition disposed of as above, alongwith all connected CMs.