

(2019) 04 J&K CK 0129

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1875 Of 2014

Madan Lal

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0129

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Sudershan Sharma, Seema Shekhar, Aseem Sawhney

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The petitioner has approached this Court seeking quashing of Government Order No. 137-Edu (Tech) dated 07.07.2014 vide which the case of the petitioner for promotion as Director, Youth Services and Sports Department, J & K, was rejected as pre-mature.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as District Youth Services and Sports Officer vide Government Order dated 07.07.1987. Vide order dated 17.11.1992, he was promoted as Assistant Director on temporary basis and the promotion was regularized vide order dated 17.10.2000. The promotion as Assistant Director was given retrospective effect from 01.11.1992 vide order dated 24.06.2004. Vide order dated 24.11.2003, the petitioner was transferred and posted as Divisional Youth and Service Sports Officer, Jammu. Aforesaid post was upgraded to the level of Deputy Director, vide Government Order dated 13.11.2006. Vide order dated 28.01.2011, the petitioner, who was working as Incharge Deputy Director (Central) was placed as Incharge Joint Director with effect from 01.01.2011.

3. Referring to the Jammu and Kashmir Youth Services and Sports (Gazetted)

Service Recruitment Rules 2013 (hereinafter referred to as 'the Rules'), it was submitted that Schedule II attached to the aforesaid Rules provide for eligibility conditions for promotion from the posts of Assistant Director to Deputy Director, Deputy Director to Joint Director and from Joint Director to Director. The post of Director is to be filled up by selection from Joint Director with 03 years experience as such or by way of transfer from KAS/IAS in case of non-availability of eligible/suitable candidate from the former category. Once the petitioner was available and eligible, he should have been considered and promoted as he had been working as Joint Director for more than 03 years.

4. It was further submitted that the petitioner had earlier filed SWP No. 1244/2014 in which direction was issued to decide the representation of the petitioner seeking promotion to the post of Director as per the Rules. The claim of the petitioner was rejected without appreciating complete facts of the case. He further referred to Government Order dated 22.11.2018, vide which promotion of the petitioner was regularized as Deputy Director with effect from 12.01.2007 and as Joint Director with effect from 01.11.2011. Meaning thereby the petitioner was eligible to be considered for promotion as Director. The stand of the respondents that the post has now been earmarked only for the KAS cadre officers, cannot be applied to the petitioner as same has been done only vide Government Order No. 308 of 2016 dated 02.04.2016 as the petitioner was already before the Court.

5. On the other hand, learned counsel for the respondents submitted that petitioner at this stage cannot be considered and granted promotion as Director. After cadre rationalization and grading of posts, the post of Director, Youth Services and Sports, State of Jammu and Kashmir, has been en-cadred in the KAS cadre. Hence, the same will now be filled up only from the member of service in KAS Cadre and the petitioner cannot be considered at this stage for the promotion as Director. He further submitted that aforesaid order of encadrement was passed on 02.04.2016 whereas the promotion of the petitioner as Deputy Director and Joint Director was regularized only vide Government Order dated 22.11.2018. Hence, prior to that date, he was not even eligible to be considered.

6. Heard learned counsel for the parties and perused the paper-book.

7. The petitioner in the present case is seeking promotion to the post of Director, Youth Services while praying for setting aside of order dated 07.07.2014 (Annexure - K) vide which his claim for same was rejected. The Rules govern the post of Assistant Director, Deputy Director, Joint Director and Director in the Youth Services and Sports.

8. Petitioner was appointed as District Youth Services and Sports Officer vide Government Order dated 07.07.1987 and in terms of order dated 17.11.1992, he was promoted as Assistant Director on temporary basis. This promotion was regularized only vide order dated 17.10.2000. The promotion as Assistant

Director was given retrospective effect from 01.11.1992 vide order dated 24.06.2004. By order dated 24.11.2003, the petitioner was transferred and posted as Divisional Youth and Service Sports Officer, Jammu. Aforesaid post was upgraded to the level of Deputy Director, vide Government Order dated 13.11.2006. Vide order dated 28.01.2011, the petitioner who was working as In-charge Deputy Director (Central) was placed as In-charge Joint Director with effect from 01.01.2011.

9. In the earlier round of litigation, the petitioner had approached this Court by filing SWP No. 1244/2014. In the aforesaid petition, on May 20, 2014, this Court had passed order directing consideration of the case of the petitioner and in compliance to the aforesaid order, the impugned order dated 07.07.2014 was passed by the Government rejecting the case of the petitioner stating that the petitioner does not have requisite experience required for consideration for promotion to the post of Director as he was substantively working as Assistant Director. He was yet to be regularly promoted as Deputy Director and subsequently as Joint Director to be eligible for consideration for promotion as Director. To challenge the aforesaid order present writ petition was filed.

10. During the pendency of the present petition, two developments took place. Firstly, vide Government order dated 02.04.2016 cadres were rationalized. Post of Director, Youth Services and Sport, State of J&K, was added in the Special Scale Cadre of KAS. As on that date, the petitioner was still substantively working as Assistant Director as his subsequent promotions on Incharge basis had not been regularized. It was only vide Government order dated 22.11.2018 that the promotion of petitioner was regularized as Deputy Director with effect from 12.01.2007 and as Joint Director with effect from 01.01.2011. However, prior to that date, the post had already been ear-marked to be filled up only by the Special Scale Cadre Officers of KAS.

11. In view of the aforesaid developments which had taken place during the pendency of the present petition, in my opinion nothing survives in present petition and the impugned order does not call for any interference by this Court.

12. The writ petition is, accordingly, dismissed.