

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.1343/2009
CMP Nos.3239/2009 & 1777/2009
c/w
SWP No.282/2009 & CMP No.354/2009

Date of Order: 25.11.2010

Jagdish Raj v. State of J&K and ors.

CORAM:

Hon'ble Mr. Justice J. P. Singh, Judge.

Appearing Counsel:

For Petitioner(s) : Mr. Anil Gupta, Advocate.

For Respondent(s) : Mr. S.C.Gupta, Sr. AAG for R-1.
Mr. Rajneesh Raina, Advocate for R-6

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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 |
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Dealing with the Contractual appointment of Patwaries in Irrigation and Flood Control Department of the State Government, the District Development Commissioner, Rajouri, the Chairman, Contractual Appointment Committee recommended petitioner-Jagdish Raj's case to the Commissioner/Secretary to Government, General Administration Department for relaxation of age against one of the posts in the Reserved Category of Actual Line of Control vide his Communication No. PS/Contractual/R/2008-09/4054-55 dated 16.10.2008. It was after about a month's time that the District Development Commissioner regretted inadvertent recommendation of the petitioner's case saying that as per the merit list already supplied to the Commissioner, it was

Vijay Kumar who was required to be recommended for relaxation of age for engagement against the position reserved for candidates belonging to the Category of Actual Line of Control (ALC) and not the petitioner who was below in merit. The General Administration Department, accordingly, approved Vijay Kumar's appointment relaxing upper age by three months and nine days.

Aggrieved by the action of the State functionaries, the petitioner approached this Court by his Writ Petition SWP No.282/2009 seeking quashing of District Development Commissioner, Rajouri's Communication No. PS/Contractual/R/2008-09/4365-67 dated 14.11.2008 and General Administration Department's OM No. GAD (Adm) 364/2007-V dated 14.01.2009 urging that the respondents' Communications were bad in law, in that, the petitioner had not been heard by them before issuance of the Communications.

During the pendency of the Writ Petition, the petitioner filed yet another Writ Petition SWP No.1343/2009 seeking quashing of Government Order No.169-PW(Hyd) of 2009 dated 09.06.2009 whereby Vijay Kumar Chouhan-respondent No.6 was engaged as Patwari on Contractual basis urging that the appointment was in violation of the interim order dated 13.02.2009 in his earlier Writ Petition.

The State-respondents and Vijay Kumar Chouhan-respondent No.6 have filed their Response to the petitioner's Writ Petition.

The respondents' Response to the Writ Petition indicates that the merit of respondent No.6 was much higher to that of the petitioner, in that, the respondent had secured 182 marks whereas the petitioner could secure only 139 marks in the Selection Process.

I have heard learned counsel for the parties and considered their submissions.

All that the learned counsel for the petitioner urged to project the petitioner's case was that the petitioner was entitled to a prior Notice before the State-respondents could withdraw the recommendation made in his favour for relaxation of his age to facilitate his engagement as Patwari.

After having known the stand taken by the respondents indicating that the petitioner was lower in merit and thus disentitled to seek engagement as Patwari, the petitioner has not placed any thing on records to dispute the factual statement made by the respondents regarding his merit position.

Even during the course of consideration of these Petitions, the petitioner's learned counsel could not dispute the official version indicating the petitioner to be lower in merit to that of respondent No.6.

In these circumstances, when it is not disputed that the petitioner was lower in merit to that of respondent

No.6, there was no requirement of hearing the petitioner before correcting the error which had crept in recommending his relaxation of age to consider his engagement.

The plea of violation of principles of Natural Justice projected by the petitioner is thus not attracted in the facts of the present case. The recommendations made and the appointment order issued in favour of respondent No.6 cannot be questioned by the petitioner, who, being lower in merit, has no right to claim appointment as against the superior claim of better merit of respondent No.6.

Thus, found without merit, these Petitions are dismissed.

(J. P. Singh)
Judge

JAMMU:
25.11.2010
Pawan Chopra

