

(2004) 04 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1166/87

Surinder Kumar

APPELLANT

Vs

Hotel Corp. of India and Others

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2004) 2 JKJ 618

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : R.A. Jan, for the Appellant; A.H. Kakroo, for the Respondent

Judgement

Syed Bashir-Ud-Din, J.—Petitioner, after initial service with Tourism and Hotel Industry, Mercury Travels (India) Ltd. and Hotel Oberoi

Palace, at Srinagar, on his applying for the job was appointed as Airport representative in the year 1983 by Central Lake View Hotel Srinagar

(hereafter called CLVH) and came to be posted in its Front office where he served for a short period of four months. Thereafter, petitioner was

transferred to House keeping Department of the CLVH as Floor Supervisor in December, 1983. Since 1983 petitioner is stagnating as Floor

Supervisor in CLVH whereas his juniors Nusrat Afrozi (respondent No. 4) and Ameet Koul (respondent No. 5) who were serving in Front office

with petitioner in CLVH have been promoted as Asstt. Lobby Managers in 1986 and 87 respectively. Another person Arshad Shuntoo who too

was junior to him was also promoted, though later he left the job. For this promotional post the claim, qualification, merit and seniority of the

petitioner was ignored.

2. In March, 1987 petitioner's two other juniors viz, Anil Kumar Revo (respondent No. 6) and Jagar Nath Thakur (respondent No. 7) were

promoted as Sr. Floor Supervisors, while seniority and superior claim of petitioner was again ignored. The appointments were made without

advertisement/interview. Again Mrs. Devi Chopra (respondent No. 12) despite lacking qualification and eligibility under Rules (of graduation or

diploma in Hotel Management with two years confirmed service) was appointed directly as Trainee Assistant House Keeper and again while doing

so the preferential strong and just claim of the petitioner was brushed aside and that too when respondents could not relax above Rule, requirement

Petitioner's rights as enshrined under Article 14 & 16 have been violated. His legal and service rights have been infringed. The impugned orders

giving promotions to respondents 4, 5, 8 and 13 as Assistant Lobby Managers, to respondent No. 12 as Trainee Assistant House Keeper and to

respondents 6, 7, 9, 10 & 11 as Sr. Floor Supervisors while ignoring and denying the promotion to petitioner far senior to all of them, with

superior claim, merit and eligibility under Rules, is arbitrary, discriminatory, unfair, unjust and illegal. Petitioner prays for promotion to either of the

two posts as Assistant Lobby Manager or Sr. Floor Supervisor with effect from the date his Junior colleagues have been given promotions with

consequential benefits. The other prayer for over-time wages and arrears is not pressed.

3. Respondent No. 2 Shri Virat Verma the then General Manager of CLVH, Srinagar has filed reply on behalf of Hotel Corporation and other

manager respondents of the Hotel.

4. In reply affidavit the case of the respondents as set out in answer to the petition allegations is that the posts of Assistant Lobby Managers have

been filled up in accordance with the Rules. The posts were advertised. There was publication in more than one newspaper in April 1986.

Announcement was made through TV and Radio. 43 candidates applied pursuant to the advertisement. After conducting interviews candidates

who made selection grade were appointed. The posts of Assistant Lobby Managers were filled as per Rules. The respondents 4, 5, 8 & 13 on

selection were appointed. Petitioner never applied in terms of the advertisement notice and therefore, could not be considered. Petitioner has come

up with the rejoinder that though he applied for the post but he is not in a position to produce the receipt issued by CLVH, as the receipt has been

misplaced by him. However, this appears not true. Even so petitioner has not denied that the posts available for filling of Assistant Lobby Manager

(ALM) were advertised in print and in electronic media, besides displaying the advertisement notice on the notice board of the respondents-Hotel.

The stark reality appears to be that the petitioner did not apply for the post. This apart the petitioner appears not to be eligible for consideration

against the post of Assistant Lobby Manager in terms of Rules as is lacked eligibility and had no experience of prescribed work period of

reception/lobby/Airline/Front office of 4-5 Star Hotel, besides not possessing desirable qualification of knowledge of a foreign language. All this is

fairly conceded by the counsel for the petitioner. Therefore, petitioner has no case for consideration against the higher post of Assistant Lobby

Manager.

5. As far as higher post of Sr. Floor Supervisor is concerned petitioner's case needs to be examined.

6. In reply the criteria for promotion from Floor Supervisor to Sr. Floor Supervisor is averred as under:-

1. SCC with five years confirmed service as Floor Supervisor. 2. Graduate or diploma in Hotel Management with two years confirmed service as

Floor Supervisor. 3. SCC with 24 weeks house-keeping Course with four years confirmed service as Floor Supervisor. 4. SCC with fifty-two

weeks House-keeping Course with three years confirmed service as Floor Supervisor.

7. In reply affidavit further averment is that the petitioner is not possessing eligibility for appointment/promotion to the post of Sr. Floor Supervisor

as the petitioner does not hold diploma in Hotel Management and has not even completed 52 weeks House keeping course and does not possess

confirmed service of five years as Floor Supervisor. It is not denied that the petitioner is appointed in Hotel Corporation of India at its CLVH at

Srinagar since 23.7.1983 against which post petitioner has joined on 16.8.83. The transfer of the petitioner subsequently as Floor Supervisor and

his confirmation on the post of Floor Supervisor on 16.8.84 is admitted in para 4 of para-wise reply in reply affidavit. The list of supervisors

annexed to the reply shows that the respondents have joined service after the petitioner. The eligibility criteria prescribed for promotion from Floor

Supervisor to Sr. Floor Supervisor as extracted above shows inter-alia that a person with graduation or diploma in Hotel Management with two

years confirmed service as Floor Supervisor is eligible for promotion to the post of Sr. Floor Supervisor from the feeder category of Floor

Supervisor. As per respondents own case petitioner's qualification as graduate is admitted and obviously even from the date of his confirmation on

the post of Floor Supervisor on 16.8.84 again as per admission of the respondents petitioner had more than two years confirmed service as Floor

supervisor on the material date when the promotions were given to respondents 6 & 7 in March 1987. This apart as admitted in para 10 & 11 of

the reply, subsequently the promotion was given to respondent No. 12, who did not even possess the qualification and eligibility, under the Rules

and Regulations. As if this was not enough, the record further shows that the respondents with lesser qualification and period of service, than the

petitioner, have been also promoted.

8. It is not the case of respondents that petitioner was considered but could not make the grade for promotional post. Instead the stand taken by

the respondents is that petitioner lacked eligibility, therefore, was not at all considered, which stand in the above view of the matter is unsustainable.

Obviously petitioner has been denied right of consideration and thereby his fundamental and other service rights have been violated. His case that

he has been subject to invidious discrimination and has been unfairly, un-arbitrarily and unjustly dealt with are borne by record. His right of equality

before law and equality of opportunity in matters of public employment as enshrined in Articles 14 and 16 of the Constitution, is infringed/violated.

Case for mandamus is made out to command the respondents 1 to 3/competent authority to appoint by promotion petitioner to the post of Sr.

Floor Supervisor with effect from the date his junior colleagues respondents 5 and 6 have been appointed to the promotional post of Sr. Floor

Supervisor. The long over 16 years having passed by, it would be unjust at this distant period of time, to issue certiorari quashing the promotion of

respondents 6, 7, 9 to 12 as Sr. Floor Supervisors. As regards the subsequent promotional benefits which would flow from this promotion to

petitioner, the court is constrained to issue any direction, in as much as, having regard to the post-litigative development of petitioner having filed a

suit for declaration and injunction in the civil court seeking relief of regularisation of his service from 1995 to 1999 with promotion and other

service benefits and for the salary for the period besides other reliefs. This civil suit is pending adjudication before a sub-ordinate Judge at Srinagar.

9. Ld. Counsel for the respondents submits that in view of the suit No. 19/01 filed by the petitioner in the court of city Judge, Srinagar, the writ

petition should have been dismissed as the petitioner is pursuing an alternative effective remedy on same set of facts and circumstances. Counsel

refers to CMP NO. 2099/01 which he has moved for the purpose.

10. The submission of Ld. Counsel for petitioner is that the suit has been filed for a relief other than one prayed in the writ petition, in as much as,

the suit covers a period 1995 to 1999 for regularisation, salary and the promotional benefits. The suit does not cover and govern the period earlier

to 1995 and the promotion which the petitioner has sought in the writ petition is on facts which admit of no ambiguity or dispute.

11. Having regard to the totality of facts and circumstances, the Rule of pursuing alternative remedy is not applicable to this case. The facts

pleaded and relief sought in the writ petition is quite separable from the facts pleaded and relief sought in the civil suit. The existence of alternative

remedy is not to operate as bar to High Court's jurisdiction to issue high prerogative writs under the constitution. It is a rule of discretion and

prudence.

In this behalf a specific and clear rule is laid down in State of U.P. v. Mohd. Nooh AIR 1958 SC 86 :1958 SCR 535 where it is observed:

But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than

a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate

legal remedies.

This proposition was further considered by a Constitution Bench of Apex Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs.

Ramchand Sobhraj Wadhwani and Another, and 'Rule of exhaustion of alternative statutory remedy,' was affirmed, in following words:-

The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which they learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.

In the aforesaid view of the matter, petition is allowed within the indicated parameters. Mandamus is issued to respondents 1 to 3/competent authority to promote petitioner to the post of Sr. Floor Supervisor from the date his juniors have been promoted as Sr. Floor Supervisor with consequential monetary benefits. However, the subsequent promotion and service benefits, if any, after 1995 shall conform to the decision of the civil court/orders of the competent authority. Disposed of.