

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1070/2002
CMP No.1641/2009

Date of decision:08.03.2010

Sumeer Khajuria vs. State and ors.

Coram :-

Mr. Justice J. P. Singh, Judge.

Appearing Counsel:

For Petitioner(s) : Mr. Z.A.Shah, Sr. Advocate with Mr. Vipin Gandotra, Advocate.
For Respondent(s) : Mrs. Neeru Goswami, Dy.A.G for R-1 to 3.
Mr. D.C.Raina, Sr. Advocate with
Mr. F.A.Natnoo, Advocate for R-4 & 5.

i)	Whether approved for reporting in Press/Journal/Media	: Yes/No
ii)	Whether to be reported in Digest/Journal	: Yes/No

Three posts of Lecturer in Electronics and Communication in Government College of Engineering and Technology were referred by the State Government in the Higher Education Department to the Jammu and Kashmir Public Service Commission for selection of eligible candidates. Three candidates figured in the Select List prepared by the Commission. The petitioner's name, however, figured fourth in the Waiting List prepared by the Commission along with the Select List. Apprehending that the State Government may allow the Waiting List Panel to expire without considering his claim to regularization in service, the petitioner approached this Court claiming *inter alia* confirmation/permanent adjustment/regularization against the post of Lecturer in Government College of Engineering and Technology, besides seeking extension of the validity period of Waiting List.

The respondents contest the petitioner's claim saying that Stop-gap arrangement of petitioner's continuance with the respondents does not entitle him to seek regularization in service and that the Waiting List Panel was not required to be operated for non-availability of any post.

Petitioner's CMP No. 904/02 was allowed by the Court at the Motion hearing stage, providing that expiration of the Panel during the pendency of the Petition would not affect the petitioner's right.

The petitioner has been appointed by the State Government as Lecturer in Electronics and Communication Engineering on regular temporary basis in the pay scale of Rs.8000-13500 in Government College of Engineering and Technology against an available post on probation for a period of two years during the pendency of the Writ Petition vide Government Order No. 107 HE of 2003 dated 08.04.2003. The appointment has, however, been made subject to the out come of the final decision in the Writ Petition.

Petitioner's learned counsel submits that the petitioner's Writ Petition needs to be disposed of in the light of the Government order issued during the pendency of the Writ Petition, because the rider placed on his appointment making it subject to the final decision in the Writ Petition, was a mere surplusage, in that, his case has been considered on its own merit and independent of the issues raised in the Writ Petition.

I have considered the submissions of learned counsel for the parties and gone through the Government Order referred to by the petitioner's counsel.

In order to deal with the petitioner's counsel's submission, reference needs to be made to the order passed by the State Government during the pendency of the Petition, which for facility of reference is reproduced hereunder:-

“Government of Jammu and Kashmir
Higher Education Department.

Sub:-Appointment of Lecturers.

Government Order No. 107 HE of 2003
Dated : 08.04.2003.

Whereas three posts of Lecturer in Electronics and Communication were referred to Public Service Commission for making necessary selection of eligible candidates vide No: HE/GCET/86-11/93-94 dated 03.11.1997.

Whereas the Public Service Commission, communicated a panel of selected candidates on 20.12.2000, vide letter No:PSC/DR/Lect/Elect. & Com./21/98 dated 20.12.2000, as under:-

Select List

- 1.Amit Verma
- 2.Sameru Sharma.
- 3.Subhash Chander.

Waiting List-Open Category

1. Manoj Kumar.
2. Anil Salgotra
3. Vandana Sharma
4. Sumeer Khajuria.

Whereas the select list was fully utilized by appointing the candidates selected by the Public Service Commission vide Government Order No:13 HE of 2001 dated 16.01.2001.

Whereas one Shri Manoj Kumar figuring at Sr.No:1 of Waiting List has since been appointed after the vacancy caused due to resignation of Shri Amit Verma, vide Government Order No:350-HE of 2001 dated 06.12.2001.

Whereas other candidate figuring at Sr.No.2 has given an affidavit that he is not going to join as Lecturer in Government College of Engineering and Technology, Jammu. Hence, the said post be filled up by next candidate.

Whereas the other candidate who is also on Waiting List at Sr.No.3 has also gone to Court of Law the directions in her case are yet awaited.

Whereas Mr. Sumeer Khajuria the candidate in the waiting List at Sr.No.4 went to Court for getting the justice for keeping the panel alive till his appointment.

Whereas the Hon'ble High Court in its interim order dated 19.04.2002 ordered that:-

“Notwithstanding the fact that the currency of the waiting list/panel is to expire during the pendency of petition, that will not affect the rights of the petitioner.

Whereas in view of interim order dated 19.04.2002 the matter was referred to Law Department for their opinion who has opined as under:-

“The matter being subjudice, the Department is advised to file the Counter and get the matter decided.”

Whereas the matter is still subjudice in the Court of Law.

Whereas Shri Sumeer Khajuria has represented for his appointment as Lecturer against the post of Lecturer in the discipline of Electronics and Communication Engineering which has become available due to rationalization of posts in various Departments of Government College of Engineering and Technology, Jammu.

Whereas the Department considered the representation of the petitioner for his appointment in the Government College of Engineering and Technology, Jammu.

Now, therefore, in pursuance of interim directions dated 19.04.2002 in CMP 904 of S.W.P 1070/02, titled Sumeer Khajuria V/s State and others, sanction is accorded to the appointment of Shri Sumeer Khajuria S/o Dr. Ravinder Khajuria, House No:541-A, Gandhi Nagar, Jammu as Lecturer in Electronics and Communication Engineering on regular temporary basis in the pay scale of (8000-13500) in Government College of Engineering and Technology, Jammu against an available post. His appointment is, however, subject to outcome of final decision in the Writ Petition No. SWP 1070/02.

The appointee shall be on probation for a period of two years from the date of joining in the College. He shall report to Principal Government College of Engineering and Technology, Jammu within a period of twenty one days from the date of issue of this order failing which his appointment shall be deemed to have been cancelled.

By order of the Government of Jammu and Kashmir.

(sd/-)

Principal-Secretary to Government Higher Education Department.

No:-HE/GCET/123/95.

Dated:-08.04.2003.”

Perusal of the Government Order aforementioned indicates that the petitioner has been appointed as Lecturer in Electronics and Communication Engineering against one of the available posts which are indicated to have become available due to rationalization of posts in various departments of Government College of Engineering and Technology, Jammu, according consideration to the petitioner's Representation seeking appointment in Government Service.

This Court had not issued any such direction requiring the State Government to consider the petitioner's case which

appears to have been considered by the State Government independent of the issues raised by him in the Writ Petition. The expression subject to final outcome of the final decision in Writ Petition SWP No. 1070/02 suffixed to the petitioner's appointment, thus appears to be a mere surplusage, and the petitioner's counsel is right in saying that with the appointment of the petitioner against a clear vacancy, the Writ Petition has been rendered infructuous.

This Writ Petition is, accordingly, disposed of as infructuous with the above observations.

(J. P. Singh)
Judge

JAMMU:
08.03.2010
Pawan Chopra