

(2019) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 524 Of 2010, IA No. 739 Of 2010

**Yog Raj Sudan @APPELLANT@Hash Chief Secretary Jammu & Kashmir
And Others**

Date of Decision : 06-05-2019

Acts Referred:

Citation : (2019) 05 J&K CK 0012

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : P.N. Raina, J.A. Hamal, Ajaz Lone

Judgement

1. The short relief prayed for by the petitioner in this petition, is for considering his case for promotion as Technical Assistant/ EMIO/ Assistant Director w.e.f 01.08.1998, the date when his immediate junior one Sh. Sansar Singh was so promoted, with all consequential benefits. The facts in brief may be noticed.

2. The petitioner came to be appointed as Junior Scale Stenographer in the Employment (Exchange) Department vide order No. 27-ED of 1983 dated 17-06-1983 issued by respondent No. 3 and was posted in the District Employment Exchange Rajouri. Revised tentative seniority list of the non-Gazetted staff of the Employment Department was circulated by the respondent No. 3 vide his circular No. DS/ESTTG/89 dated 14.02.1989. The petitioner was shown at serial No. 1 in the cadre of Junior Scale Stenographer with his date of appointment indicated as June 1983. One Sansar Singh who was working as Junior Employment Officer in the Department was placed at Serial No. 6 with his date of appointment as Junior Employment Officer as August 1985. Though the post of Junior Employment Officer and Stenographer fall in two different categories of the same class i.e Class II, yet both serve as feeding cadre for promotion to the post of EMIO. It is thus, contended that for the purpose of making promotion to the post of EMIO, the Junior Employment Officer and Stenographer are treated to be one class and promotions amongst these categories are required to be made strictly on the basis of seniority.

3. It is the grievance of the petitioner that despite the fact the petitioner was

senior in class II of the schedule than Sansar Singh, yet the respondents promoted Sansar Singh as Assistant Director retrospectively w.e.f 01.08.1998 in terms of Government order no. 11-L&E of 2001 dated 09.02.2001. The petitioner was, however, denied the promotion on the ground that at the relevant point of time, the petitioner was under suspension and facing the trial in prevention of corruption case. He was, however, exonerated of the charges and acquitted by the High Court vide its judgement 24.03.2005. The petitioner claims that as a result of his acquittal from the High Court, he was reinstated by the respondents vide Government order No. 17-I&E of 2005, dated 17-12-2005. On acquittal from the High Court and his reinstatement in the service, the petitioner claims that he made representation to the respondent No. 4 seeking consideration of his case for promotion to the higher post of Technical Assistant/ Assistant Director and consequent his placement in appropriate place of seniority. Representation, though was received by the respondent No. 3 and forwarded to respondent No.2 for taking appropriate action in terms of recruitment rules but nothing fruitful was done. It has been brought to the notice of this court that during the pendency of the petition, the case of the petitioner came to be considered by the Department Promotion Committee (DPC) and pursuant to the recommendation of DPC dated 17-08-2010, the petitioner was promoted as EMIO w.e.f 1.07.1995 notionally. It was decided in the meeting of the DPC that the case of the petitioner for further promotion to the post of Assistant Director from the date he became eligible and post was available, shall be forwarded to the Administrative Department. It is thus, contended by the learned senior counsel appearing for the petitioner that so far as the grievance of the petitioner with regard to the promotion of EMIO is concerned, the same has been redressed but his grievance that he is entitled to parity with Sansar Singh a junior to him who is promoted as Assistant Director w.e.f 01-08-1998, has not been redressed.

4. The respondents, despite availing numerous opportunities, have not filed any response and in such situation, this court is left with no option but to treat the averments made in the writ petition as gospel truth and decide the matter accordingly.

5. Having Learned counsel for the parties and perused the record, I am of the view that the petitioner is entitled to parity with Sansar Singh who has been promoted as Assistant Director w.e.f 01-08-1998 in terms of Government Order no. 11-L&E of 2001 dated 9.02.2001. Undoubtedly and indisputably the petitioner and Sansar Singh who were holding the posts of Junior Employment Officer and Junior Scale Stenographer fall in the category of A&B of Class II of the schedule of Rules of 1978. The learned counsel for the respondents has however, contended that petitioner was Junior Scale Stenographer and therefore, he would not fall in category B of Class

II. While it may be true that category B of class II refers to the post of Stenographer but the fact remains that there are no posts known by the nomenclature of Junior Stenographer or Senior Stenographer in the rules. The

schedule appended to Rules 1978 recognises only one post and that is indicated as "Stenographer". In the absence of any rebuttal from the respondents who despite opportunities, have not filed any reply affidavit, I am persuaded to accept the contention of learned counsel for petitioner that he falls in category B of class II and therefore, was eligible alongwith Sansar Singh, Junior Employment Officer for promotion to the post of EMIO. At this juncture, It may be appropriate to produce relevant portion of the schedule of Rules 1978 herein below:-

Schedule of Notification SRO- 136 dated : 4-3-1978

Class

category

Designation

Grade

No. of post

Minimum qualification for direct recruitmen

Method of recruitmen

I

A

B

Superintendent

E.M.I Officer

450- 700

450-700

1

1

To be deputed by the General Department

Masters Degree in Economics or Statistics from a recognised University

50% by promotion from Class II from among persons having at least 5 years service in that class.

ii. 50% by direct recruitment.

II

A

B

Jr. Employment Officer

Stenographer

280- 520

280- 520

5

1

Degree Examination or its equivalent of any recognized University.

Higher Secondary (Elective) or its equivalent of any recognised University or Board of Examinations.

i. 50%by promotion from Class III Category

A from among persons having at least 4 years service that class. ii. 50% by direct recruitment

By direct recruitment on the basis of test in stenography and type-writing with minimum speed of 65 words and 35 words per minute respectively.

6. From the plain reading of the schedule reproduced herein above, it is clear that 50% posts of EMIOs are required to be filled up by promotion from Class II from amongst the persons having at least 5 years service in that class. Class II contains two categories i.e A Junior Employment Officer and B Stenographer and, therefore, for the purpose of promotion they are to be put in single eligibility list as per their seniority. That being so, persons senior in Class II will have superior right of promotion to the higher post of EMIO. It may not be out of place to mention here that it is because the petitioner had been placed under suspension and had been facing criminal trial, Sansar Singh and, may be, some others, stole a march and got promotion in time. The Petitioner was considered for promotion only after he was acquitted by the High Court and reinstated in service. He was given promotion to the post of EMIO w.e.f 01.07.1998 notionally vide Director Employment J&K's order No. 116 ED of 2010 dated 21-06-2010. This position has been brought on record by the petitioner by placing the minutes of the meeting of DPC held on 17.8.2010 which were passed on and taken on record during the course of arguments and were not disputed by the respondents. The petitioner has, therefore, become entitled to promotion to the post of Assistant Director Employment which can only be considered by the respondent No. 1 pursuant to the recommendation to be made by the DPC / PSC. The post of Assistant Director is a Gazetted cadre post and, therefore, the same cannot be filled up without consultation of PSC.

7. In view of the facts and circumstances explained above, this Court has come to the conclusion that though the right of the petitioner to get further promotion

as EMIO and Assistant Director Employment remained eclipsed due to his involvement in criminal case yet on his acquittal from the High Court, he was considered and granted promotion to the post of EMIO on 01.7.1995 notionally and w.e.f 21.06.2010 prospectively. The petitioner, therefore, deserves to be considered for promotion to the post of Assistant Director Employment and while according this consideration, respondents need to take into consideration that the person junior to him namely Sansar Singh got promotion directly to the post of Assistant Director Employment w.e.f 01.08.1998.

8. Accordingly this petition along with connected IA is disposed of by providing that the case of the petitioner for his promotion to the post of Assistant Director Employment shall be considered by the respondent No. 1 in light of recommendation made by DPC in its meeting held on 17.08.2010 and while so considering, the respondent No. 1 shall take note of the fact that junior to him in Class II namely Sansar Singh got such promotion w.e.f 01.8.1998. Let respondent No. 1 place the case of the petitioner for promotion to the post of Assistant Director Employemen before DPC/PSC within a period of 6 weeks from the date certified copy of this order is made available to respondent no. 1 and after obtaining its recommendation, pass appropriate order of promotion of the petitioner as Assistant Director Employment treating him at par with Sansar Singh who has been promoted as Assistant Director Employment w.e.f 01.08.1998 in terms of Government order 11-L&E of 2001 dated 9.2.2001. Since the petitioner has now retired and at the time of his superannuation, he was holding the post as in-charge Assistant Director Employment since 26.10.2010, as such the benefit of regular promotion as Assistant Director Employment to the petitioner would be notional till 26.10.2010 and regular w.e.f 26.10.2010 till his superannuation. However, Promotion of the petitioner when effected shall enure to the benefit of re-fixation of his salary, payment of arrears w.e.f 26.10.2010 till his superannuation as also re-fixation of his post retiral benefits.