

SWP No.540/2007
CMP No.757/2007
c/w
Contempt(SWP) No.168/2007

Krishan Lal Vs. **State of J&K and ors.**

Mr. Justice J.P.Singh, Judge.

For the Petitioner (s) : Mr. D.S.Chouhan, Advocate.
For the Respondent(s) : Mr. Gagan Basotra, AAG.

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

Sanction was accorded to the placement of 45 Trained Under Graduate Teachers (Drop out cases) as Senior Teachers in the pay scale of Rs.5500-9000 w.e.f. 25.05.2005 i.e. the date from which their junior counterparts Trained Under Graduate Teachers had been placed as Senior Teachers subject to the clearance by the Departmental Promotion Committee. The petitioner was one of those Under Graduate Teachers. It was, however, later found that 19 junior most Senior Teachers had been erroneously promoted under the Scheduled Caste category. The promotions were, therefore,

cancelled vide order No.DSEJ/Gen./Sr.Tr/20374-79 dated 01.12.2006. Petitioner's name figured at senior No.18 of Annexure-B to the aforementioned order.

He has filed this Writ Petition questioning the order passed by the Director School Education, Jammu withdrawing his promotion.

His learned counsel Mr. Chouhan, urges that the Director's order, impugned in the Writ Petition, whereby the petitioner's promotion was withdrawn was bad in law for violation of the principles of Natural Justice, in that, no opportunity of hearing had been provided to him before cancellation of the promotion.

Learned State Counsel, on the other hand, submitted that as the facts stated in the cancellation order as to the disentitlement of the petitioner to promotion, in view of his junior position in the Seniority List, was not disputed in the Writ Petition so to put the records straight and correct the inadvertent error, no notice was required to be issued. It is urged that no prejudice having occasioned to the petitioner, the order impugned in the Writ Petition would not warrant interference.

I have considered the submissions of learned counsel for the parties and perused their pleadings.

The stand taken by the State-respondents on the withdrawal of petitioner's promotion is as follows:-

“to determine 50 junior most Senior Teachers of SC category whose promotion had been cancelled being over the above promotions made against roster point of the said category and in order to review the cancellation order of 50 Senior Teachers of SC category issued vide order dated 19.8.2006 and also to determine the seniority of the SC Senior Teachers promoted vide various orders it was found that 19 junior most Senior Teachers promoted as drop out under SC category on 25.07.2005 and 20.10.2005 were junior to those promoted as Senior Teachers under SC category which stood cancelled vide order dated 19.8.2006 from serial No.1 to 19 of Annexure-A to the order dated 1.12.2006 which is annexed as Annexure-B to the Writ Petition. Accordingly the answering respondents accorded cancellation of promotion of 19 junior most Senior Teacher promotees promoted under SC category vide order dated 25.07.2005 and 20.10.2005 as reflected in Annexure-B to the main order. The petitioner accordingly was also found to be one among the 19 junior most Senior Teacher promotees and accordingly was rightly reverted back.”

The factual position demonstrated by the State-respondents justifying withdrawal of petitioner's promotion has not been controverted by the petitioner.

In view of the admitted factual position indicating that the petitioner had been erroneously promoted ignoring the superior claim of Senior Teachers belonging to his category, the question that arises for consideration is as to whether or not the principles of Natural Justice would still require opportunity of hearing to the petitioner when the facts on which the order of withdrawal of promotion had been made, were not disputed.

It is no doubt true that principles of Natural Justice demand providing of opportunity to the person who is intended to be deprived of the benefit conferred on him. This rule,

however, is not of universal application and may be invoked only in cases where the adverse order causes prejudice. Prejudice means possibility of avoidance of the proposed order on hearing. Therefore, in a case where even on providing hearing, the result would be the same as it was before hearing, law may not require providing of opportunity of hearing to the person affected by the order.

Applying the above principle, to the facts of the present case, it becomes apparent that in view of the admitted facts of the case, even if the petitioner had been allowed opportunity of hearing before issuance of the impugned order, the result would have been the same, for the petitioner would have nothing to urge to support his otherwise erroneous promotion which had been ordered on the basis of a factual mistake.

I, therefore, do not find any merit in the petitioner's counsel's submission that the order impugned in the Writ Petition withdrawing petitioner's promotion was violative of the principles of Natural Justice. His submission that the order was violative of the principles of Natural Justice is, therefore, rejected.

The only ground urged by the petitioner's counsel to question the order impugned having failed, the Writ Petition merits dismissal.

Accordingly, while dismissing the petitioner's Writ Petition, proceedings initiated in Contempt (SWP) No. 168/2007 are dropped.

(J. P. Singh)
Judge

JAMMU
14.07.2010
Vinod.