

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

LPASW No.183/2001,  
CMA Nos.114/2010, 240/2001 & 183/2007

Date of order: 30.4.2014

State of J&K and ors.

v.

Swaran Kanta

## **Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**  
**Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge**

## **Appearing counsel:**

For the appellant(s) : Mr. Ravinder Sharma, AAG.  
Mr. S.S.Lehar, Sr. Advocate with  
Mr. Meharban Singh, Advocate.  
For the respondent(s) : Mr. Anil Sethi, Advocate  
Mr. Surinder Singh, Advocate.

- |     |   |   |        |
|-----|---|---|--------|
| i)  | Whether to be reported<br>Press/Media       | : | Yes/No |
| ii) | Whether to be reported in<br>Digest/Journal | : | Yes/No |

## **M.M.Kumar, CJ**

1. This order shall dispose of LPASW No.183/2001 and LPASW No.222/2001 because both the appeals have emerged from the common judgment and order dated 17.04.2001 passed by the learned Writ Court in SWP No.1307/99. It is pertinent to mention that LPASW No.222/2001 along with CMA has been filed by one Sunita Kumari Gupta, who was not a party to the writ proceedings. She has challenged the judgment and order dated 17.04.2001 passed by the learned Writ Court after obtaining leave of the Court.

2. In order to understand the contour of the legal controversy, it would first be necessary to set out few facts.

2.1. In the State of Jammu and Kashmir there is a cadre of officers connected with Libraries, which is governed by the statutory rules known as Jammu & Kashmir Libraries (Non-Gazetted) Services Recruitment Rules, 1989 (for brevity 'the Recruitment Rules'). As per Rule 4, composition and strength of the cadre has been detailed in Schedule I and Rule 5 specifies qualifications and method of recruitment by referring to Schedule II. According to Schedule II, post of Classifier, Cataloguer are the top posts. The post of Librarian and Junior Librarian falls in Class II and III respectively. In the present case we are concerned with the post of Junior Librarian which is a feeder post to the promotion of Librarian. According to Schedule II, 50% of the posts of Librarian are to be filled up by promotion from Class-III post namely Junior Librarian and 50% by direct recruitment. According to the Column 6 of Schedule II for promotion to the post of Librarian, candidate is required to have Matriculation with Certificate Course in Library Science and 3 years experience as Junior Librarian. For further promotion to the post of cataloguer from that of Librarian, the minimum qualification specified is B.A./B.Sc./B.Com, with B.Lib. Sc. Of B.Sc., B.Com with 3 years experience as Librarian in Class-II. Even for Cataloguer the quota for promotion to the

extent of 50% posts from Librarian has been fixed and 50% posts are required to be supplied by direct recruitment.

2.2. The controversy in the present case commenced by virtue of issuance of order dated 05.02.1999 by a Deputy Director temporarily adjusting the petitioner-Ms. Swaran Kanta against the post of Librarian in S.R.S. Library, Jammu against vacant post of one Sh. Joginder Kumar. The order mentions that she has the qualification of M.Lib and her adjustment as Librarian was without prejudice to the seniority of others. She was to work in her own pay and grade without financial benefits and subject to clearance of Departmental Promotion Committee. It was termed as stop gap arrangement (Annexure-A). On 13.04.1999 another order was issued which comprised the names of one Ms. Irwin Kour and petitioner-respondent, Ms. Swaran Kanta. The aforesaid order makes an interesting reading, which is set out below *in extenso*:-

“ORDER NO: 10 of 1999  
DATED : 13-4-1999

Sanction is hereby accorded to the promotion of following officials who have been cleared by the D.P.C. from the date they are holding the posts. This is in reference to the constitution of a committee by the Director Libraries vide his No.DD/Adm-I/99/F/211 dated 09.02.1999 under the chairmanship of Deputy Director Libraries, Jammu.

- 1/ Smt. Irwin Kour, Librarian, promoted as cataloguer in her own pay and grade.
- 2/ Miss Swaran Kanta, Junior Librarian, promoted as Librarian in her own pay and grade.
- 3/ Shri Behari Lal, Library Assistant, promoted as Junior Librarian.
- 4/ Shri Bilal Ahmed, Library Assistant promoted as Junior Librarian.
- 5/ Shri Paras Ram, Library Bearer promoted as Library Assistant.

6/ Shri Ashok Kumar, Library Bearer promoted as Library Assistant.

Sd/-  
(Dr.N.C.Prabhakar)  
Deputy Director Libraries”

It appears that Ms. Swaran Kanta was adjusted against the post of Librarian. When orders dated 05.02.1999 and 13.04.1999 were sent to the Director, Libraries, he cancelled the order of adjustment of Ms. Swaran Kanta and Irwin Kour. However, before the order cancelling the promotion and adjustment of Ms. Swaran Kanta could be issued a representation dated 19.07.1999 was received along with a copy of interim order dated 12.07.1999 passed by this Court in SWP No.1307/1999 filed by Ms. Swaran Kanta staying her reversion. The whole factual position is cleared from letter dated 20.07.1999 sent by the Deputy Director, Libraries to the Director Libraries, which is set out below *in extenso*:-

“Madam,

Kindly refer to the discussion held in your office chamber on 16.7.1999, during the discussion instructions were issued to the undersigned for the condollation (cancellation) of orders whereunder certain stop gap arrangements were made with the approval of Director Libraries to fill up the post of Cataloguer and Librarian. Smt. Irwin Kour, Librarian was temporarily adjusted against the post of Cataloguer in her own pay and grade and Miss Swaran Kanta, Junior Librarian was adjusted against the post of Librarian on the basis of qualification without prejudice to the seniority of others.

Accordingly, the order was prepared and was to be issued but at the same time this office received the representation dated 19-7-1999 from Miss Swaran Kanta enclosing a copy of High Court dated 12-7-1999. The order of the High Court is as under:-

“No reversion order relating the petitioner should be issued”.

In view of the above circumstances instructions are solicited in this behalf.

Yours faithfully,

Encls.

Copy of the writ petition  
Copy of representation  
Copy of high court order  
dt: 12-7-99

Sd/-  
Dr. N.C.Prabhakar  
Deputy Director  
Libraries.”

2.3. As the matter was subjudice, no further action appears to have been taken.

2.4. The appellant-State in their objections took the stand that Deputy Director, Libraries was not competent to issue any order of adjustment in respect of Ms. Swaran Kanta. The stand of the appellant-State before the Writ Court further was that the departmental promotion committee never met and that there was no vacant post against which anyone of the two could be adjusted. The learned Writ Court disposed of the writ petitions by issuing following directions:-

“These petitions are accordingly disposed of with the following directions:

i/ That communication dt. 20<sup>th</sup> July'99 written by Deputy Director, Libraries to the Director Libraries, would not be given effect till a final decision is taken by the State Government in this regard;

ii/ The petitioners would be paid emoluments on the promoted posts. This is, however, subject to the condition that they give an undertaking to the effect that they would refund the amount in the event of the Government not accepting the report of Commissioner of Inquiries on this particular issue;

iii/ The State Government to take a decision at the earliest. Till a decision is taken, the directions given at serial (i) and (ii) above, shall continue to operate;

iv/ That the petitioners would be paid their salaries on the promoted post in case they comply with the condition as indicated at serial No.(ii). The arrears would also be released in their favour within a period of two months of the date, a copy of this order becomes available to the respondent authorities . In case, the arrears are not released within

the period stipulated above, then the petitioners in that eventuality would be entitled to interest also. The rate of interest would be 12 percent and this would be payable by the person on whose account the delay occurs;

v/ In case any adverse order is passed, that be kept in abeyance for a period of two weeks.

At this stage, the counsel for the petitioners submit that some police investigation has been ordered against the Assistant Director, Libraries, who has refused to accept his signatures on the minutes of meeting dt. 23<sup>rd</sup> March'99. It is submitted that a direction should be given to complete the same.

It is accordingly observed that in case some investigation is going on and if it goes against the officer who is said to have taken a stand that he has not participated in the meeting held on 23<sup>rd</sup> March'99, then the State Government would consider the desirability of registering a criminal case under the penal provisions against the said officer.

In view of the above, no further direction is required to be given in the contempt petition bearing No.269/99. This shall stand dismissed.

The petitions are disposed of in the manner indicated above."

2.5. It is pertinent to mention that Sunita Kumari Gupta has also challenged judgment and order dated 17.04.2001 passed by the learned Writ Court. She was not a party to the writ proceedings and was granted permission by this Court to file appeal vide order dated 29.08.2001 passed in CMP No.205/01.

3. The basic issue which is raised before this Court is whether adjustment of the petitioner-respondent, Ms. Swaran Kanta on the post of Librarian would confer any right on her or could it be regarded as regular promotion. There are more than one reasons for us to believe that no right could be deemed to have been conferred on Ms. Swaran Kanta by virtue of orders dated 05.02.1999 and 13.04.1999 passed by Deputy Director, Libraries. There is a seniority list of Junior Librarians which gives the details of educational qualification of each one of the

Junior Librarian along with other particulars. The name of Miss Swaran Kanta figures at serial No.30. She is stated to have qualification of B.A. M.Lib. She was appointed as Junior Librarian on 12.02.1994 and was adjusted as Librarian on 05.02.1999 and 13.04.1999. It could not be successfully argued that her case for promotion could have been considered ahead of 29 other persons because such a course would be violative of rudimentary principles of equality enshrined by Article 14 and 16(1) of the Constitution of India.

4. The name of Smt. Sunita Kumari figures at serial No.14 in the seniority list of Junior Librarians, who has filed LPA No.222/2001. It has already been noticed by referring to Rule-5 along with Schedule II that minimum qualification for promotion to the post of Librarian is matriculation with certificate course in Library Science and 3 years experience as Junior Librarian. A perusal of the seniority list shows that almost all the Junior Librarians fulfill the qualification for promotion including Smt. Sunita Kumari Gupta, who has been working as Junior Librarian since 26.09.1978 whereas Miss Swaran Kanta was given promotion as Junior Librarian on 26.01.1981. In any case in the seniority list the name of Sunita Kumari figures at serial No.14 whereas Miss Swaran Kanta figures at serial No.30. It appears to us that the then Deputy Director, Libraries was up to

some mischief because as per the rules Deputy Director has no power to pass orders dated 05.02.1999 and 13.04.1999.

5. Mr. Sharma, learned State counsel has rightly pointed out that persons figuring at serial No.1 to 3 and 6 to 8 were promoted on the post of Librarian prior to the promotions of Miss Swarn Kanta. The names of all such persons, who have been promoted as Librarian ahead of Miss Swarn Kanta are, Mohd. Ishaq Zargar, Abdul Wahid Bhat, Faquir Chand, Prem Chand, Bodh Raj, Mohd. and Iqbal Zargar. He has also pointed out that S/Sh. Pritam Singh (serial No.4), Hans Raj (serial No.5), Mohd. Tahir (serial No.9), Joginder Singh (serial No.10), Manjeet Singh (serial No.12), Banarsi Lal (serial No.13), Mahesh Dass (serial No.16), Bachhan Singh (serial No.17), Sardari Lal (serial No.18), Jaswant Singh (serial No.20), Om Parkash (serial No.24), Chander Rekha (serial No.25), Rajinder Singh (serial No.26), Vijay Kumari (serial No.27) and Romesh Kumar (serial No.28) could not be given promotion as Librarian although eligible and they have retired as such on different dates. Obviously all of them were senior to Ms. Swarn Kanta. Mr. Sharma has further pointed out that Mohd. Shafi (serial No.11), Balbinder Kour (serial No.15), Surishta Rani (serial No.19), Sunita Kumari (serial No.14), Ved Parkash (serial No.21), Satpaul (serial No.22), Abdul Latief Naik (serial No.23) and Satnam Kour (serial No.29) are still in service and are



eligible for promotion as Librarian. Therefore, they are entitled to be considered for promotion. A copy of the list of those candidates who have retired despite being eligible and who are still working is taken on record as Mark "X" and a copy of the seniority list of Junior Librarians is also taken on record as Mark "Y".

6. The aforesaid facts do not leave any manner of doubt that the orders passed in favour of Ms. Swaran Kanta, who figures at serial No.30 of the seniority list of Junior Librarians were against rules and basic rudimentary principles of equality enshrined under Article 14 and 16(1) of the Constitution. Therefore, such orders are not sustainable in the eyes of law.

7. The argument of Mr. Anil Sethi, learned counsel for the petitioner-respondent, Ms. Swaran Kanta is that she was the only eligible candidate having qualification of M.Lib. This argument must fail because the statutory requirement of Rule 5 read with Schedule II of the Recruitment Rules is that person must be Matriculate along with Certificate Course in Library Science. He is required to have 3 years experience as Junior Librarian. A perusal of the seniority list shows that a large number of persons senior to Ms. Swaran Kanta are eligible to be considered for promotion as Librarian, who fulfilled the basic qualification. Therefore, the argument that M.Lib is the higher qualification should be accepted as the qualification of eligibility

would amount to rewriting the rules. Therefore, we have no hesitation to reject the aforesaid contention raised on behalf of Ms. Swaran Kanta. In any case Sunita Kumari is qualified with Certificate Course in Library Science and had 3 years experience. She has also been far senior to Ms. Swaran Kanta.

8. The other argument of Mr. Anil Sethi that Departmental Promotion Committee must be deemed to have been properly constituted would not also cut any ice because as per the statutory rules a large number of persons are seniors in the cadre of Junior Librarian. They could not have been ignored merely because Ms. Swaran Kanta has additional degree of M.Lib, which is not an eligibility condition as per Rule 5 read with Schedule II. The role of the Deputy Director, Libraries Sh. N.C.Prabhakar in the whole case is dubious and deserves to be adversely commented.

9. As a sequel to the above discussion, these appeals succeed. The judgment and order dated 17.04.2001 passed by the learned Writ Court is hereby set aside. The order passed by the Director cancelling the orders passed by the Deputy Director Libraries on 05.02.1999 and 13.04.1999 is upheld insofar as it pertains to the petitioner-respondent, Ms. Swaran Kanta. Appellants are directed to consider the cases of Junior Librarians for promotion to the post of Librarian as per rules and

seniority. The needful shall be done within a period of three months from the date of receipt of copy of this order.

(Muzaffar Hussain Attar)  
Judge

(M. M. Kumar)  
Chief Justice

Jammu,  
30.4.2014  
Vinod.

S.No	Case No.	Title
1.	LPASW No.183/2001, CMA Nos.114/2010, 240/2001, 183/2007.	State of J&K and ors. v. Swaran Kanta.
2.	LPASW No.222/2001 CMA Nos.266/2009 & 282/2001.	Sunita Kumari Gupta v. Swaran Kanta and ors.

(Muzaffar Hussain Attar)  
Judge

(M. M. Kumar)  
Chief Justice

Jammu  
30.4.2014.