

(2015) 11 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : LPASW No. 152 of 2004, MP No. 193 of 2004, LPASW No. 35 of 2005
& MP No. 25 of 2005

Narinder Singh

APPELLANT

Vs

Kartar Chand

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Citation : (2016) 3 JKJ 11

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Bansi Lal Bhat, J.

Bench : Division Bench

Advocate : Mr. P.N. Raina, Sr. Advocate With Mr. J.A. Hamal, Advocates, for the Petitioner; Mrs. Seema Shekhar, Sr. AAG, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, C.J. - These appeals arc filed against order dated 15.05.2004 made in SWP no. 2460/2000 and order dated

23.12.2004 made in SWP no. 1353/2000, wherein the learned Single Judge allowed the writ petitions and set aside the appointment of the

appellants.

2. The case of the appellants is that they are hailing from militancy affected area and there are no good schools or Colleges near their residence and

hence the said area was given special treatment so as to prevent the young men to join the ranks of militancy and also not to migrate from the said

place. When the appellant no.2 lost his father, he approached the Government for employment and his plight was examined at various levels and

by Order dated 09.05.2000 the appellants were given temporary appointment as Salesman in the Food and Supplies Department in the pay scale

of Rs. 2610-3540 in relaxation of rules and they are discharging their duties to

the entire satisfaction of their officers without giving room for any complaint. The respondent no.1 challenged the appointment of the appellants in the year 2000 by filing SWP No. 2460/2000 and the learned Single Judge by order dated 15.05.2004 quashed the said appointment of the appellants on the ground that appointments of the appellants having been made without inviting applications from all eligible persons, in relaxation of rules, the same cannot be sustained. It is further contended that SWP No. 1353/2000 was filed by the persons serving in the Food & Supplies Department against the appointment of the appellants and the writ petition was also allowed by order dated 23.12.2004, quashing the appointment of the appellants. Both the said orders of the learned Single Judge are challenged in these appeals.

3. On 29.07.2004 this Court ordered maintenance of status quo and according to the appellants they are continuing in their posts for all these years i.e. for above 15 years.

4. Even though the appointment was made by relaxation of rules, the learned senior counsel appearing for the appellants, by relying on the judgment of Hon'ble the Supreme Court reported in AIR 1991 SC 295 (H.C. Puttaswamy v. Chief Justice of Karnataka High Court)

contended that a person having been in service for past ten years need not to be sent out on humanitarian grounds as the person appointed have

crossed the age for getting any other appointment and the person having not suppressed any fact or played any fraud in getting the appointment,

they need not to be dislodged. The learned senior counsel, relying on the said judgment contended that the appellants are in service for last 15

years and by virtue of the appointment given to them by relaxing the rules they have settled in their life and if at this stage they are asked to go out

on the ground that appointment was irregular, it will cause great prejudice to the appellants.

5. Hon'ble the Supreme Court in the decision reported in 2002 AIR SCW 2684 (Union of India and Ors. v. K. P. Tiwari) considered a similar

issue and in paragraph nos. 4 and 5 held thus:-

4. It is necessary in this case to examine either questions of law or fact arising in the matter. Suffice to say that the respondent has been appointed

now and has been in service for more than five years. We do not think, it would

be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from his livelihood.

5. In that view of the matter, we decline to interfere with the order made by the High Court. The appeals are accordingly dismissed.

In the decision reported in (2009) 2 Supreme 271 (D.M. Premkumari v. The Divisional Commissioner, Mysore Division and Ors.),

Hon'ble the Supreme Court in paragraph nos. 11 to 16 held thus:-

11. Having given our anxious consideration to the case pleaded by the learned counsel for the parties, we are of the view, that, it would not be

desirable to decide this case on merits. If we have to do it, we might have to tell the appellant that she might have to go out of the employment.

This, in our opinion, would cause great hardship and injustice to the appellant.

12. The appellant, as we have noticed earlier, was appointed as a Primary School Teacher sometime in the year 1994. At the time of her

appointment, she had produced the caste certificate issued by the Tehsildar. She might not have understood the nuances of legal terminologies like

Group 'B' Category, Group 'D' Category etc., and therefore, now she is caught in the "cobweb".

13. The District Caste Verification Committee, which was asked to verify the appellant's claim, is justified in informing the appointing authorities

that, strictly going by the Government's orders issued in 1986, the appellant could not have claimed any reservation under Group 'B' category. We

cannot find fault with their understanding of the Government Order. However, the learned Single Judge, may be taking a very sympathetic view of

the matter, has come to the rescue of a poor primary school teacher. The Division Bench has strictly applied the true interpretation that requires to

be placed while constituting Article 15(4) and Article 16(4) of the Constitution. Therefore, we cannot find fault with the orders passed by the

Division Bench of the Karnataka High Court also.

14. This Court, while entertaining the special leave petition, had granted the status-quo order. By virtue of that order, the appellant is continuing to

work as a primary school teacher. At this stage, if the appointment of the appellant is struck down and if she is now asked to seek employment

elsewhere, in our opinion, it would cause great hardship and injustice, for the reason by now she must have crossed the upper age limit for seeking

public employment and she may not get any employment anywhere. It is not the case of the other side also, that if the appellant's service is continued, it would cause any prejudice to any other applicant.

15. "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This, in our view, is a mis-understanding. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy.

16. In view of the above discussion and keeping in view the peculiar facts and circumstances of the case, we dispose of this appeal, without going into the merits of the case. In order to do complete justice, we direct the respondents herein, not to dislodge the appellant from the post of primary school teacher. This order of ours shall not be treated as a precedent in any other case.

A Division Bench of the Madras High Court in the decision dated 03.11.2009 rendered in Writ Appeal No. 1559 of 2009 (V. Balakrishnan

v. The Joint Director of Agriculture and Ors.) held that even though the Court may not approve the manner in which the appellant in that case

got the employment, the State having delayed the action in initiating the process for cancelling the appointment and no action being taken against

the person responsible for the disputed appointment, it is not fair to disturb the employment after 15 years.

The Division Bench of Madras High Court in the decision reported in (2011) 3 MLJ 673 (The Joint Director of School Education v. C.

Lesley Jayaseelan), while relying on the above judgments declined to cancel the appointment given to a person due to lapse of 22 years.

6. In this case the Government having exercised its power and chosen to appoint the appellants by taking note of the peculiar circumstances, as

pleaded by them, it is iniquitous to dislodge the appellants from their service after lapse of 15 years. Thus on equitable grounds as observed by

Hon'ble the Supreme Court in the decisions referred supra, we are unable to sustain the order of the learned Single Judge. The appeals are

allowed. No costs.