

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

SWP No. 1751/2008

CMP Nos. 1242/2009,1323/2009 & 2491/2009

Date of decision: 22.04.2010

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Rajesh Kumar and ors. vs. High Court of J&K and ors.

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Coram :-

**Mr. Justice J. P. Singh, Judge.**

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**Appearing Counsel:**

For Petitioner(s) : Mr. Sunil Sethi, Sr. Advocate with  
Ms. Veenu Gupta, Advocate.  
For Respondent(s) : Mr. A.Kapoor, Advocate for R-1&2.  
Ms. S.Kour, Advocate for R- 3 to 13.

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i)	Whether approved for reporting in Press/Journal/Media	: <b>Yes</b>
ii)	Whether to be reported in Digest/Journal	: <b>Yes</b>

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- 1) Governed by the Jammu and Kashmir High Court Staff (Conditions of Service) Rules,1968, the petitioners and respondent Nos. 3 to 13 are the members of the Jammu and Kashmir High Court Staff Service. They were serving in the same class and category as Senior Assistants when the High Court of Jammu and Kashmir ordered adjustment of respondent Nos. 3 to 13 as Head Assistant in their own pay and grade, until further orders, entitling them to *Charge Allowance* for working against the promotional post, vide order No.667 of 24.11.2008.
- 2) In terms of the High Court order, respondent Nos. 3 to 13 were entitled to consideration for regularization/

appointment to the higher post only if they attained requisite qualification and experience prescribed for the post.

- 3) Aggrieved by the adjustment of respondent Nos.3 to 13, the petitioners have filed this Writ Petition seeking quashing of the High Court order No.667 dated 24.11.2008 in so far as it directs adjustment of respondent Nos. 3 to 13 against the post of Head Assistant, hereinafter to be referred as the “impugned order”, for short, besides for a command to the respondents to consider and promote them as Head Assistants.
- 4) The case set up by the petitioners in their Writ Petition, in a nut shell, is that respondent Nos.3 to 13 did not possess Degree of Graduation, the academic qualification, prescribed as such for the post of Head Assistant vide High Court Order No.579 dated 24.10.2008 issued under Rule 6 of the Jammu and Kashmir High Court Staff (Conditions of Service) Rules 1968 and in supersession of all previous orders in this behalf, prescribing Mode of recruitment/ promotion to various posts in the High Court, and were thus disentitled to adjustment against the post of Head Assistant which was *per se bad* because consideration under law, was available to those alone who were otherwise eligible for promotion under the Rules and the order of the High Court issued under Rule 6 of the High Court Rules.

- 5) Adjustment of the respondents by the High Court has been assailed as wholly unwarranted besides being unjustified, in that, it had been ordered ignoring the right of consideration of the available eligible Senior Assistants like the petitioners and in violation of the order of the High Court prescribing Mode of recruitment, inter alia, for the post of Head Assistant.
- 6) The High Court Administration responds to the petitioners' Writ Petition questioning its maintainability besides saying that adjustment of respondent Nos. 3 to 13, who were senior to the petitioners, was only a stop gap arrangement for running the affairs of the Registry of the High Court and that it had to continue until such time eligible and suitable candidates were available to fill up the posts, which according to it, would not affect any of the petitioners' enforceable right.

The adjustments are stated to have been made by Hon'ble The Acting Chief Justice, on the recommendations of the Hon'ble Judges' Committee.

- 7) Respondent Nos. 3 to 13 justify their adjustment saying that Lord Acting Chief Justice possessed the Authority to relax the conditions of service, And that the order impugned in the Writ Petition, being in relaxation of the Rules, was not open to question by the petitioners. They justify their adjustment additionally relying on Circular No.13 of 1980 which allowed

25% quota for promotion to matriculate employees of the High Court staff.

- 8) I have considered the submissions of learned counsel for the parties and perused the records made available by the learned counsel appearing for the High Court.
- 9) To consider the issues projected by learned counsel for the parties at the Bar, for determination, following questions need to be addressed.
  - i) Whether adjustment of respondent Nos.3 to 13 against the post of Head Assistant affects any enforceable right of the petitioners entitling them to seek Judicial Review thereof?
  - ii) In case question No.1 was answered in the affirmative, whether the High Court order No.667 dated 24.11.2008, in so far as it pertains to the adjustment of respondent Nos. 3 to 13, was justified and sustainable ?
  - iii) Whether Lord Acting Chief Justice, possessed the power to relax the Rules, and if so, whether the impugned order had been issued in relaxation of the Rules ?
- 10) Before addressing the questions aforementioned, reference needs to be made to some of the provisions of the Jammu and Kashmir High Court Staff (Conditions of Service) Rules 1968, hereinafter to be referred as “the High Court Rules”,

for short, the order passed by Lord Chief Justice, in terms of the Rule 6 of the High Court Rules, the recommendations made by the Hon'ble Judges' Committee, and the approval accorded by Lord Acting Chief Justice thereon.

- 11) All appointments to the Staff of the High Court including promotions, are made by the Chief Justice of the High Court unless, the power of appointment, other than those of Gazetted Officers, was delegated to the Registrar or to any Judge of the High Court in terms of Rule 4 of the High Court Rules.

Rule 6 of the High Court Rules, empowers the Chief Justice to lay down the qualifications of the members of service and determine the Mode of recruitment to the posts borne on the cadre of the service.

The High Court Rules do not contemplate relaxation of the Rules as such. The decision of Lord Chief Justice, in case of any doubt regarding the interpretation of Rules is, however, indicated to be final by the Rules.

- 12) The background facts leading to the issuance of High Court orders prescribing Mode of Recruitment and Qualification for the members of the service may now be noticed.

Acting under Rule 6 of the High Court Rules, the then Lord Chief Justice prescribed qualifications and Mode of appointment/ promotion to the posts on the cadre of the service vide order No.508 dated 15.10.2008.

These Rules were, however, later superseded by the Acting Chief Justice when his Lordship, in exercise of the powers under Rule 6 of the High Court Rules and in supersession of all previous orders on the subject, prescribed fresh qualifications/Mode of appointment to the posts on the cadre of the service vide order No.579 dated 24.10.2008.

- 13) The Mode of appointment/ minimum qualification prescribed for the post of Head Assistant, in terms of order No.579 dated 24.10.2008 is indicated as follows:-

Name of the Post:	Head Assistant
Mode of Appointment:	By promotion from amongst Senior Assistants on the basis of seniority cum merit.
<b>Minimum qualification: Required</b>	<b>Graduation from a recognized University.</b>
Minimum experience, if any, required	Two years
Existing pay scale	: 5000-8000

- 14) Note Nos. 1 and 2 appearing in the concluding portion of order No.579 dated 24.10.2008 read thus:-

"1) If the candidate(s) is/are not available from the relevant feeding cadre, then the selection/appointment shall be made from amongst the candidate(s) from other equivalent cadre(s).

(2) Since the requirement of graduation for entry into the High Court service was prescribed vide Notification dated 25-4-1987, at that time officials having qualification less than graduation entered the service. Such official having during this period gained sufficient experience in the working of the administration, the Chief Justice may on his own or on the recommendations of committee, if so constituted, relax the qualification in cases of officers/officials who have made their entry into the service on or before the 25th of April, 1987. Further the minimum period of experience can also be relaxed in exceptional and appropriate cases. The officials can get only one relaxation at the time."

- 15) Few more facts, discerned from the official records leading to the issuance of the order impugned in the Writ Petition may be necessary. These are as follows:-

Qualification and Mode of recruitment prescribed for appointment and promotion to the posts in the High Court by Lord Acting Chief Justice vide order No.579 dated 28.10.2008 in supersession of order No.508 dated 15.10.2008, does not appear to have resulted in filling up of the available vacancies in the High Court.

The Registrar General of the Court, therefore, mooted proposal suggesting further relaxation in the Mode of recruitment and promotions against the available vacancies in the High Court Staff Service.

Lord Acting Chief Justice directed the matter to be placed before the already constituted Judges' Committee, for examination/ recommendation and approval.

The Committee, accordingly, considered the Registrar General's Report/Note and made various recommendations suggesting promotions/adjustments to various posts in the High Court. The recommendations made by the Committee at paragraph No. 33, which may be relevant for the purpose of this Writ Petition, are reproduced hereunder for reference:-

- "33. Sanjeev Kumar, Abdul Rashid, Shakeel Ahmad, Bhawani Prasad, Molvi Mehboob, Tahira Parveen, Ranjeet Singh, Ravi Kumar, Pawan Kumar, Gh. Rasool and Daljit Singh

are adjusted as Head Assistants in their own pay and grade till further orders.”

- 16) **Perusal of the recommendations of the Judges' Committee indicates that it had made No suggestion/recommendation for affecting changes in the Mode of Recruitment for appointment and promotion to the posts available in the High Court, as proposed by the Registrar General.**
- 17) The recommendations of the Committee, suggesting amongst others the adjustment of the respondents were approved by Lord Acting Chief Justice on November 21, 2008.
- 18) Before entering into discussion on the issues which arise for consideration in the Writ Petition, it needs to be noticed that the Registrar General's note, which had been put to the Judges' Committee, pursuant to the orders of the Acting Chief Justice, **neither refers to nor suggests filling up of the posts of Head Assistant or for that matter change in the Mode of recruitment therefor appearing in High Court Order No.579 of 24.10.2008.**

### **DISCUSSION:**

- 19) Perusal of the facts culled from the records of the High Court indicates that the recommendations made by the Registrar General in his note of October 28, 2008, suggesting reconsideration of the Mode of recruitment and appointment



to various posts in the High Court, does not appear to have been deliberated upon by the Committee which, without suggesting any changes in the already prescribed Mode of recruitment for appointment and promotions, recommended promotion/adjustment of the Head Assistants besides other members of the service.

- 20) The mode of promotion to the post of Head Assistant, in terms of Order No.579 aforesaid, permits consideration for promotion, to only those Senior Assistants, who possessed academic qualification of Graduation and had two years experience as Senior Assistant. Respondent Nos. 3 to 13, as admitted by the learned counsel for the parties at the Bar, did not possess the prescribed qualification of Graduation.
- 21) Consideration for adjustment of those who were otherwise ineligible for promotion against the promotional post is not countenanced by the Service jurisprudence. Adjustment of the respondents who were admittedly ineligible for promotion for their not possessing requisite qualification was not thus warranted particularly when eligible Senior Assistants possessing requisite prescribed qualification and experience were available with the High Court.
- 22) The recommendations made by the Judges' Committee suggesting adjustment of respondent No.3 to 13 as Head Assistants, were thus not in consonance with Order No.579 dated 24.10.2008, which permitted promotion to the post of

Head Assistant of only those Senior Assistants who were graduates with two years' experience.

- 23) The records further reveal that the only material which the Hon'ble Judges' Committee had considered while making recommendations for promotion, was the Registrar General's note and nothing beyond that. The Registrar General's note, however, does not contain even a whisper about the promotion/adjustment of the Head Assistants.
- 24) Approval accorded by Lord Acting Chief Justice to the recommendations of the Hon'ble Judges' Committee for adjustment of respondent Nos. 3 to 13 as Head Assistants cannot, thus, be justified, on any count whatsoever, in that, the approval was in clear violation of Order No.579 dated 24.10.2008 issued by his Lordship, in terms whereof only those Senior Assistants could be considered for promotion as Head Assistants, who were graduates and had two years experience as Senior Assistant.
- 25) In terms of the Mode of recruitment for appointment and promotions prescribed by Lord Acting Chief Justice, the power to relax the prescribed qualification under Order 579 dated 24.10.2008 was restricted only in case of those officers/officials, who had made their entry into the High Court service on or before April 25, 1987.
- 26) Respondent Nos. 3 to 13, as conceded by the learned counsel appearing for the High Court, had entered the High

Court service after April 25, 1987, the date prescribed in Order No.579.

- 27) To examine the issues projected at the Bar by the respondents' learned counsel that Lord Acting Chief Justice had the power to relax the Rules, the Rules were examined in the light of the Mode of recruitment for appointment and promotions prescribed vide Order No.579 dated 24.10.2008. No provision was, however, found either in the Rules or in the Mode of recruitment for appointment and promotions prescribed by Lord Acting Chief Justice, which may be construed vesting powers in the Lord Chief Justice to make appointments/ promotions in relaxation of the Rules.
- 28) Note 2 forming part of Order No.579 too, was found vesting only a limited discretion in the Lord Chief Justice to consider relaxation of qualification in case of only those officers/officials, who had made their entry in the High Court service on or before April 25, 1987.
- 29) Respondent Nos. 3 to 13 having entered service much after the date appearing in note 2 referred to hereinabove, were thus not entitled to any relaxation in the qualification prescribed vide Order No.579 dated 24.10.2008.
- 30) Respondent Nos. 3 to 13's counsel's next submission that the adjustment of respondent Nos. 3 to 13 were justified in view of the quota of promotions reserved vide Circular No.13 of 1980 needs to be noticed only for rejection, in that, the

Circular has no application to the post of Head Assistant and that apart Order No.579 dated 24.10.2008, does not prescribe any such type of quota for in-service ineligible Senior Assistants for promotion to the post of Head Assistant, as was projected by the learned counsel to justify the adjustment of respondent Nos.3 to 13, despite their ineligibility.

- 31) The High Court Administration's learned counsel's plea that the adjustment of the private respondents was a stop gap arrangement for running the affairs of the Registry too, is found to be without merit, in that, no material has been placed on records to support the plea. On the contrary, the Registrar General's silence to suggest promotion/ adjustment against the post of Head Assistants, goes a long way in suggesting that the adjustment of respondents had not been made by way of stop gap arrangement for running the affairs of the Registry because had there been any such necessity, the Registrar General's note should have referred to it.
- 32) The Judges' Committee appears to have suggested the adjustment of respondent Nos. 3 to 13 as Head Assistants, merely on the basis of their seniority.
- 33) The petitioners possessed requisite qualification of Graduation as also the experience needed for promotion to

the post of Head Assistant; they were, thus, entitled to consideration for promotion/adjustment.

- 34) Omission of the Judges' Committee to accord consideration to the petitioners, despite their eligibility and experience, only on the ground that they were junior to the private respondents is unwarranted, in that, such a course was not permissible under law and was even otherwise in violation of the High Court Rules and High Court Order No.579 dated 24.10.2008.
- 35) The question that arises for consideration is; whether the approval accorded by Lord Acting Chief Justice to the recommendations of the Judges' Committee for adjustment of the respondents, refusing consideration to the eligible Senior Assistants like the petitioners, was justified and warranted under law ?
- 36) The answer to the question cannot but, be emphatic 'No', in that, while directing adjustment of the Head Assistants, the Mode of recruitment for appointment and promotion prescribed therefor, in exercise of powers vested in Lord Chief Justice under Rule 6 of the High Court Rules was required to be adhered to, And in this view of the matter, violation of, the Rules framed under Section 108 of the Constitution of Jammu and Kashmir which were required to be followed in letter and spirit, cannot be justified.

- 37) Seniority is no doubt relevant for considering promotion to the post of Head Assistant but its relevance was subject to the candidate's eligibility for consideration therefor, meaning thereby that ineligible Senior Assistants cannot claim consideration for promotion only on the basis of their seniority.
- 38) The approval accorded by Lord Acting Chief Justice for adjustment of the respondents, without commenting on the Registrar General's note as to whether or not the existing prescribed qualifications warranted any change, and taking any decision thereon, as to whether the Mode of recruitment and promotion prescribed by Lordship vide Order No.579 warranted any further change/modification, is found unjustified and illegal, in that, the adjustment of the respondents ordered vide the impugned High Court order violates not only the petitioners' right of consideration to promotion/adjustment for the post of Head Assistant, guaranteed to them under Article 16 of the Constitution of India, but also the Rules governing the service conditions of the members of the Jammu and Kashmir High Court Service read with the High Court Order No.579 which do not permit manning of the posts in the cadre of the Service by ineligible candidates.
- 39) The facts and circumstances of the case, in which the adjustment of respondent Nos. 3 to 13, has been ordered

and that too in violation of the Rules governing the service justifies Judicial Review thereof, particularly when note No.2 appended to the order impugned, hints at the respondents' regularization/appointment on the higher posts on their attaining qualification and experience prescribed therefor.

- 40) Respondents' learned counsel's plea that the adjustment of respondent Nos. 3 to 13 does not violate any enforceable right of the petitioners is found untenable, in that, for making adjustments against higher posts, allowing the incumbents to draw the *Charge Allowance*, eligibility prescribed therefor, cannot, in my view, be sacrificed to adjust ineligible persons against the promotional post, when eligibles therefor were available for such adjustment, temporary or otherwise.
- 41) Petitioners' right to consideration for promotion and adjustment having been thereby adversely affected, would not thus disentitle them to invoke the Extraordinary Writ Jurisdiction of the Court, notwithstanding any prior Representation against the adjustment, as projected by the High Court's learned counsel, in that, the Rules do not contemplate any Appeal/Representation against the orders of promotion/adjustment.
- 42) For all what has been said above, question No.1 is answered by holding that adjustment of respondent Nos. 3 to 13 against the post of Head Assistants affects the

petitioners' right to consideration entitling them to invoke the Extra Ordinary Writ Jurisdiction of the Court.

So far as question No.2 is concerned, the High Court Order No.667 dated 24.11.2008 in so far as it pertains to the adjustment of respondent Nos. 3 to 13 is found unjustified and against the Rules, hence unsustainable.

Concluding finding on question No.3, it is held that the High Court Rules do not as such vest absolute power in the Lord Chief Justice to relax the Rules and the power of relaxation, in terms of High Court Order No.579 dated 24.10.2008, is exerciseable in case of only those officers/officials who had entered the service before April 25, 1987.

Lord Acting Chief Justice had not, thus, relaxed the Rules in approving the respondents' adjustments ordered vide the order impugned in the Writ Petition.

- 43) The upshot of the above discussion and the findings is that the Writ Petition succeeds and is, accordingly, allowed quashing the High Court Order No.667 of 24.11.2008 in so far as it orders adjustment of respondent Nos. 3 to 13 as Head Assistants.

Records be returned to the learned counsel for the High Court.

**(J. P. Singh)**  
**Judge**

JAMMU:  
22.04.2010  
Vinod.