(2014) 11 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1930/2011 and Contempt No. 236 Of 2009

Chaman Lal and Others — APPELLANT

Vs

State and Others — RESPONDENT

Date of Decision : 22-11-2014

Acts Referred:

Citation : (2014) 4 JKJ 199

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : U.K. Jalali, Sr. Advocate and Jasleen Kour, Advocates for the Appellant; S.K. Shukla and M.A. Bhat, Advocates for the Respondent

Judgement

Mohammad Yaqoob Mir, J.—Petitioners and respondents No. 4 to 9 were working as Sub Inspectors in the respondent Department.

Petitioners were placed as Incharge Inspectors to the exclusion of respondents No. 4 to 9. For promotion to the post of Inspectors in the

respondent Department as per Jammu and Kashmir Excise and Commercial Taxes (Departmental Examination) Rules, 2006, Sub Inspectors who

have qualified Departmental Examination are eligible for being promoted as Inspectors. Since the petitioners and the respondents No. 4 to 9 were

not eligible, the respondent-authorities placed the petitioners as Incharge Inspectors. Respondents No. 4 to 9 noticing the same filed writ

petition(SWP) No. 664/2007 which stand disposed of on 5th June, 2009 with a direction to the respondent authorities to accord consideration to

the case of the petitioners therein for appointment as Excise Inspectors without taking into consideration the eligibility set out in the order under

challenge providing for qualifying one or two papers.

2. The respondent-authorities in compliance to the said direction accorded consideration which culminated in issuance of Govt. order No. 246 of

2009 dated 28.10.2009 wherein it is stated that the department had acute shortage of Inspectors owing to non-conduction of departmental

examination of Inspectors standard, therefore, for smooth running of the tax administration, the semi-qualified Sub Inspectors who had passed one

or two papers of the departmental examination of Inspectors standard were given the assignment of Incharge Inspectors (in their own pay and

grade) subject to the condition that they will pass the requisite departmental examination. Same was done without favour to any individual. It is

further stated therein that the result of the departmental examination has been declared, a good number of Sub Inspectors have qualified the said

examination, therefore, said Sub Inspectors are eligible for being promoted as Inspectors and those already working as Incharge Inspectors and

who have not qualified the said examination shall have to revert as Sub Inspectors for which separate orders shall be issued. The petitioners on

consideration were not covered by the rules, therefore, could not be given the benefit of incharge position.

3. As against the writ petitioners who have been placed as Incharge Inspectors, separate order was to be issued so as to revert them but same

order was not issued for the reasons best known to the respondent authorities.

4. In the year 2011, petitioners apprehending that the order dated 28.10.2009 providing for reversion may be given effect, have filed the instant

writ petition. A direction was issued on 23rd September, 2011 for not disturbing their status, therefore, on the strength of said order they are

continuing to be as incharge Inspectors.

5. The position as has emerged is that it is only Sub Inspectors who have qualified the examination of Inspectors standard are entitled to be

promoted to the post of Inspectors. Oh 13th October, 2009 result of the examination was declared and good number of qualified Sub Inspectors

were available, therefore, there was no scope for continuing the petitioners (who had passed one or two papers) as Incharge Inspectors. On such

happening their reversion was imperative in terms of order dated 28.10.2009, same has not been given effect till 2011 which speaks volumes

about the functioning of the respondent-authorities. Why they have been allowed to continue, why respondent-authorities have not given effect to

order dated 28.10.2009 providing for reversion is quite alarming.

6. The petitioners have not challenged the said Govt. order dated 28.10.2009 which provided for issuance of separate order for their reversion.

7. To seek relaxation of the rules for promotion and then for maintaining the position of the petitioners as I/C Inspectors is totally unwarranted and

uncalled for, that too in presence of order dated 28.10.2009 which till date has not been challenged. The writ petitioners, admittedly, have not

qualified the examination of Inspectors standard, shall have no right to remain as Incharge Inspectors, therefore, order dated 28.10.2009 to the

extent it provides for withdrawing their position as I/C Inspectors shall be immediately given effect.

8. Writ petition being devoid of merit, as such, is dismissed.

Contempt No. 236/2009

Mohammad Tufail & ors. v. Sh. B.B. Vyas & Anrs.

Mr. S.K. Shukla, Adv. for petitioners;

Mr. M.A. Bhat, Adv. for respondents;

9. At the instance of petitioners, contempt proceedings have been initiated for violation of judgment dated 5th June, 2009 rendered in SWP No.

664/2007 where-under respondents were to accord consideration to the case of the petitioners for appointing them as Excise Inspectors without

taking into consideration the eligibility set out in the order which was impugned that they have to qualify one or two papers. This was ordered in

view of the benefit extended to some of the Sub Inspectors who were not qualified but were placed as Incharge Inspectors because of having

passed one or two papers of the departmental examination.

10. In compliance to the said judgment, a detailed order has been passed by the respondent-authorities on 28.10.2009 wherein it has been made

clear that in view of acute shortage of Inspectors in view of non-conduction of departmental examination of Inspectors standard, for smooth

running of the tax administration, semi qualified Sub Inspectors who had passed one or two papers of the departmental examination of Inspectors

standard were given the assignment of incharge Inspectors in their own pay and grade subject to the condition that they will pass the requisite departmental examination. On 13.10.2009, result of Departmental Examination was declared and a good number of Sub Inspectors qualified the

said examination who were to be promoted as Inspectors and those already working as I/C Inspectors and who had passed one or two papers of

the departmental examination were to be reverted by issuance of a separate order.

11. According to petitioners, the order was passed but I/C Inspectors were not reverted, therefore, this was meant for defeating the judgment. It

may be a matter of concern that the respondent-authorities after passing order on 28.10.2009 have chosen to remain silent up to the year 2011 by

not giving effect to the order of reversion of those unqualified Sub Inspectors who thereafter filed a writ petition and then on the strength of interim

direction passed in the said writ petition continued to remain posted as I/C Inspectors but now said writ petition has been dismissed with a

direction to the respondent-authorities to give effect to the said order forthwith, the consideration order as passed by the respondent-authorities in

compliance to the said judgment is totally in consonance with law, therefore, there is no question of violation of the Court order. Contempt

proceeding, as such, shall stand closed.

