

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Present: The Hon'ble Mr. Justice Mohammad Yaqoob Mir – Judge

SWP No. 2468/2011, CMA Nos.2196/2012, 2718/2012 &3662/2011

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SWP NO. 2468/2011.

Sunil Kumar Gupta, Aged 46 years.
S/O Shri R.C.Gupta,
R/O H. No. 421, Shastri Nagar, Jammu.

.....Petitioner.....

VERSUS

1. State of Jammu and Kashmir through
Principal Secretary, Home Department Civil secretariat
at present at Jammu.
2. Public Services Commission,
Through its Secretary,
Pragati Bhawan, Reshamgarh Colony Road,
Jammu.

.....Respondents.....

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SWP No. 2468/2011
CMA Nos. 2196/2012, 2718/2012 & 3662/2011

Date of order: 30.12.2014

Sunil Kumar Gupta v. State and ors.

Whether approved for reporting: **Yes.**

Appearing counsel:

For the petitioner/appellant (s) : Mr. Anil Sethi, Adv.
For the respondent(s) : Mr. Gagan Basotra, Sr. AAG for R-1
Mr. F. A. Natnoo, Adv for R-2.

(ORAL)

Petitioner after hectic successful litigative process has been deprived of reaping its fruit. The relevant operative portion of the judgment dated 19.04.2004 rendered in SWP No. 1330/1996 is advantageous to be quoted:

"The petitioner has already become a substantive member of Police Service in the cadre of Inspectors (Ministerial) and pursuant to all such decisions of the Government, he is within his legal, statutory and constitutional rights to claim benefit of seniority in his cadre, but the same, till date, has been denied. The petitioner is, therefore, held entitled to the benefit of seniority and promotion as an Administrative Officer in the cadre of Deputy Superintendents of Police (Ministerial) from the same date other Police Inspectors (Ministerial) came to be promoted as such in the year 2001 on the basis of recommendations of the Departmental Promotion Committee conducted in the

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year 2001 when the case of the petitioner was also shelved illegally. The respondents are, accordingly, directed to settle the seniority of the petitioner in the cadre of Inspectors (Ministerial) on the mandate of Rule 24 of J&K CCA Rules, 1956 and also his promotion as an Administrative Officer in the cadre of Deputy Superintendents of Police (Ministerial). This exercise shall be completed within a period of three months."

The said judgment has been unsuccessfully challenged by the respondents therein by medium of LPA(SW) No.213/2004 dismissed on 08.08.2005, as such has attained finality.

When the judgment was not implemented, petitioner filed contempt petition No. 71/2008 for initiating contempt proceedings against the alleged contemnors i.e. chairman, members and secretary to Public Service Commission, same has been dismissed vide order dated 17.08.2010.

Petitioner again represented before respondent-authorities without success, hence the instant petition.

Vide interim direction dated 17.12.2011, respondents were under command to implement the judgment dated 19.04.2004. In compliance whereof as an arrangement, vide Government Order Home-07(P) of 2006 dated 09.01.2006, placement of the petitioner on officiating basis as

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Administrative Officer (M) in his own pay and grade subject to confirmation by Departmental Promotion Committee/ PSC for a period of six months or till the post is properly filled up under rules was sanctioned.

For final compliance of the judgment a report was prepared for being considered by Departmental Promotion Committee wherein amongst others, case of the petitioner was considered and proposed to be placed as Administrative Officer w.e.f 09.01.2006 with a further condition that the proposed date of clearance shall be notional w.e.f 03.04.2002 to 08.01.2006 and regular w.e.f 09.01.2006.

Proposal has not been accepted for clearance by the Public Services Commission. In this behalf, Government order no. 743-Gad of 2007 dated 28.06.2007 has been quoted to be disabling the Commission in allowing clearance.

A detailed position has been reflected in the minutes of the Departmental Promotion Committee for Home Department held on 24.05.2013 and 30.06.2013. After detailed deliberations and after noticing the entire position of the petitioner, the Public Services Commission has recommended as under:

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dated 28.06.2007 will operate against the interests of the petitioner or not. In the said Government Order, it has been quoted that in compliance with the direction of the Hon'ble Supreme Court of India issued in the case of **Suraj Prakash Gupta v. State and others**, guidelines have been framed for streamlining the cadre management of Gazetted and Non-Gazetted services, para 7 of the guidelines so framed has been recasted which reads as under:

"Promotion of a Government employee shall take effect from the date; he has been formally put in charge of the higher post subject to his eligibility in accordance with the recruitment rules and availability of the vacancy. His clearance/regularization shall take effect from the date of his placement against the higher post or availability of vacancy or the date of his eligibility, which ever is later. In all other cases, the promotion of a Government employee to the next higher post shall take effect from the date of issuance of the order"

The bare perusal of the recasted para 7 of the guidelines would suggest three alternate situations are to be taken into account while giving effect to the promotion.

- (1) Promotion is to take effect from the date official has been formally put in charge of the higher post subject to eligibility and availability of the vacancy.

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- (2) The regularization shall take effect from the date of placement against the higher post or availability of the vacancy or the date of eligibility whichever is later.
- (3) In all other cases, it is to take effect from the date of issuance of the order.

The case of the petitioner is covered by situation no. 2.

The vacancy has become available in the year 2002. Petitioner was eligible prior thereto but however he has been placed on officiating basis by way of an arrangement against the post of administrative officer in the year 2006 which is later in point of time, same is not to be counted otherwise it will run contrary to the judgement rendered in SWP No. 1330/1996 wherein he has been found eligible w.e.f 2001. His seniority and position stand directed to be settled in accordance therewith.

Placement as Administrative Officer in compliance to the judgment vide Government Order Home-07(P) of 2006 dated 09.01.2006 was in effect to dilute the action of the petitioner against the inaction of the respondents in implementing the judgment. So the said order of placement

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cannot be construed to mean placement so as to be treated as later in point of time within the meaning of situation no. 2 as quoted above.

Para 7 as has been recasted as quoted above has to be interpreted in a manner so as to advance the implementation of the final judgement. It cannot be interpreted in a manner so as to negate the operation of the judgement.

The case of the petitioner as covered by situation no. 2 would suggest that the eligibility and availability of the vacancy has to be taken into account.

Going by the records, petitioner may have been eligible in the year 2000 but vacancy has become available in the year 2002 which is later in point of time. Therefore, the proposal as was mooted for placement of the petitioner notionally w.e.f 03.04.2002 to 08.01.2006 and regular w.e.f 09.01.2006 was correct and should have been accepted.

The recommendations by Public Service Commission quoted above were subject to the determination of the issue of applicability of Government Order no. 743-GAD of 2007 which now is clarified.

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The Government Order Home-07(P) of 2006 dated 09.01.2006 has to be treated as a simple arrangement not the placement in routine or a regular placement. Because it is not in consonance with the judgment which has attained finality.

It is made clear that the Government Order no. 556 Home of 2013 dated 24.12.2013 which has been passed in compliance to various interim directions issued by the Court is subject to the outcome of SWP No. 2468/2011 as is clear from the order itself. Therefore, same shall not now operate against interests of the petitioner.

Viewed thus, respondents shall accord fresh consideration to the case of the petitioner in the light of the observations made hereinabove and to pass the appropriate orders consistent with the operative part of the judgement dated 19.04.2004 as quoted hereinabove, irrespective of Government Order No. Home-58(P) of 2008 dated 29.01.2008.

The exercise shall be undertaken and completed preferably within a period of 8 weeks.

It is rightly pointed out by the counsel appearing for Public Services Commission that the Commission is without

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chairman and the members. It being so, 8 weeks shall reckon from the date Commission becomes effectively functional.

The petition is accordingly disposed of along with connected CMA(s), if any.

Sd/- Hon'ble
(Mohammad Yaqoob Mir)
Judge

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