
(2021) 02 J&K CK 0055

In the Jammu And Kashmir High Court

Case No : Latters Patent Appeal No. 84 Of 2020, CM No. 4291 Of 2020

Manu Kapoor

APPELLANT

Vs

Union Territory Of Jk And Ors

RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:

Citation : (2021) 02 J&K CK 0055

Hon'ble Judges : Puneet Gupta, J; Ali Mohammad Magrey, J

Bench : Division Bench

Advocate : Ashish Sharma, Ravinder Gupta, Ayjaz Lone, S. H. Rather

Final Decision : Dismissed

Judgement

1. This intra Court appeal is directed against the judgment dated 24th of June, 2020, passed by the learned Single Judge in SWP No.2354/2025,

whereby the petition of the Writ petitioner/ appellant herein stands disposed of on the following terms:

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3. Having heard learned counsel for the parties and perused the record, I am of the considered view that in view of the judgment rendered

in SWP No.623/2015 today, this writ petition has virtually rendered dependent upon the outcome of consideration of Nitu Sudan, who is

petitioner in SWP No.623/2015 and has been found entitled to be considered in reference to Advertisement Notification No.06/2013. In

case, she makes the grade, she would be entitled to be appointed against the post reserved vide interim order dated 02.03.2015 (supra).

However, in case, because of her merit, respondent No.6 does not make the grade and is not selected and appointed against the reserved

post, the case of the petitioner herein, if she is next in the order of merit, shall be considered against the aforesaid post. It is made clear that

in case the petitioner herein is ultimately found to be entitled to appointment, she shall be appointed retrospectively with effect from the

date, the candidates selected pursuant to Advertisement Notification No.06/2013 were so appointed. The retrospective appointment,

however, shall be notional in nature and would qualify for pecuniary and other benefits prospectively with effect from the date of issuance

of appointment order.

4. Since the consideration of the case of the petitioner herein depends upon the merit of consecration of the case of Nitu Sudan, respondent

No.6 herein, as such, be undertaking according consideration to the case of Nitu Sudan, respondent No.6 herein and completed within one

month thereafter.â??

2. The case of the Writ petitioner/ appellant, as projected in this appeal and put in a nutshell, is that in response to advertisement notification Nos.

05/2013 and 06/2013 issued by the Service Selection Board, she submitted her application forms for the posts of Teacher for District Cadre Poonch.

The Writ petitioner/ appellant claims to have been shortlisted only for interview for 231 posts notified in terms of Notification No. 06/2013. Upon

finalization of the process of selection, the Writ petitioner/ appellant, on the basis of her merit, claims to have been placed in the waiting list at S. No.4

and the respondent No.6 was placed in the waiting list with reference to Notification No.05/2013. After the issuance of the select list, as stated, as

many as 18 candidates failed to join, resulting in the Chief Education Officer, Poonch, requesting the Director, School Education, Jammu for permitting

him to operate the wait list. It is pleaded by the Writ petitioner/ appellant that notwithstanding the fact that she, being figuring at S.No.4 of the wait list

and having been cleared by respondents 1 and 2 for appointment as Teacher against a shortfall vacancy with reference to advertisement notification

no.06/2013 and all other candidates except the petitioner having been appointed, the petitioner was denied the appointment in view of order dated 2nd

of March, 2015 passed in SWP No.623/2015 filed by the respondent No.6 herein, whereby one post of Teacher was kept reserved. Feeling aggrieved,

the Writ petitioner/ appellant approached the Writ Court with SWP No.2354/2015

pleading therein that the respondent No.6, who had not applied pursuant to advertisement notification No.06/2013, had no right or interest in stalling the one post that has fallen vacant due to non-joining of a selected candidate pursuant to notification No.06/2013. The learned Single Judge, in terms of the impugned judgment, disposed of the petition filed by the Writ petitioner/ appellant with the observations as reproduced in Paragraph No.1 of this judgment hereinabove.

3. We have heard the learned counsel for the parties, gone through the pleadings on record and have considered the matter.

4. From the perusal of the pleadings placed alongside the file, it appears that prior to filing of the petition by the Writ petitioner/ appellant herein, one

more petition was filed by one Ms Nitu Sudan/ respondent No.6 herein, which was heard and decided by the learned Single Judge in terms of

judgment dated 24th of June, 2020, i.e., the same date on which the petition of the Writ petitioner/ appellant herein was decided. The case of the Writ

petitioner/ appellant herein before the learned Single Judge was that since the respondent No.6 had not applied pursuant to advertisement notification

No.06/2013, she had no right or interest in stalling one post that has fallen vacant due to non-joining of a candidate selected pursuant to advertisement

notification No.06/2013. The learned Single Judge, however, in the Writ petition filed by the respondent No.6 herein, i.e., SWP No. 623/2015, while

disposing of the same, came to the conclusion that given the stance taken by the respondent No.2, it had no other option but to believe the petitioner

therein/ respondent No.6 herein that she had submitted two separate application forms in response to advertisement notification Nos. 05 of 2013 and

06/2013. Having concluded so, the learned Single Judge observed that in case the respondent No.6 herein/ petitioner in SWP No.623/2015 makes the

grade, she would be entitled to be appointed against the post reserved pursuant to interim order dated 2nd of March, 2015 passed in SWP

No.623/2015 and, in the event, in view of her merit, the respondent No.6/ petitioner in SWP No.623/2015 does not make the grade and is not selected/

appointed against the reserved post, the case of the Writ petitioner/ appellant herein, if she is next in the order of merit, shall be considered against the

aforesaid post. In short, the learned Single Judge, having found the respondent No.6/ petitioner in SWP No.623/2015 to have applied in reference to

advertisement notification No. 06/2013, kept the consideration of the case of the Writ petitioner/ appellant herein subject to consideration of the case

of the respondent No.6/ petitioner in SWP No.623/2015 on the basis of her merit position.

5. On a careful analysis of the aforesaid facts, we feel that once the learned Single Judge, in the petition filed by respondent No.6 herein/ petitioner in

SWP No.623/2015, came to the conclusion that the respondent No.6 herein had, in fact, applied for the posts in question in relation to advertisement

notification No.06/2013, there was no other option left for the learned Single Judge to take the course as adopted by it in the impugned judgment, i.e.,

directing for consideration of the case of the respondent No.6 herein before any such consideration is accorded to the case of the Writ petitioner/

appellant herein on the basis of the merit position. Needless to mention here that the Writ petitioner/ appellant has also assailed the judgment dated

24th of June, 2020 passed by the learned Single Judge in SWP No.623/2015 filed by the respondent No.6 herein through the medium of a separate

appeal, being LPA No. 85/2020. In this context, we do not find any illegality or perversity in the impugned judgment passed by the learned Single

Judge as would warrant its interference from this Court.

6. Accordingly, this appeal fails and shall stand dismissed as such, alongwith the connected CM(s). Interim directions, if any, subsisting as on date,

shall stand vacated.