

(2016) 3 JKJ 431

Jammu & Kashmir High Court

Case No: LPASW No. 20 of 2014, MP Nos. 190 of 2014, 24 of 2014 c/w LPASW No. 198 of 2013, MP Nos. 251 of 2013 and 44 of 2014

State and Anr.

APPELLANT

Vs

Tanveer Iqbal

RESPONDENT

Date of Decision: April 18, 2016

Acts Referred:

- Jammu and Kashmir Administrative Service Rules, 2008 - Rule 15(4)(i)
- Letters Patent Appeal - Clause 12

Citation: (2016) 3 JKJ 431

Hon'ble Judges: Mr. Mohammad Yaqoob Mir and Mr. Bansilal Bhat, JJ.

Bench: Division Bench

Advocate: Mr. M.K. Bhardwaj, Sr. Advocate With Mr. Ajay Abrol, Mr. Z.A. Shah, Sr. Advocate With Mr. Vipin Gandotra, Mr. Jahangir Iqbal Ganai, Advocate, Mr. S.K. Shukla, Advocate, Mr. Gagan Basotra, Advocate, Mr. Faraz Iqbal, Advocate & Mr. Mukhtar-ul-Aziz, Advocate

Final Decision: Allowed

Judgement

Yaqoob, J. - These batch of appeals under Clause 12 of the Letters Patent are directed against the judgment dated 08.11.2013 passed by

learned Single Judge where under batch of writ petitions as referred to in the title of the judgment have been decided.

2. In all the writ petitions so disposed of vide judgment impugned, quashment of Govt. Order No. 743-GAD of 2011, dated 24.06.2011 has been

sought. In terms of said order, final seniority list of the officers appointed to the Time Scale of the Jammu and Kashmir Administrative Services

(hereinafter for short referred to as KAS) between 01.01.2004 to 01.12.2008 as it stood on 01.01.2010, has been notified. By the same order it

has been made clear that any officer, who may feel aggrieved with his placement in the seniority list, may file a review petition before the

Government through General Administration Department within a period of 15 days from the date of issue of the order.

3. Keeping in view the grievances and the magnitude of its impact on the future prospectus of the writ petitioners, both the parties have filed instant

batch of Letters Patent Appeals, same stand clubbed for final disposal.

4. Counsel appearing for the parties were heard at length except some of those Advocates who were not available, they were given chance to file

written submissions which have been filed.

5. From the sifting of records it emerged that induction of 49 officers against Leave and Training Reserve posts was projected to be contrary to the

rules, same has been specifically pleaded in SWP No. 1487/2011, in its prayer clause, quashment of the final seniority list notified vide Govt.

Order No. 743-GAD of 2011, dated 24.06.2011 has been prayed for and at the same time it has also been prayed that induction of 49 officers

against Leave Reserve/ Training vacancies be quashed. The second prayer, as made, has escaped the attention which fact is demonstrated by the

observations and the opinion as recorded in the judgment impugned. For facility of reference, it shall be quite relevant to quote the same. In Para

71 of the impugned judgment it has been observed as under:

....I am of the considered view that the manner in which 49 Leave and Training Reserve Posts have been utilized for adjusting 49 persons in the

Time Scale, the same is not in consonance with the Rules of 1979. It is equally correct that none of the petitioners has challenged the induction of

these 49 persons, though the grievance has been raised by the petitioners that the induction of these 49 persons against the Leave and Training

Reserve posts was contrary to the rules.

Again in the same paragraph it has been observed as under:

In absence of specific challenge made by the petitioners to the induction of these 49 persons in time, this Court is not in a position to quash their

selection even if grounds for such quashment exist."" Again in the same paragraph, further it has been observed as under: ""Had the Government

taken a decision to utilise 49 Leave and Training Reserve posts for the benefit of departmental feeding services, then it was incumbent upon the

Government to distribute these slots proportionately to all the departmental feeding services.

6. Para 77 of the judgment is also advantageous to be quoted:

77. Therefore, in my considered view, these 49 persons are required to be placed at the bottom of final seniority list and, in any case, below the

petitioners. However, their actual placement in the seniority list is required to be worked out by the Government in the light of the observations

made here in above.

7. In Para 97, which is concluding part of the judgment, in sub-para (vi), the position has been reiterated i.e. appointment by promotion of 49

officers has been held to be not in conformity with the Rules of 1979. At the same time it has been opined that ""in absence of specific challenge to

their induction, that too without any inordinate delay, the Court is not in a position to set aside their induction but at same time Court cannot lose

sight of the fact that such persons appointed irregularly to the Service cannot steal a march in the matter of the seniority over and above those who

have been appointed to the Service in accordance with the Rules.

8. The object of quoting of the aforesaid observations and the opinion is to clarify the position that the learned Writ Court has not addressed the

issue as had been raised in SWP No. 1487/2011, vis-a-vis these 49 officers, therefore, the position as had been projected in the said writ petition

has remained to be adjudicated upon in its right perspective.

9. Further in another writ petition i.e. SWP No. 1450/2011, titled ""Mukhtar-ul-Aziz v. State & Ors."" in addition to the challenge to seniority

list notified vide Govt. Order No. 743-GAD of 2011, dated 24.06.2011, there were other issues raised vis-a-vis rights of the petitioner Mukhtar-

ul-Aziz. Same have remained to be adjudicated upon. In the petition it had been projected that the petitioner has been holding KAS cadre post

from the year 2000 so is eligible for promotion to the Time Scale of KAS from an earlier date. It had also been projected that on various

occasions case of the petitioner was not considered for promotion to the Time Scale from the year 1997 to 2007, so has been illegally denied right

of consideration on each and every occasion. Petitioner is contended to have been holding the higher post for which he was eligible, therefore,

claim promotion from the date he was placed against an available higher post. These issues also have not been dealt with while dealing with his writ

petition in the judgment impugned. Perhaps same has escaped the attention.

10. The determination of aforesaid issues will have direct as well as indirect impact on the seniority position of the officers who are parties in these

appeals.

11. While sifting the entire records, it also emerged that a petition bearing SWP No. 282/2012, titled ""Mohammad Ishaq Shah & Anr. v.

State & Ors."" had not been clubbed with the writ petitions, as such, has remained to be decided. In the said writ petition Constitutional validity of

Proviso (i) to sub-rule(4) of Rule 15 of J&K Administrative Service Rules, 2008 has been questioned as being ultra vires the Constitution. While

these appeals were clubbed, record of said writ petition had been called and clubbed but later on, at the request of counsel for the parties, vide

order dated 19th July, 2013, it had been segregated, as such, sent back to the Writ Court for disposal but till date same has not been disposed of.

12. Some of the writ petitioners claim the benefit of Proviso (i) to sub-rule(4) of Rule 15 of J&K Administrative Service Rules, 2008, relatable to

their seniority, which though has not been granted in terms of judgment impugned, but fact of the matter is that the said Proviso provides for

appointment against the vacancies of 2004,2005,2006 and 2007 to the Time Scale of those members of departmental feeding services whose list

had not been prepared in a particular calendar year despite availability of vacancies owing to the procedural delay. Such members, when finally

included in the select list at any later date, shall have to be appointed to the service on the date when vacancies are allocated to such feeding

services. It is because of the said position and its impact, specifically the Proviso has been challenged by medium of SWP No. 282/2012. It being

so, the result of adjudication of said writ petition shall have direct impact on the seniority position. In the same background, record of the said writ

petition was called for perusal which revealed that pleadings in the said writ petition have not been completed. In case pleadings would have been

complete, said petition could also be decided along with these appeals. In absence of respective pleadings, the question of Constitutional validity of

Proviso (i) to sub-rule(4) of Rule 15 of J&K Administrative Service Rules, 2008 shall not be appropriate to be decided so as to avoid prejudice to

either party.

13. The protracted litigation shall not be in the interests of the parties but at the same time effectual adjudication will be to the advantage of both the

parties. For effectual adjudication of the basic dispute of seniority all the relevant issues require proper consideration and adjudication.

14. We were inclined to settle all controversies but for a handicap i.e. in SWP No. 282/2012 pleadings have not been completed. Though we

have called the record of said petition for perusal but same cannot be decided in absence of the pleadings.

15. Equally the issue regarding rights of 49 officers, who too are aggrieved as they have been pushed to the bottom of the seniority list by dint of

impugned judgment, is required to be adjudicated upon. Their induction into KAS has been questioned. If the challenge to their induction

succeeds, then there is no question of determining their seniority but in case challenge to their induction fails, then the question will arise as to

whether they could be directed to be pushed to the bottom of the seniority list. In the judgment impugned such serious questions have remained to

be addressed because of the fact that the issue vis-a-vis challenge to their induction, though specifically pleaded and prayed for in SWP No.

1487/2011, has not been looked into by the learned Writ Court whereas the learned Writ Court has repeatedly observed that there is no specific

challenge to their induction, as quoted here in above.

16. In the background of stated facts and circumstances, the judgment impugned is not sustainable, as such, is set aside. All the writ petitions, as

decided by the common judgment impugned, are remanded for fresh adjudication. SWP No. 282/2012, is also required to be decided along with

said petitions, therefore, respective pleadings in SWP No. 282/2012, shall be completed within four weeks i.e. respondents therein shall file

counter affidavit within a period of two weeks with copy in advance to the learned counsel for the petitioners so as to enable him to file rejoinder, if

any, thereafter within two weeks. In default, right to file of the defaulting party shall be deemed closed.

17. All the writ petitions decided vide common judgment impugned and also the SWP No. 282/2012, be listed for final hearing before the Writ

Court (learned Single Bench) having the roster in the week commencing 23rd May, 2016 in the regular cause list.

18. All the appeals succeed so shall stand disposed of as above along with all connected MPs.