

(2002) 04 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1402 of 2000

Raman Kumar and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 07-04-2002

Acts Referred:

Citation : (2010) 4 JKJ 234

Hon'ble Judges : Muzaffar Jan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Muzaffar Jan, Judge

1. This writ petition has been filed for issuance of a writ of Certiorari for quashing letter No: PWD (R&B)J1/37-2000/JE dated: 07-06-2000

whereby no objection certificate has been issued in favour of respondent No. 4 for his permanent absorption in the Estates Department. The

petitioners further seek a direction that in case of permanent absorption is contemplated, then other eligible persons be also considered for such

absorption in the Estates Department as per seniority.

2. The main submissions made in the writ petition are that the petitioners are Junior Engineers (Civil), working in Public Works Department and are

presently posted in Estates Department, except petitioner No. 5, who is posted in Vigilance Organisation. It is further submitted that all the

petitioners are senior to respondent No. 4 who figures at S. No. 686 in the seniority list of 1997. It is also submitted and petitioner No. 5 has been

on deputation in the Estates Department that there is no post of Junior Assistant in the Estates Department and services of Engineers are taken on

deputation from Public Works Department as per Schedule II of Jammu and Kashmir Estates (Subordinate) Service Recruitment Rules, 1997. It is

also submitted that petitioners 1 to 4 are presently on deputation in the Estates Department on earlier occasions. Respondent No. 4, who belongs

to Public Works Department, is governed by the rules of Public Works Department and under the rules seniority is the relevant consideration for

promotion to the post of Assistant Engineer. In order to steal a march over the petitioners and manage out of turn promotion, respondent No. 4

filed an application on 28th April, 2000, seeking his permanent absorption in the Estates Department and consequent promotion as Assistant

Engineer, in abject disregard of the Rules, which do not permit permanent absorption or promotion as Assistant Engineer in Estates Department

because there is no cadre post of Junior Engineer or Assistant Engineer in the Estates Department. Respondent No. 1 accorded no objection to

the permanent absorption of respondent No. 4 in the Estates Department vide letter dated 7th June, 2000. This letter of "'no objection' is asserted

to have been issued in violation of the principles of natural justice and without considering all other eligible persons for absorption, therefore, it is

prayed to be quashed in the present writ petition.

The stand taken and submissions made by the respondents in their counter affidavit are that the petitioners do not have any right to ask for

permanent absorption in the Estates Department and, since no rights of the petitioners have been infringed, as such, the writ petition is not

maintainable. It is further submitted that the State Government vide Order No. 1452-GAD of 2000 dated: 12-12-2000 has accorded sanction for

shifting of lien of respondent No. 4 in the office of Executive Engineer, Estates, Jammu and, as such, respondent No. 4 does not belong to the

Public Works Department. On these grounds it is submitted that the writ petition be dismissed.

3. Heard learned counsel for the parties and considered their lucid submissions made.

4. The facts which are not denied but are admitted are that there is no cadre post of Junior Engineer in the Estates Department and under rules the

Engineers are brought on deputation from Public Works Department. It is also not denied that petitioners 1 to 4 are also on deputation in the

Estates Department and petitioner No. 5 has also worked in the Estates Department. The submissions of learned counsel for the petitioners, that in the facts and circumstances, issuance of no objection certificate vide letter dated 7th June, 2000 by respondent No. 1 in favour of respondent No.

4, is only in violation of the rules but also discriminatory against the petitioners, is an argument which has substantial basis and has to be accepted for multiple reasons.

5. The rules governing the services of the employees of the Estates Department are the Jammu and Kashmir Estates (Subordinate Service Recruitment) Rules, 1997. Under Rule 5 of the Rules, it is provided as under:

5. Qualification and method of recruitment:(I) No person shall be eligible for appointment or promotion to any post in any class, category' or grade

in the service unless he possesses the qualifications as laid down in Schedule-11 and fulfills other requirements of recruitment as provided in the

rules and orders for the time being in force;

(2) Appointment to the service shall be made:

(a) by direct recruitment (which will include appointment by transfer);

(b) by promotions; and

(c) partly by direct recruitment and partly by promotion in the ratio and in the manner mentioned against each post in Schedule-II.

From the perusal of Rule 5, it is manifestly clear that appointment/promotion is to be made by three modes, i.e. by direct recruitment, by promotion

and thirdly, partly by direct recruitment and partly by promotion. There is no provision of appointment or promotion by deputation. Under

Schedule-11, in the technical field, the services of Junior Engineers (Civil and Electrical) have to be arranged by deputation from Jammu and

Kashmir Engineering (Subordinate) Service. In Schedule-11, no cadre post of Junior Engineer is provided and it is specifically laid that the

technical assistance of a Junior Engineer shall be secured by deputation from Jammu and Kashmir Engineering (Subordinate) Service.

6. In view of the admitted factual and settled legal position, the aspect which has to be considered is whether respondent No. 4 can be

permanently absorbed in the Estates Department, when there is no cadre post of Junior Engineer in the Estates Department and without

considering the absorption of other eligible persons, who are senior to respondent No. 4 in their parent department. There is nothing on the file to show as to what exercise was conducted respondents 1 to 3 to come to the conclusion that services of respondent No. 4 are required to be

permanently shifted in the Estates Department, without considering the absorption of other eligible persons, who were senior to respondent No. 4

in their parent department and would be discriminated by being deprived of an opportunity of being considered for promotion to next higher post.

In the absence of any acceptable explanation; rational or legal basis, the order of permanent absorption of respondent No. 4 on deputation

appears to be arbitrary, discriminatory and in abject violation of the principles of natural justice. The no objection certificate vide letter dated 7th

June, 2000, in the present circumstances, therefore, cannot be sustained.

7. Learned counsel for the respondents submitted that the lien of respondent No. 4 has been shifted to the Estates Department vide order dated:

12-12-2000 and this order has not been challenged by the petitioners. The submissions, though attractive, is subversive of rules and violative of principles of natural justice and has to be disallowed.

8. As it is admitted that there is no cadre post of Junior Engineer in the Estates Department and the posts in the Estates Department under rules,

cannot be filled by deputation under rule 5 of the Jammu & Kashmir Estates (Subordinate Service Recruitment) Rule, 1997, therefore, the shifting

of lien of respondent No. 4 would be an act in violation of rules and, as a natural consequence, the order dated: 12-12-2000 also requires to be

quashed. It may be kept on record that after the order dated: 12-12-2000 was passed, another order dated: 14-12-2000 was issued in which the

shifting of the lien of respondent No. 4 has been kept subject to the out come of the present writ petition, therefore, merely by issuance of order

dated: 12-12-2000, which has been kept subject to the result of the writ petition, no right has accrued to respondent No. 4 by virtue of shifting of

the lien because the order of shifting his lien was conditional. Further, in view of the finding that permanent absorption on deputation has been held

as bad, the question of shifting of lien would not arise.

9. Learned counsel for respondent No. 4 has cited Ratilal B. Soni and others Vs. State of Gujarat and others, . The Apex Court, these authorities

has held that no person can claim right of permanent absorption on deputation, which precisely is the case of the petitioners, in so far as the

petitioners claim that respondent No. 4 is not entitled to claim absorption on the basis of deputation and, in case absorption on deputation has to

be permitted, then in that eventuality all the person eligible for absorption must be considered in order to comply with the requirement of principles

of natural justice and to ensure eligible and the meritorious candidates are absorbed in the department if and when there is a cadre post.

10. For the reasons given above, the writ petition is allowed. The impugned letter No. PWD (R&B) J/37-2000/JE dated 7th June. 2000 is

quashed. Consequently, Government order No. 1452-GAD of 2000 dated: 12-12-2000, whereby the lien of respondent No. 4 has been shifted

to the Estates Department, shall also stand quashed, being illegal and against rules. However, there is no order as to costs.