

(2018) 10 J&K CK 0060

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1238 Of 2016, MP No. 1 Of 2016

Daljeet Singh And Others @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 17-10-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2018) 10 J&K CK 0060

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : Abhinav Sharma, Seems Shekhar, Raman Sharma

Final Decision : Dismissed

Judgement

1. The petitioners in this petition, inter alia, seek a writ of certiorari to quash Govt. order No.Home-144(P) of 2014 dated 19.03.2014, whereby their claim for appointing them as Inspectors under Sports Category w.e.f. the date they were appointed as Sub Inspectors on the analogy of Sh. Sanjiv Khajuria, Dushyant Sharma and Paramjeet Singh was rejected. Petitioners also seek a writ of mandamus directing the respondents to appoint them as Inspectors under Sports Category with effect from the date they were appointed as Sub Inspectors with all consequential benefits.

2. Facts, in brief, leading to the filing of this writ petition would be advantageous to understand the controversy involved in this petition in proper perspective. The petitioners claim to be an outstanding sportspersons having represented not only the State of Jammu and Kashmir but also the country in different category of sports. Their claim for employment in the services of the State was considered along with similarly situated outstanding sportspersons in terms of the Jammu & Kashmir Government Employees (Appointment of Outstanding Sports Personnel) Rules, 1996 (hereinafter to be referred to as "the Rules of 1996") issued vide SRO 145 dated 19.04.1996. The petitioner No.1 was appointed as Sub Inspector vide Govt. Order No.157(P) of 1998 dated 24.04.1998, whereas petitioner Nos. 2 and 3 came to be appointed as Sub Inspectors in J&K Police vide Government

Order No.158(P) of 1998 dated 24.04.1998. Pursuant to the orders of appointment, the petitioners joined their services as Sub Inspectors in the police department and promoted as Inspectors vide Order dated 21.07.2005. The petitioners submit that prior to their appointment as Sub-Inspectors in the J&K Police under Sports Category, one Sh. Sanjiv Khajuria was also appointed as Sub-Inspector in the year 1995. However, another incumbent, namely, Sh. Dushyant Sharma was appointed as Inspector in the J&K Police (Executive Branch) under the same category. Feeling aggrieved, aforesaid Sanjiv Khajuria filed a writ petition bearing SWP No.166/2000 which was allowed by this Court and the Letters Patent Appeal preferred by the State-respondents was also dismissed vide judgment dated 05.03.2009. It is submitted that in compliance to the judgment of the Division Bench passed in the appeal filed by the State-respondents, aforesaid Sanjiv Khajuria was given appointment as Inspector with effect from the date he was appointed as Sub Inspector in the police department. The petitioners have also pressed into service another similar case of one Sh. Paramjeet Singh. It is submitted that the petitioners are similarly situated with Dushyant Sharma, Sanjiv Khajuria and Paramjeet Singh and, therefore, are entitled to the similar benefit as was extended to them. The petitioners claim to have moved representations in the year 2000 but neither the copy of any such representation nor receipt thereof has been placed on record. It appears that it was only when the aforesaid Sh. Sanjiv Khajuria was given retrospective appointment as Inspector, the petitioners have moved representations for considering their cases for appointment as Inspectors on the analogy of aforesaid Sanjiv Khajuria. However, their case was rejected vide PHQ Order No.116 of 2010 dated 11.01.2010 issued by respondent No.3. Aggrieved whereby, the petitioners filed SWP No.2331/2010 challenging the aforesaid rejection order. This Court vide interim order dated 06.10.2010 directed the respondents to consider the representation of the petitioners and take a decision within two weeks. In compliance to the aforesaid interim order, the respondents rejected the claim of the petitioners vide order impugned dated 19.03.2014. Aggrieved by the rejection of their claim, the petitioners have filed the instant petition.

3. Objections have been filed on behalf of respondent No.1 and 3. The claim of the petitioners has been resisted on the various grounds. It is submitted that the writ petition is hit by the principle of estoppel and acquiescence as the petitioners were appointed as Sub Inspectors in relaxation of Rules in the year 1998 and having accepted their appointment without any protest, they are debarred to seek their appointment on a higher post that too after more than a decade and a half.

4. Learned counsel for the petitioners submits that the petitioners are similarly situated with Sanjeev Khajuria, Paramjeet Singh and Dushyant Sharma and therefore, could not have been discriminated in the matter of appointment under the Rules, which were then in-vogue providing for appointment in the government service to the outstanding sportspersons. He, however, submits that the respondents have treated the petitioners with hostile discrimination which is

violative of Article 14 and 16 of the Constitution of India and the State, therefore, cannot plead estoppel or acquiescence against the fundamental rights.

5. Heard the learned counsel for the parties and perused the record.

6. It is not in dispute that the petitioners were considered for appointment under the J&K (Appointment of Outstanding Sports Persons) Rules, 1996 and were appointed as Sub Inspectors in the Police Department in the year 1998. The petitioners accepted the appointment without any protest or demur and joined their services as Sub Inspector in the Police Department in compliance to the orders dated 24.04.1998. One Sanjeev Khajuria, who was similarly appointed as Sub Inspector in the year 1995, though in terms of the J&K Govt. Employees (Appointment of Outstanding Sports Personnel) Rules, 1991, approached this Court through the medium of writ petition filed in the year 2000. The writ petition was disposed of on 22.12.2003. The appeal filed by the State against the aforesaid judgment of the learned Single Judge was disposed of on 05.03.2009. In compliance with the directions issued by the Division Bench, Sanjeev Khajuria was also appointed as Inspector in the Police Department on the analogy of Dushyant Sharma on 06.07.2009. It is also borne out from the record that the writ petitioners never approached the respondents by way of any representation and raised their grievance for the first time after accepting the appointment as Sub Inspector only in the year 2009 after aforesaid Sanjiv Khajuria and Paramjeet Singh were granted appointment as Inspectors in the Police Department with effect from the date they were appointed as Sub Inspectors.

7. In the backdrop of aforesaid admitted position, the submissions made by the learned counsel for the parties may be examined.

8. The stand of the petitioners, as is apparent from the writ petition, is that since the petitioners in the earlier writ petitions namely, Sanjeev Khajuria and Paramjeet Singh and the petitioners are similarly circumstanced and stand on the same footing, as such, the benefit that has been given to Sanjeev Khajuria and Paramjeet Singh by the Division Bench should also be extended to the petitioners and that the refusal on the part of the respondents to extend the similar benefit to the petitioners is an act of hostile discrimination and is hit by Articles 14 and 16 of the Constitution of India. It is the further submission of the petitioners that in the given facts and circumstances it may be true that only Sanjeev Khajuria approached this Court at the earliest point of time but that would not mean that other similarly circumstanced persons should be deprived of the benefit, more so, when there is no disparity between Sanjeev Khajuria and the petitioners. The reliance was placed by the learned counsel for the petitioners on the judgment of the Supreme Court in the case of State of Karnataka and others v. C. Lalitha; (2006) 2 SCC 747 to support the proposition that justice demands that a person should not be allowed to derive any undue advantage over others employees and the concept of justice is that one should get what is due to him or her in law. It is further submitted that the Supreme Court has time and again observed that the service jurisprudence evolved by the Court of law from time to time postulates

that all persons similarly situated should be treated alike and that only because one person has approached the Court would not mean that another person, though, similarly situated should be treated differently.

9. Per contra, the submission of learned counsel for the respondents is that admittedly, the conduct of the petitioners demonstrates that they were sitting on the fence and watching the proceedings. They approached the Court only after the judgment was passed by the Division Bench in the case of Sanjeev Khajuria and claimed parity in order to get the benefit that had been given to Sanjeev Khajuria and one Paramjeet Singh as a result of their successful contest in the litigation. The doctrine of estoppel and acquiescence was also pressed into service by the learned counsel for the respondents, who vehemently submitted that the petitioners could not be allowed to approach this Court seeking equitable relief by invoking the extra-ordinary writ jurisdiction of this Court after a period of 11 years of acceptance of appointment as Sub Inspector.

10. I find sufficient substance in the submission made by learned counsel for the State-respondents that the inordinate delay made by the petitioners in approaching this Court has disentitled them to the relief prayed for by them in the writ petition. The position of law in this regard is now well settled. It is now authoritatively held that when a person who is not vigilant of his rights and acquiesces to the situation, their writ petition cannot be entertained after a long delay even on the ground that the same relief was granted to a person similarly circumstanced who was vigilant enough about his rights and had challenged the action without any unnecessary wastage of time. In the case of Shiba Shankar Mohapatra and others v. State of Orissa and others; (2010) 12 SCC 471, the Supreme Court after taking note of the case law on the subject in paragraph No.29 held thus:-

"29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum. (vide Aflatoon v. Lt. Governor of Delhi; (1975) 4 SCC 285; State of Mysore v. V.K.Kangan; (1976) 2 SCC 895; Municipal Council, Amhednagar v. Shah Hyder Beig; (2000) 2 SCC 48; Inder Jit Gupta v. Union of India; (2001) 6 SCC 637; Shiv Dass v. Union of India; (2007) 9 SCC 274; A.P. SRTC v. N. Satyanarayana; (2008) 1 SCC 210 and City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla; (2009) 1 SCC 168)."

Though, the aforesaid observations were made by the Supreme Court in the matter of a dispute pertaining to seniority which had become final, yet by way of analogy, what was held by the Supreme Court in the aforementioned case is also applicable to the facts of the instant case.

11. In the instant case, if the relief claimed by the petitioners is granted at this stage and they are held entitled to be appointed as Inspectors with effect from the year 1998 that would amount to unsettling the seniority of many others who might have been appointed as Inspector after the appointment of the petitioners as Sub Inspector.

12. Similarly, in the case of *Bharat Sanchar Nigam Limited v. Ghanshyam Dass and others*; (2011) 4 SCC 38, while explaining the ratio decidendi in the case of *K.I. Shephard and others v. Union of India and others*; (1987) 4 SCC 431 in which the Supreme Court had held that the employees who had not come to the Court should not be penalized for not having litigated and would be entitled to the same benefits as the petitioners in that case, in paragraph No.13 it was held thus:-

"13. The principle laid down in *K.I. Shephard* (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

d) where the court expressly directs that the relief granted should be extended to those who have not approached the court."

13. Admittedly, Sanjeev Khajuria had not filed the writ petition in a representative capacity on behalf of similarly situated employees nor the relief granted to Sanjeev Khajuria by the Writ Court and upheld by the Division Bench can be said to be a declaratory relief intended to apply to all employees of a particular category irrespective of whether they are parties to the litigation or not. A perusal of the judgments delivered by the learned Single Judge and the Division Bench does not indicate that the relief granted by the Court to Sanjeev Khajuria was intended to be extended to all those who had not even approached the Court. On the touch stone of the principle laid down in the case of *Bharat Sanchar Nigam Ltd's case* (supra), we have no hesitation to hold that the case of the respondent is not one which falls in any of the categories enumerated in paragraph 13 of aforesaid judgment. It may be noted that the judgment in the case of *Bharat Sanchar Nigam Limited* (supra) is a judgment by a three Judge Bench whereas the earlier judgment of the Supreme Court in *K.I. Shephard's*

case (supra) was rendered by a two-Judge Bench.

14. The view which a three-Judge Bench has taken in Bharat Sanchar Nigam Ltd's case (supra) has been reiterated in another recent judgment of the Supreme Court in the case of State of U.P. and others v. Arvind Kumar Srivastava ; (2015) 1 SCC 347, which judgment has been vehemently relied upon by the learned counsel for the appellants-State. What was stated by the Supreme Court in paragraph No.22 of the aforesaid judgment is reproduced hereunder:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India; (1997) 6 SCC 721. On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or

acquiescence."

15. The Division of this Court in LPA No.192/2017 (State of J&K and others v. S. Bhpinder Singh) decided on 13.12.2017 has already set the controversy at rest in the case of similarly situated persons. I do not see any reason to take a view different from the one taken by the Division Bench.

16. On the basis of this legal position, I find that the writ petition filed by the petitioners is hit by delay and laches as well as acquiescence. As already stated, and is reiterated once again, the judgment passed in Sanjeev Khajuria's case was not a judgment in rem rendered by this Court with an intention to give benefit to all similarly situated persons nor the relief granted to Sanjeev Khajuria could be said to be declaratory, intended to apply to all similarly circumstanced persons, irrespective of whether they were parties to the litigation or not. There is inordinate delay of 11 years in approaching the Court, which has not been explained by the petitioners by placing any material on record. The only plea taken by the petitioners that they being similarly situated with Sanjiv Khajuria and Paramjeet Singh cannot be deprived of the benefit which has been granted to them, may be, due to the intervention of this Court, cannot be accepted for the reasons given herein above. The contention of the respondents that the petitioners were a fence sitter and therefore, are not entitled to any relief whatsoever, deserves to be accepted.

17. For all these reasons and the settled legal position, I find no merit in the writ petition and the same is, therefore, dismissed. There shall be no order as to the costs.