

(2016) 03 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : LPASW No. 45 of 2016, MP No. 1 of 2016, LPASW No. 46 of 2016, MP No. 1 of 2016, LPASW No. 47 of 2016, MP No. 1 of 2016, LPASW No. 48 of 2016, MP No. 1 of 2016, LPASW No. 49 of 2016, MP No. 1 of 2016 APLPA Nos. 11, 12, 13 & 14 of 2016, CDLSW Nos. 24, 25, 2

State of J&K

APPELLANT

Vs

Lalit Kumar Sharma

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Citation : (2016) 3 JKJ 25

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

Bench : Division Bench

Advocate : Mr. W. S. Nargal, AAG, for the Appellant; Mr. Abhinav Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, C.J. - Caveat Nos. 556 of 2016 and 2195 of 2016

Caveat petitions are discharged.

APLPA Nos. 11, 12, 13 & 14 of 2016

These applications have been filed seeking dispensing with the requirement of filing certified copy of the judgment along with appeals on the ground

that the same have been filed in connected appeal LPASW No.49 of 2016. The applications are allowed.

CDLSW Nos. 24, 25, 26, 27 & 28 of 2016

These applications have been filed seeking condonation of delay in filing the appeals. As the appeals are being taken up for final disposal with the

consent of learned counsel for the parties, the delay in filing the appeals is condoned and the appeals are taken up for consideration.

LPASW Nos.45, 46, 47, 48 & 49 of 2016

These appeals are filed against common order made in SWP Nos.373/2009, 236/2009, 367/2009, 349/2009, 322/2009, 362/2009, 417/2009,

374/2009, 398/2009, 1531/2009, 457/2009, 472/2009, 371/2009, 904/2009 and OWP no. 1272/2009 dated 07.03.2014 and order passed in

review petitions dated 18.12.2015 whereby the review petitions filed against the order of the learned Single Judge were dismissed at the condone

delay stage. The writ court allowed the writ petition by order dated 07.03.2014 and issued directions to appoint the writ petitioners as Sub

Inspectors who have made the grade and are shown selected by reckoning their age for purposes of being eligible as it was in the year 2007 i.e.

the date of earlier advertisement notice or in alternative, they deserve relaxation of age for appointment and held them entitled to appointment and

the State-respondents were directed to consider the claim of the merit list candidates for appointment for whom the posts were reserved.

2. The case of the private respondents/writ petitioners before the writ court was that in the year 2003, an advertisement notice was issued inviting

applications for filling up the post of Sub Inspectors in J&K Police and the process of selection could not be commenced up to the year 2007. In

the year 2007, fresh advertisement was issued stating that candidates who had applied earlier for the posts of Sub Inspector in pursuance of

advertisement notice dated 19.05.2003 need not apply again and in case any candidate has crossed the upper age limit, his age will be reckoned

from the date he has applied earlier as per advertisement dated 19.05.2003. Again the selection could not be commenced and in the year 2009,

four (4) advertisement notifications were issued for filling of the post of Sub Inspectors in (1) (Executive Wing), (2) (Armed Wing), (3) (Auxiliary

Wing) and (4) (Telecommunication wing) of J&K Police. The writ petitioners had crossed the upper age limit and therefore, they could not apply

due to the inaction of the respondents/appellants herein as the process of selection initiated pursuant to advertisement notice issued in the year

2003 and 2007 could not be proceeded as such they cannot be denied the right of consideration in the year 2009 on the ground that they have

crossed the prescribed age limit. In the advertisement notices issued in the year 2009 nothing was said about the age relaxation to such of those

candidates who had applied earlier as it was stated in the advertisement issued in the year 2007.

3. It is an admitted fact that in the year 1999, the process of selection for the post of Sub Inspectors (Executive Wing) was initiated and a list of

259 candidates was drawn at District level merit which was challenged on various grounds contending that Sub Inspector post is a State cadre

post, therefore, the merit list should have been drawn at the State level. The writ petitions were allowed. Letters Patent Appeals filed were

dismissed and Special Leave Petitions were preferred before Hon'ble the Supreme Court which were also dismissed on 10.02.2004 and three

months time was given to implement the judgment by Hon'ble Supreme Court.

4. Thereafter, the merit list was re-drawn at State level and in that process, 54 candidates got included to the exclusion of 47 candidates who were

earlier selected. The said 47 candidates challenged their exclusion. 22 more candidates, who also filed writ petitions subsequently and claimed

benefit at par with 54 candidates who were found eligible. Again the matter was settled by Hon'ble the Supreme Court in Civil Appeal No. 4758

of 2006 on the statement made by the learned Advocate General that all 47 candidates who were likely to go out of job and 22 persons who filed

writ petitions subsequently will be accommodated. He had further submitted that all the above 47 candidates who were selected and appointed

and are presently working will be allowed to continue. Based on the said submissions made by learned Advocate General on behalf of the State,

the appeal was disposed of. Hence, 47 candidates who were already selected were allowed to continue and 22 similarly placed candidates were

also appointed by order No.685 of 2005 dated 23.02.2005. According to the appellants/State, as 47 plus 22 candidates in excess to the

advertised posts in the year 1999 were adjusted, no vacancy remained unfilled for selection in the Executive Wing. Hence two advertisement

notices were withdrawn on 1.07.2008 and 10.07.2008 and therefore, the candidates who applied including the writ petitions have no right to seek

consideration for the post advertised in the year 2003 and 2007.

5. When the writ petitions were heard by the writ court, the State was specifically asked to show the number of posts advertised in the year 2003

and 2007. According to the State, only 69 vacancies were available and due to

adjustment of 69 candidates in compliance to the assurance given before the Hon'ble the Supreme Court, no vacancy was available. The Writ Court noticing the position in the year 2003 and vacancy position in the year 2006, noticed availability of 113 posts of Sub Inspectors in Executive Police and 17 posts of Sub Inspectors in Armed Police. It was further noticed by the Writ Court that in case 37 vacancies were available in the year 2006 against which aforesaid 22 candidates have to be adjusted in compliance to the directions of Hon'ble the Supreme Court, still 15 vacancies were available in the year 2007 and same could not have been withdrawn. Considering the said fact the Writ Court, taking note of the interim orders issued pursuant to which the writ petitioners were allowed to participate in the selection process who have been found meritorious, thought fit to issue directions as mentioned above. The review petition filed by the appellants were also dismissed at condone delay stage by order dated 18.12.2015.

6. Considering the peculiar facts and circumstances of the case and having regard to the fact that writ petitions' right to be considered for selection to the post of Sub Inspectors was affected due to the stand unilaterally taken by learned Advocate General before Hon'ble the Supreme Court to accommodate 69 candidates, the learned Single Judge thought fit to protect the rights of the petitioners considering the availability of vacancies.

7. The contention of the learned counsel for the appellants is that in the Executive Wing, vacancies were not filled up because persons serving on deputation from other Wings are not sent back. The same being the fault of the appellants, it cannot be put against the private respondents/writ petitioners. The said issue can be resolved by the State either by repatriating the deputationists to the extent required or temporarily accommodate the writ petitioners in the Armed Wing till the deputationists are repatriated.

8. In such view of the matter, we are unable to find any reason to interfere with the order of the learned Single Judge. The appeals are dismissed with direction to implement the order of the Writ Court within six weeks. No costs.