
(2009) 10 J&K CK 0018
In the Jammu And Kashmir High Court

Pushpjeet Singh and Others	Vs	APPELLANT
State of J. and K. and Others		RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Citation : (2010) 1 JKJ 264

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—The dispute in this writ petition is related to the seniority of petitioners. It appears that respondent No. 5 - Deputy

Inspector General of Police (Personnel) issued an advertisement notice on 28.8.1991 inviting applications for the post of Sub Inspectors in the

Executive Police and J&K Armed Police (Annexure ""A""). The select list of 111 candidates came to be issued and thereafter another list of 11

candidates came to be issued out of the waiting list (Annexures ""C"" & ""D"" respectively). It is also averred that the respondents issued another

select list of 87 candidates and the waiting list of 26 candidates (Annexures ""E"" & ""F"" respectively). The said action of the respondents constrained

one Rakesh Bamba, one of the candidates, to file SWP No. 1368/1993. His writ petition came to be allowed vide order dated 8.5.1995 and a

direction came to be issued to the respondents. The respondents failed to comply the court directions, constrained said Rakesh Bamba to file

COA(S) No. 53-B/95. The said contempt petition came to be allowed and writ petition also came to be granted in terms of the order passed in

contempt petition vide order dated 9.7.1996 (Annexure ""M""). Accordingly he

was appointed and allowed to join. On noticing the said fact, some of the petitioners filed SWP No. 195/94 in Jammu Wing of the High Court. The said petition came to be allowed vide judgment and order dated 22.8.1996 with a direction to the respondents to accord similar treatment to the said petitioners as was given to Sh. Rakesh Bamba (Annexure N"""). Another SWP No. 1629/1994 filed at Srinagar Wing of the High Court came to be decided vide order dated 11.4.1997 and the same relief came to be granted in the said writ petition (Annexure ""P"""). Accordingly the petitioners in both the petitions also came to be appointed.

2. Respondent No. 23 - Sunmati Gupta, who was selected and appointed in the first list, was not allowed to join for non-production of some documents, filed SWP No. 251/1993 and the same came to be allowed vide judgment and order dated 29.11.1996 (Annexure ""S"""). His case was considered and was allowed to join. Thereafter he had made a representation to the respondents in terms of the judgment and his seniority was fixed in the order of merit list. On noticing the said fact the petitioners have filed the instant writ petition claiming refixation of their seniority in terms of the merit list.

3. The question is whether the petitioners can seek the relief as prayed for in the writ petition. In my view it cannot be granted for the following reasons:

It is apt to reproduce the order passed in Rakesh Bamba's case (supra) ""Mr. Kapoor has submitted a communication received by him from the Police Headquarters informing that the petitioner was being appointed as Sub Inspector and that his appointment would be effective from the date of joining. Now that the petitioner's grievance stands redressed. Mr. Kohli does not want to press this contempt petition which is accordingly dismissed.

This shall also dispose of SWP No. 1362/93 with a direction to the respondents to pass appointment order of the petitioner within one month from today. The communication submitted by Mr. Kapoor is taken on record.

4. It is apt to reproduce the relevant portion of the judgments passed in SWP No. 195/1994 and SWP No. 1629/94.

SWP No. 195/94

Therefore, given regard to the fact that the writ petitioners' case squarely falls within the bracket of the case of Rakesh Bamba, writ petitioner in

SWP No. 1368/93 and, that, they are similarly situated, I dispose of this writ petition with a direction to the official respondents to accord similar

treatment to the writ petitioners for their appointment to the post of Sub-Inspector as given to Sh. Rakesh Bamba, writ petitioner in SWP No.

1368/93. They shall do so and pass appropriate orders within two months from today as prayed for by 1/c for respondents Mr. Pant.

SWP No. 1629/94

For these reasons therefore, I see no cause to disallow the writ petition. The writ petition is allowed and the respondents are directed to give the

same treatment to the petitioner which was given to Rakesh Bamba in writ petition No. 1368/93 and to the petitioners in writ petition No. SSWP

No. 195/94 and appoint him within a period of two months from the date of receipt of his order against the post of Sub Inspector of Police.

5. It is also apt to reproduce the relevant portion of the judgment passed in Sunmati Gupta's case (supra).

SWP No. 251/93

In the circumstances, this petition is disposed of by providing as under: ""That respondent shall consider passing of an appointment order of the

petitioner within two weeks from the date of the receipt of this order on the basis of selection made by them and his placement in the merit list (Sr.

No. 18) and that he shall be allowed to join in the Police Department pursuant thereto against the post of Sub-Inspector. He is also permitted to

make a representation to the competent authority of the State respondent for grant of fictional seniority benefit to him along side his co-selectees

figuring after serial 18 in the merit list. In such a case, the authority concerned shall pass appropriate orders on his representation after hearing all

parties concerned.

6. This Court specifically directed in Rakesh Bamba's case (supra) that his appointment would be effective from the date of joining.

7. The writ petition of petitioners (SWP 195/94) came to be allowed vide judgment (supra) with a direction to the respondents to give same

treatment which was given to Rakesh Bamba. Thus their appointments came to be made in pursuance of the judgment passed by this Court in

Rakesh Bamba's case (supra) and, thus, their appointments are also effective from the date of joining. The words "effective from the date of

joining" mean that an appointment is effective from the date of joining and not prior to any other date. The petitioners have not challenged the said

judgment, but have accepted it, came to be appointed in terms of the said directions and also joined. Thus they are caught by the Law of Estoppel.

8. According to the petitioners, Respondent No. 23-Sunmati Gupta stands granted the seniority as per the merit list, thus they are also entitled to

the same. But, the fact of the matter is that this Court directed the respondents to pass the appointment order in his favour on the basis of selection

while keeping in view his placement in the merit list. Further he was permitted to make representation for grant of fictional seniority benefit to him

alongside his co-selectees figuring after Sr. No. 18 of the merit list. It is also worthwhile to mention that he was appointed but could not join for

want of documents. It is not his case that he was not appointed, while as the case of writ petitioners is that they were not appointed. Thus the case

of petitioners is also different from that of Respondent No. 23 - Sunmati Gupta, for the reason that their appointments have been given effect from

the date of their joining, whereas Respondent No. 23 - Sunmati Gupta came to be allowed to join in terms of the select list and respondents were

also directed to consider his representation for grant fictional seniority benefit in his favour along with the co-selectees.

9. The argument of learned Counsel for writ petitioners that the question of seniority was not in issue/dispute at the time of filing of earlier writ

petitions, but it is an issue and dispute which arose after the appointment of petitioners, appears to be attractive but is devoid of force, for the

reason that the petitioners came to be appointed in terms of the court order vide judgment dated 22.8.1996 (supra) and their appointments were

given effect from the date of joining.

10. As discussed hereinabove and in the given circumstances, this writ petition merits to be dismissed. Dismissed as such along with all CMPs.