
(2014) 04 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : L.P.A.S.W. No. 183/2001 and C.M.A. Nos. 114/2010, 240/2001 and 183 Of 2007

State of J&K and Others

APPELLANT

Vs

Swaran Kanta

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 04 J&K CK 0042

Hon'ble Judges : M.M. Kumar, C.J.; Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : Ravinder Sharma, AAG., S.S. Lehar, Sr. Advocate and Meharban Singh, Advocates for the Appellant; Anil Sethi and Surinder Singh, Advocates for the Respondent

Judgement

M.M. Kumar, C.J.—This order shall dispose of LPASW No. 183/2001 and LPASW No. 222/2001 because both the appeals have

emerged from the common judgment and order dated 17.04.2001 passed by the learned Writ Court in SWP No. 1307/99. It is pertinent to

mention that LPASW No. 222/2001 along with CMA has been filed by one Sunita Kumari Gupta, who was not a party to the writ proceedings.

She has challenged the judgment and order dated 17.04.2001 passed by the learned Writ Court after obtaining leave of the Court.

2. In order to understand the contour of the legal controversy, it would first be necessary to set out few facts.

2.1. In the State of Jammu and Kashmir there is a cadre of officers connected with Libraries, which is governed by the statutory rules known as

Jammu & Kashmir Libraries (Non-Gazetted) Services Recruitment Rules, 1989 (for brevity 'the Recruitment Rules'). As per Rule 4, composition

and strength of the cadre has been detailed in Schedule I and Rule 5 specifies qualifications and method of recruitment by referring to Schedule II.

According to Schedule II, post of Classifier , Cataloguer are the top posts. The post of Librarian and Junior Librarian falls in Class II and III

respectively. In the present case we are concerned with the post of Junior Librarian which is a feeder post to the promotion of Librarian.

According to Schedule II, 50% of the posts of Librarian are to be filled up by promotion from Class-III post namely Junior Librarian and 50% by

direct recruitment. According to the Column 6 of Schedule II for promotion to the post of Librarian, candidate is required to have Matriculation

with Certificate Course in Library Science and 3 years experience as Junior Librarian. For further promotion to the post of cataloguer from that of

Librarian, the minimum qualification specified is B.A./B.Sc./B.Com, with B.Lib. Sc. Of B.Sc., B.Com with 3 years experience as Librarian in

Class-II. Even for Cataloguer the quota for promotion to the extent of 50% posts from Librarian has been fixed and 50% posts are required to be

supplied by direct recruitment.

2.2. The controversy in the present case commenced by virtue of issuance of order dated 05.02.1999 by a Deputy Director temporarily adjusting

the petitioner-Ms. Swaran Kanta against the post of Librarian in S.R.S. Library, Jammu against vacant post of one Sh. Joginder Kumar. The order

mentions that she has the qualification of M.Lib and her adjustment as Librarian was without prejudice to the seniority of others. She was to work

in her own pay and grade without financial benefits and subject to clearance of Departmental Promotion Committee. It was termed as stop gap

arrangement (Annexure-A). On 13.04.1999 another order was issued which comprised the names of one Ms. Irwin Kour and petitioner-

respondent, Ms. Swaran Kanta. The aforesaid order makes an interesting reading, which is set out below in extenso:--

ORDER NO: 10 of 1999

DATED : 13-4-1999

Sanction is hereby accorded to the promotion of following officials who have been cleared by the D.P.C. from the date they are holding the posts.

This is in reference to the constitution of a committee by the Director Libraries vide his No. DD/Adm-I/99/F/211 dated 09.02.1999 under the

chairmanship of Deputy Director Libraries, Jammu.

- 1/ Smt. Irwin Kour, Librarian, promoted as cataloguer in her own pay and grade.
- 2/ Miss Swaran Kanta, Junior Librarian, promoted as Librarian in her own pay and grade.
- 3/ Shri Behari Lal, Library Assistant, promoted as Junior Librarian.
- 4/ Shri Bilal Ahmed, Library Assistant promoted as Junior Librarian.
- 5/ Shri Paras Ram, Library Bearer promoted as Library Assistant.
- 6/ Shri Ashok Kumar, Library Bearer promoted as Library Assistant.

Sd/-

(Dr. N.C. Prabhakar)

Deputy Director Libraries

It appears that Ms. Swaran Kanta was adjusted against the post of Librarian. When orders dated 05.02.1999 and 13.04.1999 were sent to the

Director, Libraries, he cancelled the order of adjustment of Ms. Swaran Kanta and Irwin Kour. However, before the order cancelling the

promotion and adjustment of Ms. Swaran Kanta could be issued a representation dated 19.07.1999 was received along with a copy of interim

order dated 12.07.1999 passed by this Court in SWP No. 1307/1999 filed by Ms. Swaran Kanta staying her reversion. The whole factual

position is cleared from letter dated 20.07.1999 sent by the Deputy Director, Libraries to the Director Libraries, which is set out below in

extenso:--

Madam,

Kindly refer to the discussion held in your office chamber on 16.7.1999, during the discussion instructions were issued to the undersigned for the

condollation (cancellation) of orders whereunder certain stop gap arrangements were made with the approval of Director Libraries to fill up the

post of Cataloguer and Librarian. Smt. Irwin Kour, Librarian was temporarily adjusted against the post of Cataloguer in her own pay and grade

and Miss Swaran Kanta, Junior Librarian was adjusted against the post of Librarian on the basis of qualification without prejudice to the seniority

of others.

Accordingly, the order was prepared and was to be issued but at the same time

this office received the representation dated 19-7-1999 from Miss

Swaran Kanta enclosing a copy of High Court dated 12-7-1999. The order of the High Court is as under:--

No reversion order relating the petitioner should be issued".

In view of the above circumstances instructions are solicited in this behalf.

Yours faithfully,

Encls.

Copy of the writ petition

Copy of representation

Copy of high court order

dt: 12-7-99

Sd/-

Dr. N.C. Prabhakar

Deputy Director

Libraries.

2.3. As the matter was sub judice, no further action appears to have been taken.

2.4. The appellant-State in their objections took the stand that Deputy Director, Libraries was not competent to issue any order of adjustment in

respect of Ms. Swaran Kanta. The stand of the appellant-State before the Writ Court further was that the departmental promotion committee

never met and that there was no vacant post against which anyone of the two could be adjusted. The learned Writ Court disposed of the writ

petitions by issuing following directions:--

These petitions are accordingly disposed of with the following directions:

i/ That communication Dt. 20th July'99 written by Deputy Director, Libraries to the Director Libraries, would not be given effect till a final decision

is taken by the State Government in this regard;

ii/ The petitioners would be paid emoluments on the promoted posts. This is, however, subject to the condition that they give an undertaking to the

effect that they would refund the amount in the event of the Government not accepting the report of Commissioner of Inquiries on this particular

issue;

iii/ The State Government to take a decision at the earliest. Till a decision is taken, the directions given at serial (i) and (ii) above, shall continue to

operate;

iv/ That the petitioners would be paid their salaries on the promoted post in case they comply with the condition as indicated at serial No. (ii). The

arrears would also be released in their favour within a period of two months of the date, a copy of this order becomes available to the respondent

authorities. In case, the arrears are not released within the period stipulated above, then the petitioners in that eventuality would be entitled to

interest also. The rate of interest would be 12 percent and this would be payable by the person on whose account the delay occurs;

v/ In case any adverse order is passed, that be kept in abeyance for a period of two weeks.

At this stage, the counsel for the petitioners submit that some police investigation has been ordered against the Assistant Director, Libraries, who

has refused to accept his signatures on the minutes of meeting Dt. 23rd March'99. It is submitted that a direction should be given to complete the

same.

It is accordingly observed that in case some investigation is going on and if it goes against the officer who is said to have taken a stand that he has

not participated in the meeting held on 23rd March'99, then the State Government would consider the desirability of registering a criminal case

under the penal provisions against the said officer.

In view of the above, no further direction is required to be given in the contempt petition bearing No. 269/99. This shall stand dismissed.

The petitions are disposed of in the manner indicated above.

2.5. It is pertinent to mention that Sunita Kumari Gupta has also challenged judgment and order dated 17.04.2001 passed by the learned Writ

Court. She was not a party to the writ proceedings and was granted permission by this Court to file appeal vide order dated 29.08.2001 passed in

CMP No. 205/01.

3. The basic issue which is raised before this Court is whether adjustment of the petitioner-respondent, Ms. Swaran Kanta on the post of Librarian

would confer any right on her or could it be regarded as regular promotion. There are more than one reasons for us to believe that no right could

be deemed to have been conferred on Ms. Swaran Kanta by virtue of orders dated 05.02.1999 and 13.04.1999 passed by Deputy Director,

Libraries. There is a seniority list of Junior Librarians which gives the details of educational qualification of each one of the Junior Librarian along

with other particulars. The name of Miss Swaran Kanta figures at serial No. 30. She is stated to have qualification of B.A.M. Lib. She was

appointed as Junior Librarian on 12.02.1994 and was adjusted as Librarian on 05.02.1999 and 13.04.1999. It could not be successfully argued

that her case for promotion could have been considered ahead of 29 other persons because such a course would be violative of rudimentary

principles of equality enshrined by Article 14 and 16(1) of the Constitution of India.

4. The name of Smt. Sunita Kumari figures at serial No. 14 in the seniority list of Junior Librarians, who has filed LPA No. 222/2001. It has

already been noticed by referring to Rule-5 along with Schedule II that minimum qualification for promotion to the post of Librarian is matriculation

with certificate course in Library Science and 3 years experience as Junior Librarian. A perusal of the seniority list shows that almost all the Junior

Librarians fulfill the qualification for promotion including Smt. Sunita Kumari Gupta, who has been working as Junior Librarian since 26.09.1978

whereas Miss Swaran Kanta was given promotion as Junior Librarian on 26.01.1981. In any case in the seniority list the name of Sunita Kumari

figures at serial No. 14 whereas Miss Swaran Kanta figures at serial No. 30. It appears to us that the then Deputy Director, Libraries was up to

some mischief because as per the rules Deputy Director has no power to pass orders dated 05.02.1999 and 13.04.199.

5. Mr. Sharma, learned State counsel has rightly pointed out that persons figuring at serial No. 1 to 3 and 6 to 8 were promoted on the post of

Librarian prior to the promotions of Miss Swaran Kanta. The names of all such persons, who have been promoted as Librarian ahead of Miss

Swarn Kanta are, Mohd. Ishaaq Zargar, Abdul Wahid Bhat, Faquir Chand, Prem Chand, Bodh Raj, Mohd. and Iqbal Zargar. He has also

pointed out that S/Sh. Pritam Singh (serial No. 4), Hans Raj (serial No. 5), Mohd. Tahir (serial No. 9), Joginder Singh (serial No. 10), Manjeet

Singh (serial No. 12), Banarsi Lal (serial No. 13), Mahesh Dass (serial No. 16), Bachhan Singh (serial No. 17), Sardari Lal (serial No. 18),

Jaswant Singh (serial No. 20), Om Parkash (serial No. 24), Chander Rekha (serial No. 25), Rajinder Singh (serial No. 26), Vijay Kumari (serial

No. 27) and Romesh Kumar (serial No. 28) could not be given promotion as Librarian although eligible and they have retired as such on different

dates. Obviously all of them were senior to Ms. Swaran Kanta. Mr. Sharma has further pointed out that Mohd. Shafi (serial No. 11), Balbinder

Kour (serial No. 15), Surishta Rani (serial No. 19), Sunita Kumari (serial No. 14), Ved Parkash (serial No. 21), Satpaul (serial No. 22), Abdul

Latief Naik (serial No. 23) and Satnam Kour (serial No. 29) are still in service and are eligible for promotion as Librarian. Therefore, they are

entitled to be considered for promotion. A copy of the list of those candidates who have retired despite being eligible and who are still working is

taken on record as Mark ""X"" and a copy of the seniority list of Junior Librarians is also taken on record as Mark ""Y"".

6. The aforesaid facts do not leave any manner of doubt that the orders passed in favour of Ms. Swaran Kanta, who figures at serial No. 30 of the

seniority list of Junior Librarians were against rules and basic rudimentary principles of equality enshrined under Article 14 and 16(1) of the

Constitution. Therefore, such orders are not sustainable in the eyes of law.

7. The argument of Mr. Anil Sethi, learned counsel for the petitioner-respondent, Ms. Swaran Kanta is that she was the only eligible candidate

having qualification of M.Lib. This argument must fail because the statutory requirement of Rule 5 read with Schedule II of the Recruitment Rules is

that person must be Matriculate along with Certificate Course in Library Science. He is required to have 3 years experience as Junior Librarian. A

perusal of the seniority list shows that a large number of persons senior to Ms. Swaran Kanta are eligible to be considered for promotion as

Librarian, who fulfilled the basic qualification. Therefore, the argument that M.Lib is the higher qualification should be accepted as the qualification

of eligibility would amount to rewriting the rules. Therefore, we have no hesitation to reject the aforesaid contention raised on behalf of Ms. Swaran

Kanta. In any case Sunita Kumari is qualified with Certificate Course in Library Science and had 3 years experience. She has also been far senior

to Ms. Swaran Kanta.

8. The other argument of Mr. Anil Sethi that Departmental Promotion Committee

must be deemed to have been properly constituted would not

also cut any ice because as per the statutory rules a large number of persons are seniors in the cadre of Junior Librarian. They could not have been

ignored merely because Ms. Swaran Kanta has additional degree of M.Lib, which is not an eligibility condition as per Rule 5 read with Schedule

II. The role of the Deputy Director, Libraries Sh. N.C. Prabhakar in the whole case is dubious and deserves to be adversely commented.

9. As a sequel to the above discussion, these appeals succeed. The judgment and order dated 17.04.2001 passed by the learned Writ Court is

hereby set aside. The order passed by the Director cancelling the orders passed by the Deputy Director Libraries on 05.02.1999 and 13.04.1999

is upheld insofar as it pertains to the petitioner-respondent, Ms. Swaran Kanta. Appellants are directed to consider the cases of Junior Librarians

for promotion to the post of Librarian as per rules and seniority. The needful shall be done within a period of three months from the date of receipt

of copy of this order.