

(2018) 07 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No.1202 Of 2018, Miscellaneous Petition No.01 Of 2018

Vinod Kumar @APPELLANT@Hash State Of Jammu & Kashmir And Ors.

Date of Decision : 03-07-2018

Acts Referred:

Citation : (2018) 07 J&K CK 0014

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Through the instant writ petition, petitioner seeks the following reliefs:-

â??Mandamus:-

i) Commanding the respondents i.e. SSRB to select theÂ petitioner for the post of Tech.IIIÂ in the Power Development Department in District

Jammu with all consequential benefits.

ii) Further command the respondents to appoint the petitioner as Tech. III against the vacant posts, as disclosed by the SSB.â??

2. The case of the petitioner is that respondent-Service Selection Board issued Advertisement Notice No. 06 of 1997 dated 1.7.1997 for the post of

Tech.III in Power Development Department in District Cadre of Jammu District. The eligibility for the said posts was prescribed as Matric with ITI

Diploma in Electric/Electronics.Â

3. Learned counsel for the petitioner states that pursuant to the aforesaid Advertisement Notice, petitioner applied for the post of Tech.III. The

respondent, i.e., SSRB issued notification for interview and the petitioner also appeared before the Interview Committee and he did well in the said

interview.

4. It is pleaded that respondent-Service Selection Board issued select list on 28.05.1998 and the same was published in Daily Excelsior Newspaper. It

is stated that the name of the petitioner did not figure in the said selection list and that not even a single person from Electronic discipline was

selected.Â

5. Learned counsel for the petitioner states that various writ petitions were filed, challenging the said selection and all the writ petitions were disposed

of by a common order. The operative part of the said order reads as under:-

â??These petitions are, accordingly, disposed of with the directions that the petitioners be appointed against the available vacancies in different

Districts and the selections already made shall not be disturbed. The petitioners would also be entitled to all consequential benefits minus monetary

benefits.â??

6. It is pleaded that instead of implementing the above said order, respondent-Service Selection Board challenged the same by filing various Letters

Patent Appeals and all these appeals came to be disposed of vide order dated 16.11.2007 with the following directions, which reads as follows:-

â?? In view of what is said herein above, the order of learned Single Judge insofar as directing the State Government to make appointments is

concerned is required to be quashedÂ and set aside. However, at the same time, a direction is required to be given to the State to redraw the merit

list of candidates according to their merits by preparing state wise list, directing the candidates to join at a particular place after taking undertaking

from the candidates.â??

7. Learned counsel for the petitioner states that the petitioner kept on representing before the respondent-SSRB, but nothing has been done till date. It

is stated that on the basis of same notification, similarly situated candidates have been selected and appointed by the respondent â?"SSRB in

Electronic in different districts, however, despite that the petitioner, who secured 54.45% marks and having better merit than the last selected

candidate in the Jammu Division has not been appointed.Â

8. It isÂ pleaded that vide order (Annexure-C) dated 16th April, 2015, passed by this Court in SWP No. 1846/2011 it has been directed to the

respondents, i.e., SSRB to consider and appoint the petitioner as Tech. III in District, Rajouri. further pleaded that selection of the said notification

dated 01.07.1997 has been challenged in number of petitions and the respondent-SSRB preferred an appeal before the Division Bench of this Court

and number of candidates preferred SLP before the Honâ??ble Supreme Court and got consideration order. The respondents-SSRB in LPA titled,

â??Satvinder Singh vs. State of J&K and ors.â? clubbed with LPASW 183/2011 filed an affidavit before the Division Bench, stating that there are 28

available vacancies. It is pleaded that petitioner had secured 54.45% marks, more than the last selected candidate in Jammu Division.

9. I have considered the submissions at admission stage of the writ petition.

10. The admitted facts are that advertisement notice No.6 of 1997 inviting applications for the post of Tech. III in PDD in District cadre for Jammu

District was issued on 1.7.1997 and select list was issued on 28.5.1998, thereby 20 years back. Petitioner did not qualify and also did not file any writ petition.

11. Now when the other persons succeeded by virtue of LPA No.183/2011 and others, present petitioner awoken from deep slumber after 20 years

and has filed present writ petition for same relief. Apex court in State of U.P. & Ors vs Arvind Kumar Srivastava & Ors., on 17 October, 2014 in

CIVIL APPEAL NO. 9849 of 2014 (Arising out of SLP(C) No.18639 of 2012), reported in 2015 (1) SCC 347, held as under; - |

â??Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because

of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that

the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fencesitters and laches

and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (3) However, this exception may not apply in those cases where

the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the

Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person.

Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see

K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment

of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

12. In present case, bare perusal of judgment passed in LPASW No.183/2011 & connected matters, it is evident that the judgment is in personam

holding that benefit of the said judgment shall accrue to the appellants only.

13. In view of above, this petition is dismissed.