

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPAOW no.311/2000
CMP no. 573/2000.

Date of order: 11.02.2010

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| Director General of Police. | v. | Karanjit Singh & ors. |
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Coram:

Hon’ble Mr. Justice Barin Ghosh, Chief Justice

Hon’ble Mr. Justice Gh. Hasnain Massodi, Judge

Appearing counsel:

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

For respondent(s) : Mr. M. K. Bhardwaj, Sr. Advocate with Mr. Ajay Abrol, Advocate.

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| i) Whether approved for reporting in Law journals etc.: | Yes. |
| ii) Whether approved for publication in press: | Optional |

This appeal is against the judgment and order dated November 20, 1998, passed on a writ petition registered as OWP no. 731/1990. By the judgment and order under appeal, the appellant was directed to treat the writ petitioners appointed against the posts of Sub Inspectors in the Executive Armed Police and to extend them the benefits of promotion notionally taking the date of their first appointment for the purpose of

seniority. The judgment and order under appeal made it clear that the writ petitioners shall not be entitled to any monetary benefits in terms of arrears of pay and other allowances.

Though the present appeal was preferred in 2000, the Appellate Court, at no stage, during the pendency of appeal, stayed implementation of judgment and order appeal, as a result, judgment and order under appeal, has been implemented.

By reason of implementation of judgement and order under appeal, the writ petitioners, who came to be appointed as Assistant Sub Inspectors on August 17, 1982, were treated to have been appointed a Sub Inspectors on and from August 17, 1982.

The admitted facts leading to the presentation of the writ petition are that by advertisement notice no. 2 of 1980, dated August 9, 1980, applications were invited for selection to posts, amongst others, of Sub Inspectors of Police, in Regular Police, in Armed Police and in Research and Development Cell. Writ petitioners' respondents responded to the said

advertisement notice and offered themselves for being selected for appointment as Sub Inspectors of Police. By another advertisement notice no. 3 of 1980 dated September 9, 1980, applications were invited for the selection to the posts of Assistant Sub Inspectors of Police. Petitioners-respondents did not respond to the said advertisement. Petitioner-respondents were offered the posts of Assistant Sub Inspectors of Police and they having accepted such offer were appointed as Assistant Sub Inspectors of Police on August 17, 1982. After making certain representations, the writ petitioners filed the aforementioned writ petition registered as OWP no. 731/1990. In the counter affidavit, it was contended that the respondees to the advertisement notices went through one selection process and the candidates who responded the said selection process were offered appointments on the basis of their adjudged merit in the selection process. In other words, it was contended that in the selection process whoever had shown better merit were accommodated as Sub Inspectors and who had shown lesser merit were accommodated as Assistant Sub

Inspectors. It was also contended that the petitioners, having had accepted the offer made to them are estopped from contending that the offer so made was improper. It was further contended that after seven years of acceptance of the offer, the writ petitioners could not challenge the same. Court directed the appellant to produce the records to show that the merit of all the respondees to the said advertisement notices had been assessed through one selection process resulting in preparation of one merit list and that those who had been accommodated as Sub Inspectors got better merit than those who were accommodated as Assistant Sub Inspectors. The appellant failed to produce any record before the Court to establish the same. In the consequence, the Court proceeded on the basis that for no just reason, some were accommodated as Sub Inspectors and some were accommodated as Assistant Sub Inspectors. Inasmuch as the said state of affairs stood revealed before the Court for the first time upon the appellant disclosing its contention as above and failing to establish the same, Court felt it was not necessary to go into the question

of delay on the part of the writ petitioners in approaching the Court. On such principle, the Court passed the order appealed against.

When the appeal was pending, by a communication dated November 4, 2008, Deputy Inspector General of Police, Jammu Range Jammu, informed the Director General of Police that records have been destroyed in the year 2002. A copy of the said communication has been brought on record, which we have perused.

Learned counsel for the appellant has candidly confessed that he is not in a position to produce any record to substantiate the contentions of the appellant, as was put forward in its counter affidavit pertaining to selection, as mentioned above.

The one and only point which survives for consideration, therefore, is delay on the part of writ petitioners in approaching the Court. There cannot be any dispute that on accepting offer given to the petitioners for appointment to the posts of Assistant Sub Inspectors, the petitioners represented that they

may be appointed as such, though had responded to an advertisement for being appointment as Sub Inspectors. It is also true that the petitioners having had made such representation could not seek to avoid the same and that, too, seven years later by filing a writ petition, provided, however, on a mistake of law, the appellant had taken recourse to one selection process and concluded the same in the manner it had indicated in its opposition filed before the Court. When it failed to do so, the logical conclusion would be that appellant without applying any principle gave offers of appointment to various applicants as it felt and did not adhere to any principle of selection. That having been revealed for first time when the writ petition was pending, and that being a step taken to defeat the law applicable to selection of employees of the State should be deemed to be fraudulent and right to challenge the same, accrued on the date the knowledge thereof was gathered and, accordingly, there was no delay in the instant case.

We, accordingly, conclude the matter and dismiss the appeal.

(Gh. Hasnain Massodi)
Judge

(Barin Ghosh)
Chief Justice

Jammu,
11.02.2010
Sunita, JS.