

(2010) 07 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1453 of 2001

Bhupinder Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Citation : (2010) 3 JKJ 628

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, Judge

1. In terms of the advertisement notice no. Estt/Pros-9/91/37224-94 dated 10.09.1991, petitioner applied for the post of Prosecuting Officer. He

passed initial physical and out-door tests and was consequently called for the written examination. After having qualified the written examination the

petitioner was called for the viva-voce test. However, he did not find his name in the select list and filed the present writ petition.

2. It may be noted that the selection of some of the selected candidates was challenged in the Srinagar Wing of the Court in SWP no. 156/1993,

which writ petition came to be allowed on 16.07.1998 and directions were issued to appoint two of the three writ petitioners, though

prospectively. The petitioner, after coming to know about this judgment, sought permission of the Court to amend his writ petition, and after

permission, he has filed an amended writ petition, wherein he has stated that in a subsequent selection for the said post, he stood appointed as

Prosecuting Officer in the year 1995, and has limited his prayer to the extent

that petitioner be deemed to have been appointed from 4.1.1993 and he should be assigned his place in the select list in view of his merit position in the said selection.

3. The contention of the petitioner is that though he had filed the present writ petition, challenging the selection in question, yet the respondents, took the stand before the Court in SWP no. 156/1993 that no other person has challenged the selection and, it was on the basis of this statement of the respondents, that two of the writ petitioners were directed to be appointed. The respondents, thereafter appointed one more candidate, namely, Nazir Ahmed Naikoo, whose name did not figure at all in the select list, as such, the right of the petitioner for his appointment was intentionally taken away. His further contention is that his merit is higher than those of the writ petitioners who have been appointed in terms of the directions of this Court passed in SWP no. 156/1993.

4. It may further be noted that said persons who had challenged the selection in SWP no. 156/1993 are stated to have better merit than those persons who stood appointed. It was as a result of that their selection was found to be bad. Without disturbing their selection the petitioners in that writ petition came to be appointed.

5. I have heard the learned counsel for the parties.

6. Respondents were given number of opportunities to file their reply, but they have failed to do so. Even respondent no. 2, vide order dated 15.10.2009, was directed to produce the record pertaining to the selection, but that direction too has not been complied with as no record has been produced by the respondents.

7. During the course of arguments Mr. Parihar, learned AAGH, was directed to produce the result of the candidates for the post of Prosecuting Officer for the year 1991-1992, in which selection the petitioner has admittedly secured 39 marks, which was higher than most of the persons who found their names in the select list. Same was true about the persons who had challenged the selection in SWP no. 156/1993. Their merit was also better than the selected candidates. The merit position of the persons who were selected after the direction was issued by this Court in SWP no.

156/1993, is also lower than that of the petitioner. The benefit is required to be given to the petitioner in this behalf as has been done in case of

Shiekh Mohammad Musharaf and Hamida Lone. This direction was passed without disturbing the selection of the candidates who were selected

vide advertisement notice dated 10.09.1991.

8. The petitioner already stood appointed as Prosecuting Officer on the basis of a fresh selection conducted by the respondents thereafter. The

only relief which can be given to the petitioner is that his selection shall be deemed to have been made vide advertisement notice no. Estt/Pros-

9/91/37224-94 dated 10.09.1991. His seniority will date back from the date the appointments have been made in pursuance to the advertisement

notice no. Estt/Pros-9/91/37224-94 dated 10.09.1991. He will figure over and above all those persons who have secured lessor marks in that

selection process. Let the exercise be completed within a period of three months by showing the name of the petitioner at the right place, as

indicated above.

9. With these observations the writ petition is allowed.