
(2020) 10 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Latter Patent Appeals No. 88 Of 2020

Charanjit Kour Sudan

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Citation : (2020) 10 J&K CK 0024

Hon'ble Judges : Rajesh Bindal, J;Javed Iqbal Wani, J

Bench : Division Bench

Advocate : Surinder Kour, Manpreet Kour

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The appellant has approached this Court impugning the order dated 20.07.2020, passed by the Learned Single Judge whereby the writ petition filed by her was dismissed.

2. The petitioner had approached this Court seeking a direction to the respondents to regularize/confirm/promote her to the post of administrative officer, on which she was working on incharge basis in terms of order No. 188/2018 dated 28.05.2018, read with corrigendum issued vide order No. 194/2018 dated 29.05.2018. The prayer was also made for quashing of order dated 02.06.2020, which mentions the designation of the appellant as Assistant Administrative Officer instead of Incharge Administrative Officer.

3. The writ petition filed by the appellant was dismissed vide order dated 20.07.2020. Before parting with the order, the Learned Single Judge has observed that despite their being vacancies available, the posts are not being filled up on regular basis and the officers are being given charge of the higher posts. This is despite being adversely commented upon by Hon'ble the Supreme Court. The authorities were directed to fill up the vacancies in terms of the rules

and seniority position of the incumbents in the feeder-cadre.

4. Ms. Surinder Kour, learned senior counsel for the appellant submitted that she was given charge of the post of administrative officer after retirement of Mohd. Yousuf on 31.05.2018, vide order dated 28.05.2018. The appellant had taken the charge of the post on 01.06.2018. Thereafter, even vigilance clearance of the appellant was also taken for promotion to the post of administrative officer vide communication dated 03.10.2018. Vide order dated 20.04.2020, the appellant was transferred from the office of Chief General Manager (West) Circle Jammu, to the Administrative Wing of the Corporation, at Jammu. In the order of transfer, the designation of the appellant was mentioned as Assistant Administrative Officer. However, the aforesaid order remained unimplemented as no one was posted at the place of the appellant and she continued to discharge her duties as Incharge Administrative Officer. Vide order dated 02.06.2020, the order dated 20.04.2020, was directed to be kept in abeyance and the appellant was retained in the Office of Chief General Manager (West) Circle Jammu. The writ petition was filed with a grievance that in the aforesaid order, the designation of the appellant was mentioned as Assistant Administrative Officer instead of Incharge Administrative Officer. Ever since the appellant was given the charge of the post of Administrative Officer on 01.06.2018, she had been discharging her duties as such. The prayer in the writ petition was that the designation of the writ petitioner in the order dated 02.06.2020, is required to be amended to make it as Incharge Administrative Officer. The contention is that the appellant is the senior most Assistant Administrative Officer and she had been given the charge of the post of Administrative Officer, withdrawal thereof would amount reversion, which is punitive in nature, hence, deserves to be corrected.

5. She further submitted that one Suresh Sharma, who is senior to the appellant as Assistant Administrative Officer was given the charge of the post of Secretary vide same order dated 28.05.2018, whereby the appellant was given the charge of the post of Administrative Officer. He is still continuing. Even though, as per rules, the post of Secretary is to be filled up by way of direct recruitment. Only the appellant has been singled out.

6. After hearing learned counsel for the appellant, we do not find any reason to interfere in the present appeal. It is not a matter of dispute that mere posting to an incumbent on a higher post as incharge basis without carrying out regular promotion in terms of the rules has been strongly deprecated, with reference to the then State of Jammu and Kashmir, by Hon'ble the Supreme Court in the case of Suraj Parkash Gupta and others Vs. State of J&K and others reported as (2000) 7 SCC 561.

7. A reference to the principles laid down by Hon'ble the Supreme Court in Suraj Parkash Gupta's case (supra) are also relevant in the case in hand. Relevant paragraph there from is extracted below :-

"84. Apart from the above specific directions, we think this is an occasion to

issue certain general directions to the State of J&K. As pointed out earlier, the State of J&K has been flouting basic rules of recruitment by granting relaxation of the rules of direct recruitment as also the rules requiring consultation with PSC/DPC for promotions/recruitment by transfer. In order to ensure that this is not done in future, the following directions shall also issue:

(A) The State of J&K shall appoint a High Level Committee within a month from today to go into the question as to whether in any department in government service, direct recruitment of existing vacancies has not been made and if there was unreasonable delay. The State will consider making direct recruitment expeditiously depending on the needs in the service and other relevant factors. But it will ensure that no promotees are put in the direct recruitment quota, temporarily or on stopgap and ad hoc basis unless simultaneously proceedings are initiated for direct recruitment through the Service Commission. The Committee will recommend in what manner the direct recruitment could keep pace with promotions as contemplated by rules.

(B) Similarly, the Committee will find out in which department the ad hoc/stopgap promotees are languishing without their cases being referred to the Service Commission/DPC for regularization within their quota.

(C) The State of J&K will ensure that no relaxation of the basic recruitment rules is made for direct recruitment through PSC, or for purposes of regular promotions/recruitment by transfer. The recommendations of the Committee referred to above may be considered by the Government and implemented in accordance with the rules and in accordance with law without unreasonable delay."

8. As despite the aforesaid judgment passed by Hon'ble the Supreme Court, still adhocism is prevalent in Jammu and Kashmir this Court vide order dated 04.08.2020 passed in WP(C) No. 946/2020, titled as Ghulam Hassan Rather vs Union Territory of J&K and another, has sought explanation from the government on this issue so that this system, which is causing heart burning amongst the employees and generating avoidable litigation, is brought to an end.

9. In the case in hand, though the appellant claims that she is the senior most to be promoted as Administrative Officer from the post of Assistant Administrative Officer but the fact remains that Suresh Sharma, is senior to her as it is reflected in the seniority list placed on record by the appellant. We are not going into this aspect of the matter as this Court does not appreciate the action of the authorities in giving promotions on incharge basis and creating lot of avoidable litigation. If any higher post is to be filled up, the same should be on regular basis considering the eligible incumbents in the feeder cadre, strictly as per the rules. The matter in the present case is not limited to giving promotion on incharge basis to a post, which as per the rules may be a promotional post but the example given by the appellant is also that the Suresh Sharma, who is senior to him as Assistant Administrative Officer has been given the charge of post of

Secretary, which as per the rules is a direct recruitment post. Meaning thereby, the departmental candidate has been made to usurp a post, which is to be filled up by way of a direct recruitment. The rules are framed and different feeder cadres are provided for various posts keeping in view the job requirements. At different stages even fresh entry is required to infuse new ideas but the respondents are playing with the rules at their own whims and fancies thereby defeating the very object of the rules. This is nothing else but smacks of favoritism. An incumbent having been given charge of a higher post cannot be said to be regularly promoted on the same to claim that she has right to stick to that and merely because she has been given the designation of the post which is substantively held by her would amount to reversion, is totally misconceived.

10. While concurring with the view expressed by Learned Single Judge, we do not find any error in the order passed. The appeal is accordingly, dismissed, however, we are pain to observe that the rules and regulations are framed to be followed and not violated but violation thereof is a rule and adherence thereto is an exception in Jammu and Kashmir.