

(2020) 07 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1170 Of 2020, Civil Miscellaneous No. 3392,
3393 Of 2020

Charanjit Kour Sudan

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 20-07-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(2)
Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 07 J&K CK 0036

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Surinder Kour, Manpreet Kour, Amit Gupta

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

CM No.3393/2020:

1. This application is filed on behalf of the applicant/ petitioner with a prayer that she may be allowed to file the accompanying Writ petition without enclosing therewith the requisite Stamp Paper, Court fee, etc.
2. For the reasons mentioned in the application, coupled with submissions made at the Bar, the instant application is allowed and the applicant/ petitioner is permitted to file the accompanying Writ petition, being WP(C) No.1170/2020; CM No.3392/2020, without enclosing therewith the requisite Stamp Paper, Court fee, etc. It is, however, directed that the said deficiency shall be immediately made good by the applicant/ petitioner, as and when the prevailing lockdown period, announced by the Government on account of outbreak of COVID-19 pandemic, comes to an end.
3. CM disposed of as above.

4. In an earlier round of litigation, the petitioner claims to have approached the Central Administrative Tribunal, Jammu Bench (hereinafter referred to as 'the Tribunal'), for the relief claimed herein this petition through the medium of OA No.61/0200/2020. The Tribunal, by order dated 6th of July, 2019, observed that the J&K Forest Corporation has not been brought within the jurisdiction of the Tribunal by a notification to be issued by the Central Government under Section 14(2) of the Administrative Tribunals Act, 1985 and that so long as this notification is not issued, the Tribunal cannot assume jurisdiction in respect of any service matter pertaining to the employees of the Corporation under the Act. Accordingly, the Tribunal held that it is not vested with any jurisdiction to entertain any petition related to any service dispute in the respondent Corporation and, therefore, while dismissing the OA filed by the petitioner for want of jurisdiction, the Tribunal gave liberty to the petitioner to avail the appropriate remedy available to her under the law before the appropriate forum. In this backdrop, the petitioner has knocked at the portals of this Court through the medium of the instant petition.

5. In the petition, the petitioner is seeking a 'Writ of Mandamus' upon the respondents directing them to regularize/ confirm/ promote the petitioner to the post of Administrative Officer, on which post the petitioner was made incharge vide order No. 188 of 2018 dated 28th of May, 2018 read with corrigendum issued by the Corporation vide No.194 of 2018 dated 29th of May, 2018 and to give the effect of such confirmation/ regularization/ promotion retrospectively, i.e., the date from which the petitioner assumed the said charge. The petitioner is also seeking a 'Writ of Certiorari' for quashing the order bearing No.716-21/PS/MD/JKFC dated 2nd of June, 2020, to the extent it mentions the designation of the petitioner as Assistant Administrative Officer instead of Incharge Administrative Officer.

6. The case of the petitioner, put in a nutshell and as stated by her in her petition, is that she, on 18th of July, 1984, came to be appointed as a Junior Assistant/ Typist in the respondent Corporation. Thereafter, the petitioner claims to have been promoted as Junior Stenographer; subsequently, as Senior Stenographer/ PA; and, finally, as Private Secretary vide order dated 18th of August, 2010. It is stated that in terms of order dated 30th of September, 2010, issued by the Managing Director, the petitioner was re-designated as Assistant Administrative Officer (Central). It is pleaded that, thereafter, by order dated 1st of October, 2010, the petitioner was transferred and posted in the office of General Manager (Adm.), Headquarters at Jammu and, subsequently, posted in the office of General Manager, Jammu (West) Circle, Jammu. It is further submitted that on the retirement of one Mohammad Yousuf Dar, Administrative Officer, on 31st of May, 2018, the respondents, after appreciating the performance, merit, suitability and seniority of the petitioner, promoted the petitioner as Incharge Administrative Officer in the respondent Corporation,

whereafter the petitioner has been discharging her duties in the respondent Corporation as Incharge Administrative Officer. It is contended that on 20th of April, 2020, the respondents again transferred the petitioner from the office of Chief General Manager (West) Circle, Jammu and posted her in the Administration wing of the Corporation, at Jammu, however, the designation of the petitioner was shown as Assistant Administrative Officer. It is also submitted that the order dated 20th of April, 2020, however, remained unimplemented because nobody was posted in place of the petitioner and that the petitioner continued to perform her duties as Incharge Administrative Officer. Thereafter, the respondents are stated to have issued an order dated 2nd of June, 2020, by which the order dated 20th of April, 2020 has been kept in abeyance and the petitioner retained in the office of Chief General Manager (West) Circle, Jammu. The grievance of the petitioner is that in the said order, too, the respondents have again mentioned the designation of the petitioner as Assistant Administrative Officer, instead of Administrative Officer, without appreciating the fact that the petitioner is performing her duties and holding the charge of Administrative Officer since 31st of May, 2018 in pursuance of order dated 28th of May, 2018 and corrigendum dated 29th of May, 2018 issued by the respondent Corporation itself.

7. Ms Surinder Kour, learned senior counsel appearing on behalf of the petitioner, submits that the petitioner has been promoted to the post of Incharge Assistant Administrative Officer vide order dated 28th of May, 2018 read with corrigendum dated 28th of May, 2018 against a clear vacancy arising on account of retirement of one Mohammad Yousuf Dar, Administrative Officer and despite the fact that the petitioner is continuously performing the duties as such in the respondent Corporation, the respondents have lowered down the status of the petitioner by mentioning her designation as Assistant Administrative Officer instead of Administrative Officer in the orders dated 20th of April, 2020 and 2nd of June, 2020. The learned senior counsel has proceeded to state that the petitioner was promoted as Private Secretary in the respondent Corporation vide order dated 18th of August, 2010, whereafter the petitioner came to be re-designated as Assistant Administrative Officer in terms of order dated 30th of September, 2010, meaning thereby that the petitioner has completed 10 years of service as Assistant Administrative Officer, thus, making her fully eligible and entitled to be promoted to the post of Administrative Officer under the J&K State Forest Corporation Employees (Condition of Services) Regulations 1993, as amended vide SFC order No. 498 of 2010 dated 26th of July, 2010. It is argued that the respondents, instead of regularizing the promotion of the petitioner, have lowered down her status by mentioning her designation as Assistant Administrative Officer when, in fact, the petitioner has been continuing to perform her duties as Administrative Officer in the respondent Corporation since the year 2018. In this context, the learned senior counsel contends that the respondents by depriving the petitioner from her right of regularization/confirmation/ promotion on the post of Administrative Officer have not only

violated the mandate of Articles of 14 and 16 of the Constitution of India, but have also held the principles of natural justice in breach.

8. Per Contra, Mr Amit Gupta, learned Additional Advocate General, appearing on behalf of the respondents, submits that the petitioner was never ever promoted against the post of Administrative Officer and, in fact, was only assigned the additional task of performing the duties of Administrative Officer on incharge basis in view of exigency of service. It is submitted that merely performing the duties on a higher post cannot be treated as a promotion and that the petitioner has been rightly shown as Assistant Administrative Officer, i.e., the post which she is substantively holding in the Corporation.

9. I have heard the learned counsel for the parties and have also gone through the pleadings on record.

10. At the very outset, what requires to be stated is that merely asking an officer/ official, who substantively holds a lower post, to discharge the duties of a higher post cannot be treated as a promotion. In such a case, the said officer/ official does not get the salary of the higher post, but only gets that in-service parlance known as the 'charge allowance'. Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The concerned officer/ official continues to hold her substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.

11. Law on this point is now well-settled. Incharge arrangement is not a recognition of right to a higher post. An incharge arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, equities, or expectations could be built upon it asking an officer/ official, who substantively holds a lower post, merely to discharge the functions of a higher post cannot be treated as promotion. It is also well settled that when incharge arrangement is made, it has to be, as far as possible, for a short duration; not exceeding six months and such an arrangement does not confer any right whatsoever on the officer/ official holding the post on incharge basis, except entitling him/ her to the charge allowance. The basic idea of making incharge arrangement emanates from administrative reasons, however, ordinarily, any order governing such incharge position contains a stipulation that it shall be for a period of six months purely on temporary basis against available vacancies or till the posts are filled up under rules on regular basis by the DPC/PSC, whichever is earlier. This stipulation has never been respected; instead position of inchargeship has been continued at all levels. It is not forthcoming as to why promotions on regular basis at every level are not referred to the DPC/PSC nor it is understandable as to why inchargeship is continued which, more often than not, appears to be with some design. In the case on hand, admittedly, the petitioner is substantively holding the post of Assistant Administrative Officer in the respondents Corporation and merely because the petitioner has been placed as incharge on the post of Administrative Officer, the petitioner cannot, as a

matter of right, claim that she had been regularly promoted on the said post or that on the basis of said services rendered by her, she deserves to be regularized/ confirmed/ promoted against the said post. This incharge arrangement of the petitioner can, in no circumstances, be treated as a promotion and it does not give the petitioner any right over the said post. The said post has to be filled up by the respondent Corporation in accordance with the relevant recruitment rules governing the subject as well as the seniority position in vogue and, in the said process, the petitioner, if eligible, has a right of consideration alongwith all other eligible officers working in the Corporation.

12. In view of the above, this Writ petition is found to be devoid of any merit and, as such, shall stand dismissed accordingly alongwith the connected CM(s).

13. Before parting with the file, it, needs, must be said that notwithstanding the dismissal of this petition, one contention of the learned senior counsel representing the petitioner deserves utmost consideration. It has been contended by the learned senior counsel that despite vacancies, the respondent Corporation is not filling up the post of Administrative Officer on regular basis for a long time now and are, instead, resorting to incharge arrangement. The Apex Court of the country has been repeatedly declaring that incharge arrangements on higher posts shall only be resorted to in order to meet exigency of public service and that such arrangements must be followed, thereafter, by regular promotions in accordance with the relevant recruitment rules governing the field and the seniority position in vogue. If the incharge arrangements are allowed to continue indefinitely, it may inbreed back door entry into the service of promotion posts and, thus, such incharge arrangements have to be discouraged in normal circumstances and, even if any such arrangement is necessitated in view of exigency of service, it should not be allowed to continue indefinitely. It should be for a specific purpose and for a short period because in the guise of exigency of service, the recruitment rules; regulating the procedure for appointment and promotion, cannot be circumvented. In view of the observation aforesaid, the competent authorities in the respondent Corporation are directed to forthwith fill up the vacancies of Administrative Officer on regular basis in accordance with the relevant recruitment rules and the seniority position in vogue.