

HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU

SWP No. 892/2001  
CMP No.2888/2001

Date of decision: 07.07.2010

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Urgain Londup vs. State 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. D.S.Thakur, Advocate.  
For Respondent(s) : Mr. S.C.Gupta, Sr.AAG.

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

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Petitioner's earlier Writ Petition SWP No.395/1993 seeking quashing of Government Order No.101-TSM of 1992 dated 06.11.1992, whereby Harbans Singh-respondent No.4 had been promoted as Assistant Director Tourism and Government Order No. TSM-110 of 1997 dated 11.08.1997 indicating the petitioner junior to Choudhary Wazir Hussain-respondent No.5 in the Seniority List of the Tourist Officers in the Jammu and Kashmir Tourism (Gazetted) Service, besides seeking promotion as Assistant Director Tourism in terms of SRO-8 of 1991 dated 03.01.1991 and SRO-205 of 1991 dated

02.07.1991, was disposed of by this Court issuing direction to the State-respondents to consider his claim to retrospective promotion as Assistant Director Tourism, within a period of three months.

This direction was issued taking into consideration the fact of petitioner's promotion as Assistant Director during the pendency of the Writ Petition.

The petitioner's claim was, however, rejected vide Government Order No.112-TSM of 2000 dated 14.07.2000 finding him disentitled to retrospective promotion as persons senior to him and belonging to the category to which he belonged, were found entitled to promotion against the Reserved Category Post.

Petitioner has again approached this Court seeking quashing of Government Order No.112-TSM of 2000 dated 14.07.2000, whereby his case for retrospective promotion was rejected besides seeking same reliefs which he had pleaded in his earlier Writ Petition SWP No.395/1993.

The case set up by the petitioner in the Writ Petition, in a nut shell, is that appointed as Tourist Officer on adhoc basis, prior to respondent No.5, he was entitled to the

position senior to him in the seniority list and that while making promotion against the post of Assistant Director Tourism, he was entitled to be considered for such promotion on the ground of his belonging to the reserved category of Scheduled Tribe, before respondent Nos.4 & 5.

The respondents have denied the petitioner's claim to seniority and promotion urging that the petitioner's adhoc service had not to be counted for the purposes of the seniority or increment, as indicated in Communication No.GD(Ser)OPN/OAS/84 dated 06.02.1987 of the General Administration Department informing the Tourism Department that the appointment of the petitioner and Choudhary Wazir Hussain-respondent No.5, having been made in relaxation of the rules, in pursuance of Cabinet decision, their regular service had to count only from the date they were appointed on regular basis i.e. 17.09.1984 and the adhoc period had not to be counted for the purpose of increment or seniority as per rules.

Justifying the rejection of the petitioner's claim, it is stated by the respondents that the petitioner was not entitled to retrospective promotion against the post

reserved for Scheduled Tribe candidates because there were other candidates belonging to the category in the Tourism (Gazetted) service, who because of their seniority were entitled to promotion before the petitioner.

Respondents have questioned the maintainability of the petitioner's Writ Petition too on the ground that the petitioner was disentitled to re-agitate and ask for the same reliefs, which though prayed for in his earlier Writ Petition, had not been granted to him.

I have considered the submissions of learned counsel for the parties and perused the records of the petitioner's earlier Writ Petition besides the material placed on records of this Writ Petition.

The records of the case reveal that barring the first relief of the rejection of petitioner's claim to retrospective promotion by the State Government, the other reliefs claimed in the present Writ Petition are same which the petitioner had claimed in the earlier Writ Petition.

Therefore, before proceeding to examine the submissions of learned counsel for the parties as to the non-maintainability of the Writ Petition, reference needs to be made to the order which this Court had passed on the

petitioner's earlier Writ Petition SWP No. 395/1993 which reads thus:

HIGH COURT OF JAMMU AND KASHMIR JAMMU

SWP No.395/93

Urgain Londup

V/s

State & ors.

Mr. D. S. Thakur.

Mr. O. Seth.

The petitioner submits that there was a quota meant for the category to which he belongs. The requisite averments have been made in paragraph 6, 7 and 8 of the writ petition.

Respondents have filed objections.

The stand taken is that the petitioner has been promoted. It is, however, admitted that there was a quota for the category to which the petitioner belongs.

In view of the above stand, this petition is disposed of with a direction that the claims of the petitioner for retrospective promotion be considered. Let a decision be taken within a period of three months. This period, shall begin from a date, the copy of the order passed by this Court today, is made available to the respondent authorities.

Perusal of the above quoted order passed on the petitioner's Writ Petition suggests that in view of his promotion during the pendency of his Writ Petition, all that the petitioner wanted the State Government to consider, was his case to retrospective promotion against the post reserved for the Scheduled Tribe candidates and nothing beyond that. It therefore appears that the other reliefs which the petitioner had sought in his Writ Petition, relating to his seniority over respondent Nos.4 & 5, had been abandoned by him while seeking disposal of the Writ Petition limited to the relief of seeking consideration for

retrospective promotion against the post reserved for the Scheduled Tribe Candidates.

The order passed by the Court on the petitioner's earlier Writ Petition granting him limited relief of consideration to retrospective promotion against the promotional post of Assistant Director Tourism, reserved for the Scheduled Tribe candidates, the other reliefs claimed in the Writ Petition shall be deemed to have been disallowed having not been pressed for.

Even otherwise, the petitioner, having opted not to question General Administration Department's Communication No. GD(Ser)OPN/OAS/84 dated 06.02.1987 whereby his adhoc service had been ordered not to be counted for the purposes of the seniority, may not be entitled to question Government Order No. TSM 110 of 1997 dated 10.11.1997 wherein he is shown junior to respondent Nos. 4 & 5 in the seniority list of Tourist Officers.

Thus, having opted not to, press his relief seeking quashing of Government Order No. TSM 110 of 1997 dated 11.08.1997, as projected in the earlier amended Writ Petition and question the General Department's

Communication No. GD(Ser)OPN/OAS/84 dated 06.02.1987, the petitioner's challenge to Government Order dated 10.08.1997 in this second round of litigation would be impermissible and in this view of the matter, the petitioner's Writ Petition seeking those reliefs which he had prayed in his earlier Writ Petition would be non-maintainable.

The only issue that now remains to be determined is regarding the legality or otherwise of Government Order No.112-TSM of 2000 dated 14.07.2000, whereby the petitioner's claim to retrospective promotion stands rejected by the Government and which the petitioner's learned counsel questions as arbitrary on the ground that persons indicated senior to the petitioner and entitled to promotion before him, were not named in the order.

I do not find any merit in the learned counsel's submission because the specific plea raised on facts by the respondents in this behalf in Response to the Writ Petition that M/s L.Thinless and Choudhary Wazir Hussain, who belonged to the same category, to which the petitioner too belonged, were senior to the petitioner and as such entitled to promotion before him, remains

uncontroverted and in this view of the matter, it cannot be said that there were no persons senior to the petitioner who were entitled to consideration for promotion as Assistant Director Tourism.

That apart, the omission of the State-respondents to indicate the names of the persons senior to the petitioner in the Scheduled Tribe category in the Tourism Department, in the order impugned in the Writ Petition, would not, of itself, make it arbitrary, when the facts stated in the order have not been controverted and are rather borne out from the documents placed on the records.

Therefore, the petitioner's plea that there was no other person senior to him in the category of the Scheduled Tribe in the Tourism (Gazetted) service for promotion to the post of Assistant Director Tourism and that he had been denied retrospective promotion erroneously, fails and is, accordingly, rejected.

For all what has been said above, the rejection of petitioner's claim for retrospective promotion by the State Government, vide Government order No.112-TSM of 2000 dated 14.07.2000, cannot be faulted.



This Writ Petition, therefore, lacks substance and is,  
accordingly, dismissed.

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

JAMMU:  
07.07.2010  
*Ram Murti*

