

(2012) 07 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : LPA No. 38 and IA No. 70 of 2009

State of J. and K. and Others

APPELLANT

Vs

Prince Ahmad Khan

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 124

Citation : (2013) LabIC 135

Hon'ble Judges : M.M. Kumar, C.J.;Hasnain Massodi, J

Bench : Division Bench

Advocate : M.I. Qadiri and T.H. Khawaja, for the Appellant; Z.A. Qureshi, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, C.J.—The instant appeal by the State of Jammu and Kashmir is directed against judgment dated 18.10.2008 rendered by the

learned single Judge of this Court, holding that once the writ petitioner-respondent has been permitted to officiate on the post of Junior Scale

Stenographer for a long period of 4 years then it was not justified to withdraw his pay scale of the post of Junior Scale Stenographer. The learned

single Judge further directed that the services of the writ petitioner-respondent be regularized on the post of Junior Scale Stenographer

(stenographer as per rule) with effect from the date he was asked to officiate. The view of the learned single Judge is discernible from the following

extract of the judgment which read thus:--

On consideration of the case, I find due force in the submissions of learned counsel for the petitioner. The petitioner was subjected to test of

stenography and after he qualified the same he was duly promoted to the higher

post though on officiating basis. The Department allowed him to work for 4 long years. It appears that it is only after he filed a petition for regularisation that the respondents have in the year 1995 denied him the benefit of higher scale. In these circumstances, I do not find the respondents were justified or could have stopped the scale of pay particularly when the order impugned has been passed by an authority lower in rank to the appointing authority.

In these circumstances, the petition is allowed. Respondents are directed to regularise the services of the petitioner against the post of Jr. Scale

Stenographer held by him w.e.f. the date he joined the post.

(Emphasis added)

There is no dispute on facts. The writ petitioner-respondent was asked to officiate on the post of Junior Scale Stenographer (there is no such post as per rules, post is only of a Stenographer) by Office Order No. 108/Adm of 1991 dated 05.06.1991. The aforesaid officiating promotion was ordered in favour of the writ petitioner till the selection was made by the Subordinate Services Recruitment Board. It would be pertinent to read that order in extenso:--

The following Junior Assistants of this department who have passed the test of Stenography held by the Deputy Sales Tax Commissioner (Adm),

Srinagar under the supervision of Shri A.R. Beg, Excise and Taxation Officer, Sales Tax, Circle ""H"", Srinagar are promoted to officiate as Junior

Scale stenographers in the grade of 1150-2050 till selection is made by the S.S.R.S. Board:--

1. Shri Shafiq Ahmad, (Working as Junior Assistant in Head Office)
2. Shri Prince Ahmad Khan (Working as Junior Assistant in Dy. Sales Tax Commissioner, (Adm), Srinagar's office).

These officials shall report to the Deputy Sales Tax Commissioner, Srinagar for posting.

2. A perusal of the aforesaid order shows that the writ petitioner-respondent was given the higher grade of 1150-2050. However, his pay was re-

fixed vide order dated 24.06.1995 by giving him the basic pay as a Junior Assistant plus officiating allowance for working as Stenographer with effect from 06.06.1991 (P3).

3. The recruitment to the post of Stenographer is regulated by statutory Rules, known as the Jammu and Kashmir Excise and Sales Tax

(Subordinate) Service Recruitment Rules, 1991 (for brevity to be referred as 'the Rules') which have been framed in pursuance of powers

conferred by the proviso to Section 124 of the Constitution of Jammu and Kashmir. The post of Stenographer finds mention in Schedule II and the

minimum qualification prescribed for the post is graduation from any recognized University having minimum speed of 65 and 35 words per minute

in short hand and typewriting respectively. The second qualification for direct recruitment prescribed is six months certificate course in Computer

applications from a recognized institute. Under the column ""method of recruitment"" the appointment has to be made by direct recruitment on the

basis of competitive test. Thus there is no rule for promoting a person from the post of Junior Assistant to that of stenographer. It is in the aforesaid

context that the import of the order dated 05.06.1991 has to be understood, which in letter and spirit implied that in the administrative exigency the

writ petitioner-respondent, who was working as Junior Assistant in the department and had qualified the test of stenography, was to officiate as

Junior Scale Stenographer till the time selection is made by the Subordinate Services Selection Board.

4. There is another aspect of the matter. It is well settled that when a promotee officer is asked to officiate against a direct quota post then he

cannot derive any benefit while working against a direct quota post till the time a promotee quota post in his own quota becomes available.

However, in the present case that situation could never arise because there is no quota for Junior Assistants for promotion as Stenographer. Under

the statutory rules the appointment to the post of stenographer is by direct recruitment alone. For the aforesaid proposition we may place reliance

on the judgments of the Hon'ble Supreme Court in the cases of AFHQ/ISOs SOs (DP) Association and Others Vs. Union of India (UOI) and

Others, and Dr Ram Raj Ram Vs. State of Bihar and Others, .

5. Therefore, it has to be concluded that the writ petitioner-respondent was never borne on the cadre of Stenographer or so to say Junior Scale

Stenographer. In the absence of becoming member of the cadre, his appointment would de hors the rules and no benefit could be given to him.

Moreover, he participated in the regular selection process held by Services Selection Board but could not qualify.

6. Mr. Qureshi, learned counsel for the writ petitioner-respondent, has submitted that on account of the judgment dated 18.10.2008 rendered by

the learned single Judge, which is subject-matter of challenge in the instant appeal, he has withdrawn the other writ petition, namely, SWP No.

2085/1994, where he has challenged the selection by way of direct recruitment. Accordingly, a request is made that the writ petitioner-respondent

may be permitted to file an application for revival of the aforesaid writ petition before the learned single Judge.

7. As a sequel to the above discussion, this appeal succeeds. The judgment and the order passed by the learned single Judge dated 18.10.2008 is

set aside. The order passed by the appellant-State is up-held. However, we accept the request made by Mr. Qureshi, learned counsel for the writ

petitioner-respondent for filing an application for revival of SWP No. 2085/1994.

8. The appeal and IA stands disposed of. No costs.