

(2018) 07 J&K CK 0072

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1282 Of 2018

Hari Bhushan And Others @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 19-07-2018

Acts Referred:

Citation : (2018) 07 J&K CK 0072

Hon'ble Judges : M. K. Hanjura, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The petitioners have sought the indulgence of this Court in quashing the Government Order No. 242 PW (Hyd) of 2018 dated 27.06.2018, by virtue

of which the seniority of the respondent Nos. 3 to 6 has been determined over and above the heads of the petitioners and they have been placed as

I/C Executive Engineers. The contention of the petitioners is that this order has been passed in utter violation and contravention of the rules and in

ignoring the superior seniority of the petitioners. The petitioners have contended that the respondents be commanded to make officiating as well as

regular promotion of Assistant Executive Engineers/Incharge Assistant Executive Engineers, strictly as per the final seniority list of junior Engineers

(Civil) Degree holders of Hydraulic Wing, as it stood on 01.01.2015, issued vide Government Order No. 29-PW (Hyd) of 2017 dated 17.01.2017,

wherein all the petitioners have been shown senior to Private respondents and for commanding the respondents to promote/place the petitioners as I/C

Executive Engineers on the basis of their seniority determined in the final seniority list issued vide Government Order No. 29-PW (Hyd) of 2017 dated

17.01.2017.

2. Heard and considered.

3. The Government Order bearing No. 208-Works of 2002 dated 24.04.2002, which has a direct bearing on the subject, inter alia, directs as under:

“Now therefore, in compliance to the judgment passed by the Hon’ble Court, it is hereby order that petitioners namely S/Shri Vinod Gupta,

Ram Paul Gupta, Surjeet Singh, Sanjeev Puri, Ajay Kumar Gupta and Rajesh Kumar Gandotra are promoted as Assistant Engineers in the grade of

Rs. 8000-12950.

This, however, shall not come in the way of state to comply the judgment of Hon’ble Supreme Court in S. B. Gupta’s case so far as the clearance of the petitioners by DPC/PSC is concerned.

The release of grade in respect of other eligible I/C AE’s will be ordered after clearance from PSC/DPC.

4. In Suraj Parkash Gupta and Others v. State of J & K and Others, reported in 2000 AIR (SC) 2386, it has been held as under:

“Apart from the above specific directions, we think this is an occasion to issue certain general directions to the State of Jammu & Kashmir. As

pointed out earlier, the State of Jammu and Kashmir has been flouting basic rules of recruitment by granting relaxation of the rules of direct

recruitment as also the rules requiring consultation with PSC/DPC for promotions/ recruitment by transfer. In order to ensure that this is not done in

future, the following directions shall also issue.

(A) The State of Jammu and Kashmir shall appoint a high level Committee within a month from today to go into the question as to whether in any

department in Government service, direct recruitment of existing vacancies has not been made and if there was unreasonable delay, the State will

consider making direct recruitment expeditiously depending on the needs in the service and other relevant factors. But it will ensure that no promotees

are put in the direct recruitment quota, temporarily or on stop gap or ad hoc basis unless simultaneously proceedings are initiated for direct recruitment

through the Service Commission. The Committee will recommend in what manner the direct recruitment could keep pace with promotions as

contemplated by rules.

(B) Similarly, the Committee will find out in which department the ad hoc/stop-gap promotees are languishing without their cases being referred to the

Service Commission/DPC for regularization within their quota.

(C) The State of Jammu and Kashmir will ensure that no relaxation of basic recruitment rules is made for direct recruitment through P.S.C., or for

purposes of regular promotions/recruitment by transfer. The recommendations of the Committee referred to above may be considered by Government

and implemented in accordance with the rule and in accordance with law without unreasonable delay??.

5. The specific case of the petitioners to which learned counsel for the respondents has also acceded to is that the clearance of the PSC has not been

sought while making officiating as well as regular promotion of the Assistant Executive Engineers/Incharge Assistant Executive Engineers, which had

to be done strictly as per the final seniority list of Junior Engineers (Civil) Degree holders of Hydraulic Wing, as it stood on 01.01.2015. The clearance

of the petitioners and the respondent Nos. 3 to 6 has not been sought from PSC in tune and in line with Government Order cited above and the

judgment of law delivered in S. P. Gupta??s case. Therefore, having regard to the grievances projected by the petitioners and the relief sought for,

this writ petition is admitted to hearing and taken up for final disposal and is disposed of along with the connected MP(s) with the direction to the

respondents to seek clearance from PSC/DPC at the level when the petitioners and the respondent Nos. 3 to 6, were promoted as Assistant

Engineers and to reframe the seniority list of the petitioners and the respondent Nos. 3 to 6, in accordance with the law and the rules governing the

field.

6. The writ petition is disposed of along with connected IA(s).