

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP No. 1145/2008 a/w 1042/2008, SWP No. 484/2008, SWP No. 635/2008, SWP No. 1084/2008, SWP No. 877/2009, SWP No. 1540/2008, SWP No. 689/2009, SWP No. 821/2009, SWP No. 400/2008, SWP No. 889/2009, SWP No. 800/2009, SWP No. 1622/2008, SWP No. 388/2009, SWP No. 1500/2009, SWP No. 1556/2009, 136/2009, SWP No. 724/2008, SWP No. 1763/2008, SWP No. 120/2009, SWP No. 2240/2009, SWP No. 1446/2009 a/w connected CMPs.

Date of order: 26.08.2010

Dev Raj and others Vs. **State and others.**

a/w connected petitions.

CORAM:

HON'BLE MR. JUSTICE SUNIL HALI-JUDGE

Appearing counsel:

**For petitioner(s) : Mrs. Surinder Kour, M/s Abhinav
Sharma, Shahzad Azeem, Sudesh
Sharma and A.S.Salathia, Advocates**

For respondent(s): Mr. Jagdish Parihar, AAG.

(i) Whether to be reported in Press, Journal/Media : Yes/No
(ii) Whether to be reported in Journal/Digest : Yes/No

As the issues involved in all these writ petitions are similar, therefore, the same shall stand disposed of by a common order.

The selection process for appointment to the post of Sub Inspectors in Jammu and Kashmir Police was initiated by the respondents vide Advertisement Notice dated 25.02.1999. As a consequence of the selection, select list of Sub Inspectors was issued and having failed to make the grade in the said selection process, unsuccessful candidates questioned the selection/appointment in SWP No. 576/2000 on the ground that being State cadre posts, the selection was required to be made on State-wise basis while as the same was made on Province-wise basis.

Learned Single Judge disposed of the said petition by a common order against which Letters Patent Appeal came to be preferred by the State. Learned Division Bench of this Court while disposing of the Letters Patent Appeal quashed the select list vide order dated 19.08.2001 and issued directions to the State to re-draw the merit list on State-wise basis. Against the order of the learned Division Bench, SLP came to be preferred by the State, which too was dismissed by the apex court on 10.08.2004 and the judgment of the Division Bench was affirmed.

In view of the directions of the Division Bench of this Court and affirmed by the Apex court, State-wise merit list was re-drawn, as a result of which, 47 candidates who were earlier selected/appointed did not come in the merit zone, as such they were ordered to be ousted. Order of their ousting was not given effect to, as a result of which, contempt petition came to be filed before this Court. On presentation of the contempt petition, notice came to be issued to the respondents to implement the judgment of Division Bench of this Court. This order, however, was challenged by the ousted candidates before the Apex court in Civil Appeal No.4758 of 2006 wherein the apex court vide its order dated 10.05.2007 passed the following order:-

"I.A No. 49 of 2006 is allowed. Applicants Surinder Vir Singh Chib S/o Shamsher Singh Chib and Joginder Singh S/o Thoru Ram are permitted to be impleaded as respondents.

Mr. Altaf H. Nayak, learned Advocate General fairly submits that all the 47 petitioners who are likely to go out of job as a result of the impugned order passed by the High Court and 22 respondents herein will be accommodated on the post of Sub-Inspector. He further submits that all the 47 petitioners who were selected on account of impugned selection and are presently working will be allowed to continue on their posts. In view of this statement made by learned Advocate General, we do not think we need to determine any legal question involved in this matter. Consequently, the Appeal stands disposed of in view of the statement made by learned Advocate General.

This order came to be passed on the concession given by the then learned Advocate General that the persons who filed the contempt petition before this court would be accommodated without disturbing the selection of 47 candidates who had to be ousted on account of redrawing of the merit list State-wise. This order was passed by the Apex Court without determining the legality of the order challenged before it. As a consequence thereto the persons ousted were allowed to continue on the concession given by the then learned Advocate General.

It transpires that on the basis of re-drawing the merit list in terms of the directions of the Division Bench and adjustment of 22 candidates along with 47 candidates in terms of the concession given by the learned Advocate General before the Apex Court, some of the candidates amongst the above category have been so adjusted even though, they have secured either equal or less marks than the petitioners herein. It is this aspect of the matter which has been challenged in the present petitions by contending that petitioners even though have secured either equal marks or higher marks than the private respondents, have been left out which action of the official respondents is said to be discriminatory in nature and violative of Articles 14 and 16 of the Constitution.

The respondents in their objections have not denied the fact that the petitioners have secured either equal or more marks than the private respondents in their respective writ petitions. The only stand taken by the official respondents is that the private respondents were appointed in terms of the statement of the then learned Advocate General made before the Apex Court. In nutshell, the stand of the official respondents is that the candidates, who were to be ousted in view of the directions of the Division Bench, were allowed to continue in terms of the judgment of the Apex court. It is also contended

that 22 candidates who have been selected have either equal or lesser merit than the present petitioners.

The case of the petitioners herein, as noticed above, is that they have secured more or equal marks than the candidates who have been appointed by the official respondents in view of the concession given by the then learned Advocate General before the apex court as also other candidates who have been granted the benefit of appointments in pursuance to the directions of the Apex court. The grievance projected in these writ petitions is that despite they having better merit than the candidates selected by the official respondents, the petitioners have not been given the benefit of appointment. Thus a direction is sought to the official respondents to grant similar treatment to the petitioners as has been given to the private respondents.

This court in one of the writ petitions bearing SWP No.1255/2004 titled Ashish Khajuria and another Vs. State and others while considering identical controversy has passed the following orders :-

“It is not in dispute that the Division Bench of this court in LPA No. 336/2001 has set aside the selection of Sub Inspectors made in pursuance to the advertisement notice dated 25.2.1999 and directed the State Government to re-frame the select list state-wise. These findings of the Division Bench were affirmed by the Apex Court vide order dated 10.2.2004. The import of the judgment was that after re-drawing the merit list of Sub Inspectors, the candidates who were selected/ appointed earlier, in case did not make the grade were to be ousted. The effect of Advocate General’s concession before the Apex Court was only for accommodating the candidates who had to be ousted. This would, however, did not dilute the judgment passed by the Division Bench of this Court and affirmed by the Apex Court as the candidates having better merit were to be selected first and thereafter left over vacancies, if any, the ousted candidates had to be accommodated”.

The direction of this Court was categorical that concession given by the then learned Advocate General in accommodating 47 candidates would not dilute the impact of judgment passed by the Division Bench of this court and affirmed by the Apex court. It may also be noted that in the writ petition (SWP No. 1255/2004), Director General has filed his affidavit indicating the marks obtained by the private respondents vis-à-vis petitioners.

In view of the above, these writ petitions are allowed with the following directions to the official respondents:-

- (a) to consider the merit of the petitioners vis-à-vis those candidates who have been selected on the basis of the concession granted by the learned Advocate General;
- (b) In case the merit of the petitioners is higher than those persons who came to be appointed on the concession given by the then learned Advocate General, in that eventuality the petitioners shall be appointed against the post of Sub Inspectors from the date the said persons have been appointed as per their merit position;
- (c) the merit of the petitioners shall also be considered vis-à-vis the candidates who even though not selected on the basis of concession given by the then learned Advocate General but otherwise and have secured lesser marks than the petitioners after redrawing the merit on State-wise basis; and
- (d) In case any of such selected candidates' have secured lesser marks vis-à-vis petitioners, in that eventuality the petitioners shall be given the same benefit as has been given to the said candidates who are lesser in merit than the petitioners.

Let this process be completed and appropriate orders passed by the official respondents within a period of three months from the date a copy of this order is made available to them by the petitioners.

Disposed of alongwith connected CMP(s), if any.

(Sunil Hali)
Judge

Jammu:
26.08.2010
'Madan'