

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**SWP No. 532/2010 & CMP Nos. 1483/2010 &
747/2010**

SWP No. 206/2010 & CMP No. 251/2010

SWP No. 203/2010 & CMP No. 248/2010

Date of Decision: 29.12.2010

1. Javed Iqbal	v.	State and ors.
2. Manzoor Hussain	v.	State and ors.
3. Ahjaz Ahmed	v.	State and ors.

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing Counsel:

For the Petitioner(s) : M/s A.V.Gupta, Sr.Advocate with K.M.Bhatti,
Advocate.
Mr. M.I.Sherkhan, Advocate.

For the Respondent(s) : M/s Sunil Sethi, Sr. Advocate with Veenu
Gupta, Advocate and Gagan Basotra, AAG.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes |
| ii) | Whether to be reported
in Digest/Journal | : Yes |
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Government of Jammu and Kashmir in the Home Department accorded sanction to the placement of Eleven Inspectors of General Executive Cadre as I/C Deputy Superintendent of Police, in their own pay and grade with Charge Allowance, as admissible under

rules, for a period of six months or till such time, the posts were filled up on regular basis on the recommendations of DPC/PSC whichever was earlier vide Government Order No. Home-123(P) of 2010 dated 04.02.2010.

Javed Iqbal Naaz, Inspector of Police, figured at Serial No.11 of the List of the Officers placed as I/C Deputy Superintendent of Police indicating him to have been adjusted against the post reserved for persons belonging to the Reserved category of persons residing in the area adjoining Actual Line of Control, 'ALC', for short.

Aggrieved by the placement of Javed Iqbal as I/C Deputy Superintendent of Police, Manzoor Hussain and Ahjaz Ahmad, Inspectors of Police, approached this Court by their Writ Petitions SWP Nos. 206 and 203 of 2010 respectively seeking quashing of the Government Order, in so far as it adjusted Javed Iqbal against the post reserved for candidates belong to *ALC category*, besides a Command to the respondents to promote them as I/C Deputy Superintendent of Police under *ALC category*.

Vide Orders dated 10.02.2010 passed in their Writ Petitions, Government Order No. Home-123(P) of 2010 dated 04.02.2010 was kept in abeyance.

Javed Iqbal too approached this Court by his Writ Petition SWP No. 532/2010 seeking directions against the State-respondents not to disturb his status as I/C

Deputy Superintendent of Police ordered vide Government Order of 04.02.2010.

Vide interim order dated 15.03.2010 passed in his Writ Petition, the State-respondents were directed to maintain status quo with respect to his status.

Manzoor Hussain, writ petitioner in SWP No. 206/2010, has filed CMP No. 1483/2010 for his impleadment as party respondent to Javed Iqbal's Writ Petition.

Manzoor Hussain's case in his Writ Petition against the adjustment of Javed Iqbal as I/C Deputy Superintendent of Police, in short, is that being junior to him, as indicated in the Combined Seniority List of Inspectors of Jammu and Kashmir Police, Javed Iqbal could not be adjusted as such ignoring his superior claim on the basis of seniority and belonging to the Reserved category of *ALC*.

Ahjaz Ahmad's grievance against the adjustment of Javed Iqbal too is on the similar lines.

Projecting his entitlement to adjustment as I/C Deputy Superintendent of Police, Zaffar Iqbal-respondent No.4 in SWP No. 532/2010 contests Javed Iqbal's entitlement to adjustment as I/C Deputy Superintendent of Police urging that having entered the Police Department as Sub-Inspector of Police and earned promotion as Inspector, taking benefit of the Reserved category of *Scheduled Tribe*, Javed Iqbal was not entitled to promotion as I/C Deputy Superintendent of Police taking benefit of the Reserved

category of *ALC* because such a course was impermissible in view of the provisions of the Jammu and Kashmir Reservation Act, 2004. Certificate obtained by Javed Iqbal indicating him a candidate belonging to the Reserved category of *ALC* too has been disputed.

State Government's Response to Ahjaz Ahmad and Javed Iqbal's Writ Petitions reveals that Manzoor Hussain and Ahjaz Ahmad figure at Serial Nos. 536 and 663 respectively of the Seniority List of Inspectors issued by Police Headquarters vide Order No. 1980 of 2004 dated 06.07.2004 whereas Javed Iqbal would figure at Serial No. 726 of the Seniority List.

On examining the Representations of some of the Inspectors of Police including Zaffar Iqbal, the State-respondents are stated to have found the adjustment of Javed Iqbal as I/C Deputy Superintendent of Police, bad in law, because having entered the State service taking benefit of the Reserved category of *Scheduled Tribe*, he was not entitled to adjustment as I/C Deputy Superintendent of Police against another Reserved category of *ALC*, because shifting from one Reserved category to another, was not countenanced by law.

The State-respondents have taken this decision pursuant to the clarification received from the General Administration Department of the State Government in this behalf.

According to the State-respondents, the error noticed in the adjustment of Javed Iqbal as I/C Deputy

Superintendent of Police could not be corrected because of the continuance of the interim order in his Writ Petition SWP No. 532/2010.

To deal with the issue that arises for consideration in these Petitions, as to whether or not Javed Iqbal's adjustment as I/C Deputy Superintendent of Police against the Reserved category of *ALC* was permissible, all these Petitions, were heard together, with the consent of learned counsel for the parties.

Appearing for Javed Iqbal, Mr. A.V. Gupta, learned Senior Counsel, submitted that reservation of *ALC*, having become available to the petitioner for the first time in the year 2005 in terms of SRO 294 of 2005, the petitioner was entitled to make choice for taking benefit of one of the two reservations to which he belonged i.e. one belonging to the *Scheduled Tribe* and the other to the *Socially and Educationally Backward Class-ALC*. Reliance is placed on Section 19 of the Jammu and Kashmir Reservation Act, to support the submission.

Mr. Sunil Sethi, learned Senior Counsel, appearing for Zaffar Iqbal-respondent No.4 in Javed Iqbal's Writ Petition, on the other hand, submitted that having taken benefit of the reservation under the *Scheduled Tribe Category* at the time of his appointment as Sub-Inspector of Police and promotion as Inspector of Police, the petitioner was not entitled to shift to the category of *ALC* because shifting from one

Reserved category to another was not contemplated by the provisions of Section 19 of the Jammu and Kashmir Reservation Act.

Supporting the view projected by Mr. Sethi, Mr. Gagan Basotra, learned Additional Advocate General, submitted that Section 19 of the Reservation Act may not permit an employee belonging to one Reserved category to shift to another Reserved category, at his option looking to the chances of promotion in a particular category, because the Reservation Act contemplates benefit of employment and promotions only against one category, of course with choice to the employee to opt for one of the Categories in case of his belonging to more than one Reserved categories.

Considered the submissions of learned counsel for the parties and perused the provisions of the Jammu and Kashmir Reservation Act, 2004, hereinafter to be referred as “the Act”.

To address the issue canvassed at the Bar, regard needs to be had to the provisions of the Act and particularly to Section 19 thereof, which for facility of reference, is reproduced hereunder:-

“Section 19-Choice

A candidate belonging to more than one category shall be entitled to claim the benefit of reservation in one category only, as per his choice, for appointment or promotion in Government Service or admission in professional institutions, as the case may be.”

Perusal of the Scheme of Reservation contemplated by various provisions of the Act indicates that shifting from one Reserved category to another, in

appointment, by Direct Recruitment, and Promotion, in Government Service, besides Entry into Professional Institutions, was not contemplated by the legislature. Section 19, when read, in the light of the Scheme contemplated by the Act, demonstrates that choice available to a candidate to opt for only one of the two or more reservations available to him, does not create any additional privilege in the candidate belonging to the Reserved categories to shift from one to the other category while in Government Service. The expression “for appointment or promotion in Government Service”, which appears as a separate Clause in Section 19, clearly suggests that the legislature had intended allowing option to a candidate seeking entry into Government Service, to make choice for claiming reservation in appointment and promotion(s) and also to one or the other Reserved category, if he belonged to more than one such categories. Option of claiming reservation to a particular Reserved category, once exercised, and benefits of appointment and promotion, as the case may be, obtained thereunder, may not be withdrawn, for shifting to another Reserved category for further promotional benefits even if the employee became entitled to another reservation subsequent to his taking benefit of the earlier opted Reserved category, during his Service. This is additionally so because the intention behind providing reservation is to encourage and give boost to those, who, because of their suffering from one or the other disability, were

not entitled to enjoy the right of equality in seeking Employment, Promotion or Entry into Professional Colleges, like others, because of the Caste, Area, Backwardness or other factors on the basis whereof they were allowed reservation in appointment, promotion and entry to the Professional Colleges, so that they were able to enjoy the right of equality, untrammelled by the disability from which they suffered and which was sought to be alleviated by providing reservation. Such boost may not, however, permit shifting from one Reserved category to another because such a course would amount to conferring additional benefit to a person who having already been brought at par with others by providing him one reservation, may not be entitled to another boost, because such a course would be against the provisions of Articles 14 and 16 of the Constitution of India.

Mr. Gupta's plea that the use of expression "as per his choice" appearing in the Section gives an option to an employee belonging to more than one Reserved categories, to opt for any one or the other categories at the time of seeking appointment as also at the time of seeking promotion, to shift from the opted Reserved category to another, is devoid of any substance because such a course would ascribe to discordant construction of the Section, in that, the emphasis which is intended to be supplied by the legislature by the use of word 'only' in the Section to convey that

benefit of reservation would be available in one category alone, may not be achieved.

Thus considering the phraseology employed in the Section and the Scheme of the Reservation Act, providing for benefit of reservation in one category alone, it is held, that regardless of a candidate's acquiring the status of belonging to another Reserved category during his service career, he may not be entitled to claim Service benefits under the newly acquired Reserved category.

The view taken by the State-respondents that a candidate belonging to more than one category shall be entitled to claim benefit of reservation in one category only as per his choice and the option so exercised was final, leaving no option to him to shift to another category which appears to him more beneficial is, therefore, found in line with the Scheme of the Jammu and Kashmir Reservation Act, 2004, warranting no interference therewith.

For all what has been said above, Javed Iqbal-petitioner in SWP No. 532/2010, having taken benefit of the Reserved category of *Scheduled Tribe* in securing employment as Sub-Inspector of Police and promotion as Inspector of Police, was not entitled to claim promotion/adjustment as Deputy Superintendent of Police under the Reserved category of *ALC*.

Government Order No. Home-123(P) of 2010 dated 04.02.2010, in so far as it directs the adjustment of

Javed Iqbal as I/C Deputy Superintendent of Police under *ALC category*, is, therefore, found illegal.

On the same analogy, Manzoor Hussain and Ahjaz Ahmad who had got appointment as Sub-Inspector and promotion as Inspector of Police against the posts reserved for *Scheduled Tribe category*, cannot stake claim for promotion or adjustment as Deputy Superintendent of Police against the Reserved category of *ALC*.

Resultantly, SWP No. 532/2010, is found to be without merit, hence dismissed, lifting the interim order dated 15.03.2010 and SWP Nos. 206 and 203 of 2010 are allowed quashing Government Order No. Home-123(P) of 2010 dated 04.02.2010, in so far as it pertains to the adjustment of Javed Iqbal-respondent as I/C Deputy Superintendent of Police against *ALC category*. The petitioners' prayer in SWP Nos. 206 & 203 of 2010 for issuance of Command to the State-respondents to promote/adjust them as I/C Deputy Superintendent of Police against the post reserved for persons belonging to *ALC category*, is, however, declined.

(J.P.Singh)
Judge

JAMMU:
29.12.2010
Pawan Chopra.