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**(1995) 03 J&K CK 0011**  
**In the Jammu And Kashmir High Court**  
**Case No : Letters Patent Appeal No. 68/94**

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| Hamidullah Malik | Vs | APPELLANT  |
| State and others |    | RESPONDENT |

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**Date of Decision :** 29-03-1995

**Acts Referred:**

**Citation :** (1995) JKLR 220 : (1995) SriLJ 166

**Hon'ble Judges :** A.Q.Parray, J and R.C.Gandhi, J

**Bench :** Division Bench

**Advocate :** Mir Saifullah, M.Y.Bhat , Advocates appearing for the Parties

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## Judgement

Parray, J.—This letters patent Appeal has been filled by Hamidullah Malik, Senior Scale Stenographer, District Rural Development/ Agency

Srinagar along with an application seeking leave of the Court to file the appeal as because he was not a party in the main writ petition filed by

respondent no. 4 herein which came to be numbered as SWP No: 1281/1994 and CMP No: 3231 of 1994. In the said writ petition,

petitioner/respondent no. 4 herein succeeded in obtaining an order passed by learned single Judge {Hon'ble Mr. Justice V.K. Gupta} dated

981994, where under Government order No: 591 Art of 1993 dated 27121993 has been kept in abeyance by ordering maintenance of status quo

ante as it existed prior to the issuance of the said order with the further directions to respondent to make arrangements for appropriate reposting of

Hamadullah Malik, who is appellant before us.

2. The facts in brief which have given rise to the present letters patent Appeal are that the respondent no. 1 i.e. State of Jammu and Kashmir

through Commissioner/Secretary to Government, Agriculture Rural Development,

had created an agency known as District Rural Development

Agency for implementation of various development schemes in rural areas. While creating the said agency, various posts have been created in the

agency itself and filled up. The appellant herein was also appointed in the agency and is an employee of the agency. Some employees were brought

on deputation from other Department of the State Government under standard terms and conditions of deputation.

3. The respondent no. 4, Ali Mohammed Sofi (writ Petitioner), who is on caveat, is an employee of Rural Development Department, which as

submitted by the appellant is a separate Department and was brought on deputation to the agency on the post of senior Stenographer.

4. The appellant herein claims that he was due for promotion and had in fact made number of representations in this respect to his superiors for

consideration and promotion to the next higher grade and post. Even the other employee of the Rural Development Agency had also taken up the

matter with the respondent no. 1 that their promotion chances are being blocked due to deputation of various employees from various Government

departments and since the Rural Development Agency has its own employees who are qualified and eligible for manning the posts which are

blocked by the deputationists and it is after a prolonged delay that the grievances of the employee of the Rural Development Agency seem to have

been redressed and in consequence thereof, it is alleged by the appellant herein that he came to be promoted to the post of senior stenographer by

respondent no. 1 vide Government order No: 591 Agri of 1993 dated 27/12/1993, against a clear vacancy caused due to recalling of the

respondent no. 4 herein to his parent Department.

5. Aggrieved by the impugned order dated 27/12/1993, respondent no. 4 (writ petitioner), filed writ petition No: 1281 of 1994 and by staying this

very order and ordering maintenance of status quo ante, the person of appellant herein has not been allowed to join as senior stenographer in his

own department and instead a deputationist is continuing on the said post, as per averments of the appellant.

6. In the writ petition filed by Caveator/ respondent no. 4 (writ petitioner), he had pleaded that he being a permanent employee of Rural

Development and has been working in the said Department since 1976 on

various assignments and came to be promoted from time to time by the respondents and has reached the post of senior stenographer in the Department. He was apprehending reversion from the post of senior stenographer on the count that there was no post of senior stenographer available presently in the Department and has challenged the order dated 27121993, whereby the person of writ petitioner/respondent no. 4 has been recalled from the Rural Development Agency and directed to report to Director Rural Development [SIC] Srinagar for further posting and on the said resultant vacancy, appellant Hamidullah Malik Jr. Stenographer, District Rural Development Agency, Anantnag has been promoted as senior stenographer, and posted in District Rural Development Agency, Srinagar against the resultant vacancy of Shri A.M.Sofi (respondent no. 4), Subject to clearance by the Department promotion Committee and without prejudice to the superior claims of others if any.

7. While addressing arguments, permission for filing the letters patent appeal has been accorded to the person of appellant herein as because he was not a party to the writ petition, but nevertheless the order impugned in the appeal affects his rights and the order which has been challenged before the learned single Judge directly pertains to the person of the appellant. So leave to file appeal is granted to the appellant, and the appeal filed is admitted to hearing.

8. After hearing learned Counsel for the parties, the appeal can be disposed of in light of the fact that the averments made by the respondent no.

4/caveator that he was not a deputationist, is belied by the records. It may be noted that the person of the appellant has placed on record

Government order No: 38Agri of 1992 dated 631992, which reads:

In the interests of administration Shri Ali Muhammad Sofi functioning as P.A. to special Secretary to Government Agriculture and Rural

Development Department, is hereby transferred to District Rural Development Agency Srinagar. His deputation shall be governed by standard

terms of deputation. By order of Govt. of JandK.

9. So in light of these averments which have not been projected by the respondent no. 4 (writ petitioner) before the learned single Judge and in fact

has suppressed this fact. Had the respondent no. 4 brought this fact to the notice of the learned Single Judge, the orders would have been

accordingly passed, but by suppressing this material fact and by submitting that he was not on deputation, the order impugned in this appeal came to be passed by learned Single Judge. An employee who is being sent on deputation, his parent Department/competent authorities have every right and they are within their rights to recall back the deputationist to his parent Department. So the order No: 591Agri of 1993 dated 27121993, which is impugned in the writ petition, does not suffer on any count and is in no way violating the constitutional as well as statutory rights of the petitioner/respondent no.4 herein. Infact the respondent no.4 who has been recalled back by the Department from deputation, can be adjusted by his parent Department on an equivalent post.

10. For the foregoing reasons, the letters patent appeal is accepted and the order impugned dated 981993 passed by learned Single Judge in

SWP No: 1281 of 1994 and CMP No: 3231 of 1994 is set aside and the case is sent back to the learned Single judge for consideration afresh.

The appeal file be consigned to records.