
(2018) 03 J&K CK 0048
In the Jammu And Kashmir High Court
Case No : LPASW No.224 OF 2017

ASHFAQ AHMED BUTT AND OTHERS.	APPELLANT
Vs	
STATE OF JAMMU & KASHMIR AND OTHERS	RESPONDENT

Date of Decision : 02-03-2018

Acts Referred:

Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 24

Citation : (2018) 03 J&K CK 0048

Hon'ble Judges : BADAR DURREZ AHMED;CJ, SANJEEV KUMAR

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal by leave is directed against the judgment of a single Bench dated 17.08.2017 passed in SWP No.1221/2013 titled Sh. Mohan Lal v/s

State of J&K and others.

2. Briefly stated, the facts are that pursuant to selection conducted by J&K Service Selection Board, a select list for the posts of Patwaris District

Cadre Kathua was prepared in which name of the writ petitioners figured above the name of some of the private respondents in the writ petition.

However, the orders of appointment in the case of some of the candidates were issued on 18.02.1999 whereas orders of appointment in case of

others could be issued only on 25.02.1999, due to late receipt of character verification reports from Criminal Investigation Department. The Revenue

Department prepared a tentative seniority list wherein the name of writ petitioners figured below the private respondents in the writ petition. The

aggrieved candidates objected to the tentative seniority list but their objection was rejected on the ground that the benefit of seniority could not be

given to the writ petitioners for the reason that they had been appointed later in point of time than the private respondent in the writ petition. The

learned single Judge after considering the rival contentions held that the seniority of writ petitioner as well as the private respondents was governed by

Rule 24 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. Relying upon the proviso to Rule 24 (Supra), the

learned single Judge concluded that the seniority of the writ petitioners as also the private respondents was to be determined on the basis of their

ranking in the merit list. Accordingly, the writ petition was allowed and the tentative seniority list impugned issued on 12.12.2009 was quashed. The

learned single Judge also directed the official respondents to reframe the seniority list by showing the writ petitioners at their appropriate place, based

upon their merit in the select list prepared by the Service Selection Board in terms of Class 24 of the Jammu and Kashmir Civil Services

(Classification, Control and Appeal) Rules, 1956 by treating the writ petitioners also to have been appointed on motion basis with effect from the date

the private respondents in the writ petition had been appointed.

3. The appellants, though not party before the writ Court, have assailed the aforesaid judgment by seeking leave of this Court on the ground that the

judgment impugned has adversely affected them, in as much as, the seniority position which has been accorded to them in the tentative seniority list

has been altered to their prejudice and, that too, without even affording them any opportunity of being heard.

4. The learned counsel appearing for the appellants submits that the judgment impugned cannot sustain for the reason that the same has been obtained

by the respondents by suppression of material facts. He draws our attention to the order of appointment issued in favour of the candidates who had

been selected by the Jammu and Kashmir Service Selection Board which include the appellants as well as the respondents. The learned counsel made

specific reference to Class V of the order of appointment appended with the writ petition as Annexure A and submits that the order of

appointment itself provided that the seniority of the incumbents would be determined on the basis of performance and grading in the post appointment

training course. He, therefore, submits that in the face of aforesaid stipulation in the order of appointment which has been accepted by all including the

writ petitioner, the learned single Judge should not have directed the reframing of seniority list on the basis of merits in the select list prepared by the

Jammu and Kashmir Service Selection Board, moreso, when the aforesaid stipulation in the appointment order has not been assailed by the writ

petitioners.

5. Considered the submissions made by the learned counsel for the appellant. In terms of Jammu and Kashmir Revenue (Subordinate Service)

Recruitment Rules, 2009, seniority of members of the service which includes Patwaris as well is required to be maintained as per Jammu and Kashmir

Civil Services (Classification, Control and Appeal) Rules, 1956. In terms of Proviso to Rule 24, the inter se seniority of two or more persons appointed

to the same service, class, category or grade simultaneously shall be determined in the case of direct recruits according to the positions attained and

assigned to them in the order of merit at the time of competitive examination, notwithstanding the fact that they may assume the duties of their

appointments at different dates. In view of statutory prescription as aforesaid, the stipulation made in the order of appointment, i.e. condition No.5 on

the face of it, is ultra vires. The official respondents by laying down a condition in the appointment order cannot change the statutory rules which

provide for fixation of seniority of the members of Revenue Subordinate Service including Patwaris.

6. We, therefore, do not find any infirmity in the judgment impugned whereby a direction has been issued to the official respondents to reframe the

seniority of the Patwaris strictly in terms of Rule 24 of the Jammu and Kashmir Civil Services (Classification, control and Appeal) Rules, 1956 .

7. The appeal is thus, found to be without any merit and the same is dismissed.