

(2020) 01 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2420 Of 2018, IA No. 01 Of 2018

Manzoor Ahmad Khan & Ors

APPELLANT

Vs

State Of Jk & Ors

RESPONDENT

Date of Decision : 30-01-2020

Acts Referred:

Citation : (2020) 01 J&K CK 0019

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : N.A. Beigh, Shah Aamir

Final Decision : Disposed Of

Judgement

Magrey, J

1. In the instant petition, the petitioners have prayed for the following reliefs;

a) A writ of Mandamus, directing the respondents to submit the entire record pertaining to the promotion of the petitioners as also the similarly situated employees, to this Hon'ble Court;

b) A writ of Mandamus, directing the respondents to consider the petitioners for their promotion as Head Assistants from the date the said promotion had fallen vacant due to them;

c) A writ of Mandamus, directing the respondents to pay the petitioners all the concomitant benefits which will accrue to them on account of the said promotion;

d) A writ of Mandamus, directing the respondents to pay the petitioners pay i.e. attached to the post of Head Assistant in view of their continuous officiation against the said post of Head Assistants from the due date; and

e) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case may also be passed in favour of the petitioners and against the respondents. Hence the same will be in the larger

interests of justice.

2. There is no denial of the petitioners being working as Senior Assistants in the respondent institute as also their eligibility for promotion against the post of Head Assistants against 25% quota in tune with the mandate of SRO 272 of 2008.

3. Mr N.A. Beigh, learned counsel representing the petitioners invited attention of the Court to the office order bearing No. SIMS: 162 (P) of 2017 dated 13.07.2017, in terms whereof, the petitioners have been asked to hold the charge of the post of Head Assistant on officiating basis in their own pay and grade with the incentive of charge allowance as admissible under rules against the available clear vacancies, for a period of six months or till such posts are filled by proper procedure, whichever is earlier. Mr N.A. Beigh, learned counsel for the petitioners further submits that the petitioners are continuing in the said arrangement, however, the respondents are not considering their case for regularization/regular promotion in tune with the mandate of law.

4. On notice, the respondents have filed their reply, admitting therein that the petitioners were asked to hold the post of Head Assistants in their own pay and grade with further admission that the petitioners have crossed the age of 50 years and have the service of three years as Senior Assistants, therefore, eligible for promotion in terms of rules promulgated vide SRO 272 of 2008 dated 19.09.2008. It is further stated that 75% quota (promotion of Senior Assistants who have qualified the Secretariat Assistants Examination) are entitled for promotion against the post of Head Assistants. It is further submitted that the case of the petitioners was submitted to the Junior Selection Committee who on consideration did not agree for regular promotion beyond the quota of 25%. It is further averred that the respondent institute processed the case of the petitioners for considering them against 75% quota meant for Senior Assistants who have qualified the Secretariat Assistants Examination by seeking relaxation but the same was not agreed by the competent authority. Mr Shah Aamir, learned AAG has produced the record to substantiate that the quota of 25% has already been exhausted and beyond the said quota, the petitioners cannot be considered and granted the relief.

5. Since the petitioners are continuing in the respondent institute as Head Assistants in their own pay and grade as on date, therefore, it shall be appropriate to disposed of this writ petition with direction to the respondents to reconsider the case of the petitioners for their regularization in tune with mandate of rules and by exploring the possibility of according relaxation on the ground of having rendered services as Head Assistants. The exercise shall be undertaken and consideration affected within a period of two months from the date, copy of this order is served on the Respondent No. 2- Director, Sher-i-Kashmir Institute of Medical Sciences, Soura, Srinagar. Till fresh decision is taken and intimated to the petitioners, their present position shall not be disturbed.

6. With the aforesaid direction, writ petition alongwith connected IA(s) shall stand disposed of.