
(2014) 10 J&K CK 0030

In the Jammu And Kashmir High Court

Case No : SWP No. 1564 Of 2013, IA No. 4087 Of 2013, IA No. 2501 Of 2013,
SWP No. 480/2001, IA No. 825/2001 and SWP No. 302 Of 2009

Ali Mohd. Rawat

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2015) 2 JKJ 224

Hon'ble Judges : Hasnain Massodi, J.

Bench : Single Bench

Advocate : M.A. Qayoom and Tufail, for the Appellant; S.A. Naik, Senior AAG,
S.R. Hussain and Hashim Hussain, for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.â?"Petitioner is an employee of Jammu and Kashmir Legislative Council, Secretariat and so is respondent No. 4 in the present

petition. Petitioner claims to have been initially engaged on 28th October 1980, as Book Lifter in the Secretariat. He during last 34 years has gone

up the promotion ladder and at present holds the post of Deputy Secretary. Respondent No. 4 like petitioner has since his initial appointment as

Reporter on 16th February 2001 earned several promotions, and at present holds the post of Special Assistant-Private Secretary in the

Secretariat. Petitioner is aggrieved with the initial appointment of respondent No. 4 as Reporter and his subsequent promotions on the ground that

petitioner's appointment in the Secretariat was de hors rules and his subsequent promotions manipulated more because of favour shown to him and

less on account of merit.

2. Petitioner complains that though respondent No. 4 after his initial appointment

was found to have produced fake and forged Date of Birth

Certificate (in short DOB) and even a case FIR No. 78 of 2007 u/sections 420, 468, 471 and 409 registered with Crime Branch Srinagar

Kashmir, the investigating agency is yet to present charge sheet against respondent No. 4. It is pleaded that delay in concluding investigation on

part of investigating agency is wilful and intended to help respondent No. 4 to escape prosecution and punishment.

3. Petitioner through medium of writ petition on hand seeks following relief.

i. A writ of quo warranto or any other appropriate writ, order or direction, setting aside illegal appointment of respondent No. 4's dated 16th

February 2001 as also the subsequent promotion orders dated 27th November 2001, 16th Jan 2004, 23rd August 2004 and 20th February, 2008.

ii. A writ of mandamus or any other appropriate writ or direction commanding respondent No. 5 to present final report of case FIR No. 78 of

2007, Crime Branch Srinagar against respondent No. 4 before competent court so that he is prosecute and punish for producing fake and forged

matriculation date of birth certificate before authority of Legislative Council Secretariat.

4. Writ petition is opposed by respondent 1-3 on the grounds that none of the petitioner's right is violated and petitioner therefore does not have

cause of action and locus standi to maintain the writ petition. Respondent No. 4's appointment and promotion vide order dated 16th January 2004,

and 23rd August 2008 are said to have been questioned in SWP No. 2004 of 2006 titled Manzoor Ahmad Khan v. Ishfaq Ahmad Wani. The writ

petition is said to have been dismissed, as petition did not disclose any cause to assail respondent No. 4's appointment and subsequent promotion.

The judgment according to respondents 1-3, has attained finality as it has not been questioned in appropriate proceedings till date.

5. Petitioner is said to have earlier filed a writ petition titled Ali Mohammad Rawat v. State of J&K & Others being SWP No. 302/2009 on the

grounds identical to the grounds agitated in the present petition. It is pleaded that as writ petition stands dismissed as withdrawn, petitioner is

estopped from re-agitating the matter.

6. The respondents oppose the writ petition not only on the ground of inordinate

delay and laches on part of the petitioner but also propriety to re-agitate the cause in view of the withdrawal of the earlier writ petition. The writ petition according to respondent 1-3 is nothing but an attempt to use judicial process as tool to blackmail and harass respondent No. 4. It is denied that petitioner's transfer from J&K State Legislative Council, Secretariat was outcome of conspiracy or an effort by respondents against petitioner to put him to disadvantage. The transfer is justified on the ground that in wake of bomb blast in J&K State Legislative Council premises, petitioner and a number of offices were shifted from the secretariat.

7. Denying that respondent No. 4's appointment was backdoor appointment, respondent 1-3 plead that respondent No. 4 was initially vide Government Order No. 1387- GAD of 1998 dated 26th October 1998 appointed as Public Relations Officer to Deputy Chairman Legislative Council and later on the basis of experience gained appointed vide Council Secretariat Order No. 75-LC of 2001 dated 16th February 2001, as Reporter in the Council Secretariat. Respondent No. 4 is said to have earned quick promotions as the bomb blast left a number of officials of the Secretariat dead leaving vacuum at different levels in the Secretariat. While admitting that the DOB certificate produced by respondent No. 4 after his appointment as Reporter in the Secretariat was on verification found not corresponding to Board of School Education Records. It is explained that matter was enquired into and Chairman, J&K State Legislative Council, Secretariat Competent Authority let off respondent No. 4 with the warning to remain careful in future as notwithstanding the Certificate produced by respondent No. 4, correct date of birth certificate was recorded in service record.

8. It is pleaded that, in any case State Government vide Circular No. 14-GAD of 2007 dated 19.4.2007 has granted general amnesty to the government employees found not to have got correct DOB recorded in their service record, provided correct particulars were furnished by 31st May 2007 and as respondent No. 4 taking benefit of the amnesty scheme and pursuant to Council Secretariat Order dated 20th March 2007 produced DOB certificate on 21st May 2007 i.e. before the cut of date his case was settled in terms of the Circular. It is insisted the matter was not more open and did not call for interference.

9. I have gone through pleadings and record available on file. I have heard learned counsel for the parties at length.

10. Perusal of record available on the file would reveal that respondent No. 4 was initially vide Government Order No. 1387-GAD of 1998 dated

26th October 1998 appointed on contractual basis as Public Relations Officer to Deputy Chairman Legislative Council. He was later appointed as

Reporter in the grade of 5000, vide order No. 75 LC of 2001 dated 16th February 2001. Petitioner was an employee in J&K Legislative Council

Secretariat on the date respondent No. 4 was appointed as Public Relations Officer to Deputy Chairman Legislative Council and later appointed

as Reporter in the Council Secretariat. He continued to be posted in the Secretariat till 22nd November 2001 when he was vide Government

Order No. 1244-GAD of 2001 dated 22nd October 2001 transferred and posted in J&K Schedule Caste Development Corporation. Petitioner

was therefore aware of initial appointment of respondent No. 4 as Public Relations Officer and also as Reporter in the Council Secretariat. He did

not question appointment of respondent No. 4 on any of the grounds sought to be agitated in the writ petition on hand. He did not choose to

question respondent No. 4's appointment for next few years. This is an important aspect of the matter as writ petition inter alia is opposed on the

ground of estoppels, delay and laches.

11. Petitioner continued to serve on deputation-first in J&K Schedule Caste Development Corporation and thereafter in Board of Professional

Entrance Examination. Respondent No. 4 vide Council Secretariat Order No. 564-LC 2001 dated 27th November 2001 was temporary

promoted and adjusted as Senior Scale Stenographer in the pay scale of Rs. 6500-10500 again. The promotion as, the contents of the order

would reveal, was made against backdrop of massive bomb blast that hit the Legislative Council Complex on 1st October 2001, left a number of

senior officers including Deputy Secretary to Secretariat dead. Respondent No. 4 was not singled out for promotion. He was promoted alongside

21 other officers of the Council. Petitioner did not question the Order No. 564-LC 2001 dated 27th November 2001 or earlier order, whereby

respondent No. 4 was appointed as Reporter.

12. Respondent No. 4 was given charge of Private Secretary to Chairman

Legislative Council sometime after he was promoted as Senior Scale

Stenographer. Retirement on superannuation of one Brij Mohan Sharma Undersecretary in the Council Secretariat triggered another chain of

promotions. Respondent No. 4 working as Incharge Private Secretary vide Council Secretariat Order No. 560-LC 2004 dated 16th January

2004 was promoted and adjusted as Private Secretary to Chairman Legislative Council in the pay scale of Rs. 7500-12000, against the available

post of Private Secretary. Respondent No. 4's other 27 colleagues in the Secretariat were also given promotion vide above mentioned order to

different positions in the Secretariat. Petitioner again opted to remain silent and not to question the Order No. 560-LC 2004 dated 16th January

2004. Promotion order dated 16th January 2004 was vide Council Secretariat Order No. 37-LC of 2004 dated 29th February 2004 given

retrospective effect w.e.f. 11th July 2002. This order again remained unchallenged. The post of Private Secretary was vide Council Secretariat

Order No. 328-LC 2004 dated 23-8-2004 up graded to Rs. 10000-15200 till respondent No. 4 held the post. Petitioner, this time also did not

choose to assail the order.

13. The State Government vide Government Order No. 841-LD (PAB) of 2008 dated 20th February 2008 re-designated post of Private

Secretary to the Chairman, J&K Legislative Council as Special Assistant, Respondent No. 4 was direct beneficiary of the order. This order also

was not questioned by any of the employees of Council, including petitioner.

14. Petitioner woke up only after Deputy Secretary in the Council Secretariat vide communication dated 6.6.2008 informed Deputy Secretary to

Government General Administration Department, (Legal) Civil Secretariat, Srinagar that petitioner because of Government Order referred in the

communication, ceased to be on the establishment of J&K Legislative Council.

15. The Communication dated 6.6.2008 was questioned by petitioner in SWP No. 958/2008. The writ petition sought quashment of

communication dated 6th June 2008. Petitioner prayed for a writ of mandamus commanding respondents to promote petitioner from Section

Officer to the post of Private Secretary as ""Reserved Category"" candidate ahead of respondent No. 4 in the present petition (respondent No. 3 in

SWP No. 958/2008)

16. Petitioner, as averments made in writ petition SWP No. 958/2008 would reveal, was well aware of respondent No. 4's initial appointment and

subsequent promotions. He, however, did not question his initial appointment as Public Relations Officer to Deputy Chairman Legislative Council

or Reporter in J&K State Legislative Council, Secretariat. It would be appropriate to extract para 8 of the petition.

The Juniors of the petitioner have been promoted to the next higher post which includes the promotion of Sh. Ishfaq Ahmed Wani as Private

Secretary in the pay scale of Rs. 10000-15200 vide order dated 23.8.2004, copy of the same is placed on record as annexure-G. It is

respectfully submitted that said Sh. Ishfaq Ahmed Wani was appointed in Council Secretariat vide order dated 26.2.2001 and has been granted

promotion over the head of the petitioner to the post of Private Secretary/Special Assistant. It is further submitted that said Sh. Ishfaq Ahmed

Wani was promoted and adjusted as Private Secretary to Hon'ble Chairman in the pay scale of Rs. 7500-12000 vide Council Secretariat Order

No. 560-LC of 2004, dated 16.1.2004. Copy of the same is placed on record as annexure- H.

17. As the above reproduced para of the petition, would reveal, petitioner was more aggrieved with denial of promotion to him and would feel

satisfied in case he was promoted as Private Secretary ahead of respondent No. 4, even if respondent. No. 4 was allowed to continue in the

Department and occupy the position he held on the date the writ petition was filed. Petitioner withdrew writ petition and therefore abandoned

challenge to respondent No. 4's promotion as Private Secretary. He felt contented with the withdrawal of the Communication dated 6th June

2008.

18. J&K Legislative Council, Secretariat vide No. 191- LC of 2008 dated 7.4.2008 promoted one Janak Raj Sharma, Senior Section Officer as

Private Secretary to Hon'ble Deputy Chairman and Smt. Vimla Sharma, promoted and adjusted as Section Officer to Hon'ble Deputy Chairman in

the pay scale of Rs. 7500-15000. Petitioner aggrieved with the order, filed a writ petition registered as SWP No. 302/2009. Petitioner sought

quashment of order dated 7.4.2008 on the ground that S/Shri Janak Raj Sharma was Junior to him and ineligible for promotion, and therefore did

not have a right to be promoted. Similar plea was raised as regards promotion of Ms. Vimla Sharma. Petitioner on the grounds urged in the writ

petition sought quashment of Council Secretariat Order No. 191-LC of 2008 dated 7.4.2008.

19. Though immediate cause to invoke writ jurisdiction of the court was Order No. 191-LC of 2008 dated 7.4.2008, yet petitioner in the body of

petition questioned initial appointment of respondent No. 4 and the promotion orders issued in his favour from time to time. In the relief clause, he

not only asked for quashment of Order dated 16.2.2001 but also quashment of Order No. 6th June 2008, unmindful of fact that communication

stood withdrawn and petitioner's writ petition to question the Communication was dismissed as withdrawn. Petitioner also sought direction to

Crime Branch to submit a detailed report and launch prosecution against respondent No. 4 (respondent No. 5 in the writ petition. The writ petition

SWP No. 302/2009 was dismissed as withdrawn on 23.5.2012. The reason that persuaded petitioner to withdraw the writ petition is spelt out in

para 2 of the application, reproduced hereunder.

That in the above titled writ petition interim order was passed also meanwhile the respondents assured the petitioner that his grievances will be

redressed soon in case he withdraws the above titled writ petition. Hence the writ petitioner wants to withdraw the above titled writ petition with a

liberty to file fresh as and when need arise"".

20. Petitioner in the above background was primarily interested in his promotion and conveniently forgot to prosecute the writ petition to the extent

it questioned the appointment of respondent No. 4 and his prosecution for alleged forgery. Petitioner's resolve to re-agitate the matter in the event

his grievance is left unaddressed is, in the facts and circumstances, restricted to the issue of his promotion as Private Secretary.

21. Petitioner aggrieved with his possible exclusion from consideration for further promotion and apprehending that the respondent No. 4 may be

considered for promotion to the post of Additional Secretary, once again seeks to raise the question of respondent No. 4's initial appointment and

the promotions given to him from time to time on the grounds he urged in SWP No. 302/2009, later withdrawn by him.

22. The above narrative of facts and events would reveal that petitioner has

made attempts more than once to question the initial appointment of respondent No. 4 and left such efforts halfway once petitioner was either given an assurance that he would be considered for promotion or granted promotion.

23. To summarise, petitioner initially avoided to question respondent No. 4's initial appointment made in 2001 for eight long years. Petitioner in

SWP No. 958/2008 did not raise issue nor did he seek quashment of respondent No. 4's appointment Order. He as already indicated, though

aware of respondent No. 4's appointment as evident from the averments made in the petition, did not voice any reservation about the appointment.

Once he raised the issue, he abandoned it, after he got an impression that he was likely to be considered for next promotion. Petitioner against the

above backdrop and having regard to his conduct, is disentitled from invoking extra ordinary writ jurisdiction of the court, to throw challenge to

respondent No. 4 initial appointment. The facts and events dealineated above, cast a serious doubt on petitioners bona fides. It is more than

evident that petitioner is not aggrieved with what he calls respondent No. 4's appointment de hors rules. He is not pained that respondent No. 4 is

usurper of a public office. His grievance is, denial of consideration to his promotion. He uses respondent No. 4's appointment and promotions as a

tool, to extract concessions and therefore very conveniently forgets about respondent No. 4's appointment and promotions, once he succeeds in

getting his grievance addressed.

24. It needs no emphasis that writ jurisdiction is essentially equitable in character and cannot be used as a tool to raise a issue like one raised in

petition only to get the personal benefit and once that benefit comes to the petitioner, to very conveniently abandon the issue. Quo warranto is a

discretionary relief, which may be refused where the petition has its edifice on an ulterior motive, and not one claimed in the petition. So much as

regards petitioner's challenge to respondent No. 4's initial appointment and subsequent promotions. Let's now try to find out whether the issue was

raised in any other petition and the fate of such petition.

25. It is well settled that quashment of appointment to government service is to be avoided after long delay. The reason being that such a course

may have disastrous consequence not only for the person sought to be thrown

out but also those who depend on him. The negative fallout of quashment in such a case would be on the family and not restricted to the person whose appointment is found to have been made in violation of Rules. In *Ashok Kumar Sharma and Another Vs. Chander Shekher and Another*, , Supreme Court held that, it would be unreasonable to quash appointment after ten years. The principal was reiterated in *S. Sumnyan and Others Vs. Limi Niri and Others*, . In this case promotion made a decade back, was sought to be questioned and writ jurisdiction invoked. Supreme Court held the writ petition to be belated and liable to be rejected. It follows that even where there is the reason to throw challenge to appointment or promotion of a person against a post under government, such challenge should be projected with reasonable dispatch Delay and laches may end a cause otherwise genuine.

26. There is no scope for disagreement with learned counsel for petitioner that Quo Warranto is an important tool to discourage backdoor

appointments and to throw out usurper of a public office. Reliance placed by learned counsel for the petitioner to emphasise importance of

Constitutional device, on *N. Kannadasan Vs. Ajoy Khose and Others*, and *Renu and Others Vs. District and Sessions Judge, Tis Hazari and*

Another, , is well placed. The Supreme Court in *Renu's* case (supra) emphasizing the importance of the Constitutional remedy observed:

The procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to

protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of

public officer who might be allowed to continue either with the connivance of the executive or by reason of its apathy. Before a person can

effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal

authority, and that inevitably would lead to an enquiry as to whether the appointment of alleged usurper has been made in accordance with law or

not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the

post has no right to hold it.

However case law relied upon by learned counsel for the petitioner is of no help

to the petitioner, as facts and circumstances of case on hand, are distinguishable from the facts of two reported cases.

27. In the present case challenge is sought to be thrown to respondent No. 4's appointment more than a decade after the appointment order was issued. Respondent No. 4 has worked for one and half decades and earned promotions on the basis of his merit and seniority. He has crossed the upper age limit prescribed for the government service. Taken an overall view of the matter challenge to his appointment after such a long time is not to succeed, more so when petitioner has not exhibited an honest resolve to take his effort to dislodge respondent No. 4 to its logical end.

28. S/Shri Mohammad Akbar Wagay and two other employees of J&K Legislative Council, Secretariat filed a writ petition being SWP No.

480/2001, assailing respondent No. 4's appointment as Reporter vide Council Secretariat Order No. 75-LC of 2001 dated 16th February 2001.

They sought quashment of appointment order on the grounds urged in the writ petition. The writ petition was dismissed as withdrawn at request of petitioners.

29. Shri Manzoor Ahmad Khan also an employee of J&K State Legislative Council, Secretariat again questioned respondent No. 4's appointment

in writ petition SWP No. 2004/2006. Respondent No. 4 in the present petition figured as respondent No. 3 in the aforementioned writ petition.

The writ petition was disposed of on 30th November 2006, with the following order.

Petitioner has questioned the appointment of respondent -3 passed and acted upon way back in February 2001, followed by his promotion in the

year 2004 to the post of Private Secretary upgraded subsequently. For years together the petitioner did not approach the court, significantly no

cause much less tenable one is advanced to escape the fall out of latches. However, regard being had to the fact that Order No. 37-A LC of 2006

has been issued in the year 2006 by the respondents to consider the grievances of its employees, nothing prevents the petitioner to seek redressal

of his grievances provided process of consideration in terms of the above said order is still going on. Disposed of Order to be communicated in its entirety".

30. The writ court was not inclined to interfere in respondent No. 4's

appointment Order in SWP No. 2004/2006 on the grounds of laches. A

cause held to suffer from inordinate delay and laches in 2006 cannot, be entertained eight years thereafter. If the cause agitated five years after it

arose, was held to have become stale and obsolete, it cannot be taken up thirteen years after it became available.

31. This takes us to the petitioner's grievance as regards failure on part of the investigating agency i.e. Crime Branch to present the charge sheet

against respondent No. 4 on account of alleged forgery.

32. It is pertinent to point out that respondent No. 4 is not alleged to have produced forged DOB certificate so as to convert his ineligibility into

eligibility for the post of Reporter in J&K Legislative Council, Secretariat. Only allegations levelled against respondent No. 4, is that he made an

attempt to get the date other than his actual DOB recorded in his Service Book. The effort was made presumably to stay or remain in service for

longer period. Once the discrepancy was detected, petitioner was given an opportunity to get his correct DOB entered in service record. He

availed the opportunity and was left with warning to be careful in future.

33. True, that case FIR No. 78/2007 was registered, yet the charge sheet was not presented against respondent No. 4, presumably on the ground

that in wake of Circular No. 14-GAD of 2007 dated 19.4.2007 and departmental action taken against respondent No. 4, it may not be open to

launch prosecution against the petitioner. Be that as it may, as in petition under section 561-A Cr.P.C. titled Ishfaq Ahmad Wani v. State of J&K

and Ors. (581-A Cr.P.C. No. 134/2013) case FIR No. 78/2007 PS Crime Branch, Kashmir under section 420, 468, 471, 120-B RPC 5(2) has

been quashed vide Order dated 11.3.2014, the question of prosecution against respondent No. 4 does not arise.

34. In the circumstances and for the reasons discussed, writ petition must fail on the ground that petitioner failed to question respondent No. 4's

appointment as Reporter vide Council Secretariat Order No. 75-LC of 2001 dated 16th February 2001 for twelve long years and even when a

feeble attempt was made to question the order, it was left halfway and abandoned after the petitioner got the benefit, and therefore it suffers from

estoppels, and laches. The writ petition is also destined to fail on the ground that challenge to respondent 4's appointment by his other colleagues

failed, leaving no scope for re-opening the matter, more so when the Judgment dated 30.11.2006 in SWP No. 2004/2006 has assumed finality.

Quashment of FIR No. 78/2007 PS Crime Branch also stands in the way of the petitioner to seek relief prayed in the petition. Petition is accordingly dismissed.