
(2011) 10 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1428 of 2002

Gulshan Banday

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-10-2011

Acts Referred:

Citation : (2011) 4 JKJ 360

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Judge

1. Through the medium of this petition the petitioner seeks issuance of a writ of co-warranto removing respondent No. 4 from the post of

Secretary; with a further prayer for issuance of writ of certiorari quashing the promotion of respondent No. 4 as Secretary vide Order No.

SKICC/PS/1466-74 dated 03.11.2001 and the seniority list dated 3.9.1993 so far as it relates to petitioner; with a further direction in the nature

of mandamus commanding respondents 1 to 3 to fix the seniority of petitioner ahead of respondent No. 4 and to consider her case for grant of

promotion to higher grade/cadre/post of Secretary retrospectively on the grounds taken in the writ petition.

2. Precisely the case of writ petitioner is that respondent No. 4 came to be appointed/promoted as Secretary dehors the rules and was ineligible.

3. It is contended that petitioner was appointed vide Order No. SKICC/88/4934-39 dated 9.8.1988 issued by the Executive Director, Sher-i-

Kashmir International Conference Centre, Srinagar (for short, SKICC) as Typist in

the pay scale of 800-1500 with effect from 01.07.1988 on probation for a period of one year and respondent No. 4 was appointed vide Order No. -SKICC/88/4940-45 dated 9.8.1988 with effect from 01.07.1988. She and respondent No. 4 were working as Daily Wagers before their appointment. The appointment order of petitioner as Typist was issued first and in favour of respondent No. 4 was issued later, thus was senior to respondent No. 4. Petitioner is 10+2 and has obtained National Trade Certificate from National Council for Vocational Training in the Stenography Trade. She has completed computer training course successfully. She has undergone one month training in internet from Off-limits Cyber Cafe and also Office Management Course conducted by the J&K Institute of Management Public Administration and Rural Development. Petitioner was and is meritorious and senior to respondent No. 4, but despite of that official respondent promoted respondent No. 4 ahead of petitioner which has seriously affected the rights of petitioner. It is further contended that official respondents have failed to determine the seniority of petitioner and have also promoted respondent No. 4 as Personal Secretary though no such post was available. Her designation was re-designated as Personal Secretary to Director without any competence and she was shown senior to petitioner in the seniority list. Vide order dated 23.03.1999 respondent No. 4 was conferred the grade of 4000-6000 retrospectively with effect from May 1991 without approval from competent authority. Petitioner made so many representations but in vain. Respondents have also issued order dated 03.11.2001 whereby grade of 6700-10700 was released in favour of respondent No. 4 though she was not eligible at all, but despite of lacking eligibility and competence she was granted promotion from time to time and promotion as Secretary.

4. Respondents 1 to 3 have filed reply and resisted the petition. It is averred that petitioner and respondent No. 4 came to be appointed as Typist with effect from 1.7.1988 purely on probation for a period of one year. Respondent No. 4 came to be confirmed after completion-of one year probation period and annual increment was released in her favour with effect from 01.07.1989. The probation period of petitioner was extended by one month, therefore, annual increment in her favour was released with effect from 01.08.1989, i.e., one month later from respondent No. 4.

Thus petitioner did not complete the probation period successfully thereby became junior to respondent No. 4. Tentative Seniority List was issued on 28.6.1993. Objections were invited, however, no objections were filed on behalf of petitioner. Thereafter final seniority list was issued on 03.09.1993. Neither the petitioner questioned the confirmation of respondent No. 4 nor the petitioner questioned extension of her probation period within time, not to speak of questioning of releasing annual increment in favour of respondent No. 4 with effect from 01.07.1989 or releasing annual increment in her favour with effect from 01.08.1989. Petitioner has also not questioned the final seniority list issued on 03.09.1993 till filing of the instant writ petition. So many promotions and increments have been released in favour of respondent No. 4 right from 1989 till filing of the petition. Petitioner has virtually come out of slumber after feeling aggrieved of the promotion order passed in favour of respondent No. 4 as Secretary. The writ petition is belated on the face of it.

5. Record produced by the respondents also discloses that the confirmation and release of annual increments were made first in favour of respondent No. 4 as compared to petitioner. Petitioner has also not questioned the final seniority list and the orders passed thereafter as well as time bound promotion granted in her favour.

6. The Apex Court in case P.S. Sadasivaswamy Vs. State of Tamil Nadu, held that when a Government employee/servant fails to challenge the seniority list or promotion of other employees promptly and sleeps for a pretty long time, writ petition merits to be dismissed. It is apt to reproduce relevant portion of the judgment herein.

2..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and

try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time

of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We

consider that the High Court was right in dismissing the appellant's petition as well as the appeal.

7. This court in a case Syed Riyaz, Qadiri v. State & ore., 2008 (11) SLJ 738: 2009 (2) JKJ HC 97 held that delay in questioning the seniority list

is fatal and writ petition merits to be dismissed on account of delay and laches. It is apt to reproduce para 20 and 21 herein.

Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the employees because of stale claims made after a

lapse of reasonable time. It is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due

diligence and promptitude and not sleep over the matter.

In this behalf reliance can be placed on B. S. Bajwa's case (supra) cited by Mr. Qayoom where the Apex Court observed that in service matters

the question of seniority should not be re-opened after the lapse of a reasonable period because that results in disturbing the settled position which

is not justifiable. There was inordinate delay in the said case for challenging the seniority list and the Court held that this alone was sufficient to

decline interference under Article 226 and to reject the writ petition.

8. Keeping in view the discussion made hereinabove, the writ petition merits to be dismissed. Accordingly the writ petition is dismissed along with

all CMPs.