

**(2004) 03 J&K CK 0013**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 1904 of 2001

Gian Chand Khajuria

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

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**Date of Decision :** 19-03-2004

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2004) 3 JKJ 604

**Hon'ble Judges :** Sudesh Kumar Gupta, J

**Bench :** Single Bench

**Advocate :** D.S. Thakur, for the Appellant; B.S. Salathia, AAG, for the Respondent

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## **Judgement**

S.K. Gupta, J.—The case of the petitioner as projected in the writ petition is that he was initially engaged as daily wager in the Food and

Supplies Department in January 1985. The services of the petitioner were subsequently regularized as Chowkidar/Weighman (Class IV post) vide

order dated 22.12.1986 by Director, Food and Supplies, Jammu. It was in the year 1987, the petitioner was assigned the work of Salesman-cum-

Storekeeper at Bhadoo vide order dated 9.12.1987. Right from 1987, the petitioner is working against the vacant post. It is further submitted that

the petitioner has been working against the post of Junior Assistant at various places after his regularization (as Class-IV post) till date.

2. The grievance of the petitioner is that similarly situated employees, the particulars of which have been given in the grounds of the writ petition,

who are working along with the petitioner, stood regularized on Class IV posts and have been granted relief by the respondents on the directions

issued by the Court in SWP No. 92/1995 and SWP No. 108/1996 to prejudice the

right of the petitioner and he has been ignored. Further submission of the petitioner is that in the tentative seniority, his name figures at Serial No. 296, whereas employees, who have been given the benefit in pursuance of the Court directions in the aforesaid writ petitions, are shown above the petitioner. The petitioner, therefore, invokes the writ jurisdiction of this Court in seeking a direction to the respondents to promote the petitioner in the grade of Junior Assistant/Salesman/Storekeeper, i.e., 3050-4500, with effect from 10-06-1996, the date when the other similarly situated employees have been promoted and be also given the consequential benefits of arrears of salary of the post of Junior Assistant from the said date.

3. Respondents in their disclaimer admitted that the petitioner has been assigned, from time to time, the duties of a higher post than Class IV post in order of meet the exigency of administration. It is further stated that the petitioner, in fact, was holding a substantive post of Class IV as Chowkidar/Weighman in the Food and Supplies Department. It is also submitted that the posts of Junior Assistant are filled up by referring the same to the Departmental Promotion Committee, on their availability against the quota for in-service candidates/employees, subject to their eligibility. It is further stated that the petitioners in writ petitions, SWP No. 92/1995 and SWP No. 108/1996, were promoted in compliance to the directions issued by the Court, subject to the approval/confirmation by the Departmental Promotion Committee and without prejudice to the superior claims of the others.

4. Heard the learned counsel for the parties, at length. I have also perused the record meticulously.

5. It is not in dispute that the petitioner was regularized with the petitioners in writ petitions, viz., SWP No. 92/1995 and SWP No. 108/1996, who were similarly situated as petitioner in this writ petition and have been promoted in compliance to the Court directions. The only stand taken by the respondents is that the petitioners in the aforesaid writ petitions were promoted to the posts of Junior Assistant in the grade of 3050-4050 conditionally, subject to approval/confirmation by the Departmental Promotion Committee. It is not the case of the respondents that the petitioner does not fulfil the qualification requirement or does not fall within the

consideration zone for promotion to the post of Junior Assistant. Mr. B.S.

Salathia, learned senior AAG, however, on the other hand, fairly stated that there are still vacancies of Junior Assistants in the Department, which

are required to be filled up from the in-service employees by the Departmental Promotion Committee in accordance with rules and regulations

governing the field..

6. In the above view of the matter, the writ petition is disposed of with the direction to the respondents to consider the case of the petitioner for

appointment against the post of Junior Assistant from the date other similarly situated persons, whose names figured in the writ petition at para 10

(b), have been promoted. While according consideration, the respondents shall also take note of the judgments of this Court passed in SWP No.

92/1995 and SWP No. 108/1996 and also take into account that the petitioner had served on the post of Junior Assistant on many occasions at

various places after his regularization on a substantive post of Class IV employee, subject to eligibility and in accordance with rules and regulations

governing the field. Let this be done by the respondents within three months from the date a copy of this order along with copy of the writ petition

along with all annexures is made available to the respondents and also the learned counsel for the respondents by the petitioner. In case this is not

done within the stipulated period, the official respondents shall be under an obligation to regularize his services on the post of Junior Assistant.

7. Disposed of.