

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW No. 113/2014
CMA no. 139/2014

SWP no. 210/2014, CMA nos. 272/2014 & 339/2015

Date of judgment: 13.02.2015

Dr. Raj Kumar Sangra

vs.

State of J&K and ors

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing counsel:

For the Appellant(s)	:	Mr. M. K. Bhardwaj, Sr. Advocate with Mr. Gagan Kohli, Advocate.
For the Respondent(s)		Mr. Gagan Basotra, Sr. AAG vice Mrs. Neeru Goswami, Dy. A.G.. Mr. Rohit Verma, Advocate.

i) Whether approved for reporting in Law journals etc.:	Yes/No
ii) Whether approved for publication in press:	Yes/No

N. Paul Vasanthakumar, CJ

1. Since the issue involved in both the cases and parties are one and the same, both the cases are heard together and common order is passed.

2. SWP no. 210/2014 was filed by the appellant in the Letters Patent Appeal wherein he challenged the promotion of private respondent to the post of In-charge Chief Medical officer, figuring at serial no. 14 of the order 28.01.2014 and for directions to the respondents to promote the appellant to the post of Chief Medical Officer in the Health Department. During the pendency of the writ petition, on 28.07.2014 the said order was cancelled. The cancellation order dated 28.07.2014 was

challenged by the private respondent in the writ petition in SWP no. 2020/2014 on the ground that the said order is in violation of Government transfer policy formulated pursuant to Cabinet decision No. 156/12/2010 dated 27.07.2010 issued by Government Order no. 861-GAD of 2010 dated 28.07.2010 and that the appellant does not have the requisite experience to hold the post of Chief Medical officer which was the contention raised by the official respondents in the writ petition filed by the appellant in SWP no. 210/2014. During pendency of the writ petition another order was passed placing the appellant as Chief Medical Officer which was challenged by the private respondent in SWP no. 2020/2014 and the learned Single Judge disposed of the same without issuing notice to the appellant and directed the official respondents to re-consider the transfer of the private respondent in the light of the transfer policy and ordered that till appropriate decision is taken on re-consideration, the private respondent shall continue as In-charge Chief Medical officer Kathua and the said transfer order shall not be given effect to.

3. Aggrieved of the said directions above mentioned, this Letters Patent Appeal is filed by the appellant contending that he is placed at serial no. 71 in the updated seniority list of the Medical Officers of the Health and Family Welfare Department dated 11.06.2014 and the name of the private respondent

figures at serial no. 154 and based on the seniority position the charge of the post of Chief Medical Officer was given to the appellant on 28.07.2014. The appellant also joined in the said post and on 30.07.2014 report to that effect was also sent to the Director Health Services Jammu. The appellant, being senior most Medical officer of the Health Department in Kathua District, is automatically entitled to get the charge of the post of Chief Medical Officer Kathua while considering the grounds raised by the appellant in writ petition SWP no. 210/2014 filed by the appellant challenging the earlier order giving promotion of in-charge Chief Medical Officer to the private respondent. According to the appellant, the service Rules nowhere prescribe five years experience for Chief Medical Officer and the requirement is posting of Medical Officer strictly on seniority basis and the appellant being senior than the private respondent, placing the appellant as Chief Medical Officer is well within the Rules and the direction issued by the learned Single Judge on the date of admission, without issuing notice to the appellant, cannot be sustained. It is creating serious dislocation of the appellant's position and the private respondent has not informed the assuming of the office by the appellant when the order dated 01.08.2014 was issued. To the writ petition filed by the appellant the private respondent filed objections wherein it is stated that Jammu and Kashmir Health

(Gazetted) Service Recruitment Rules, 2013 have been framed prescribing minimum qualification and the method of recruitment for various gazette posts including the post of Chief Medical officer and the appellant was appointed as Medical officer in the Health Department on 11.11.1985. Though the appellant is shown at serial no. 103 and the private respondent was shown at serial no. 189 in the final seniority list of Medical Officers as on 30.04.2013, the appellant has less experience as Block Medical Officer when compared to the private respondent the said fact weighed with the department to place the private respondent as in-charge Chief Medical officer initially. The Rules having framed and the said Rule nowhere stipulated experience at Block Level Medical Officer, the mistake was rectified during the pendency of the writ petition filed by the appellant and the appellant was given the charge of Chief Medical officer till further orders.

4. The point raised for consideration in this appeal is as to whether the order passed by the learned Single Judge, giving direction to re-consider the order dated 28.07.2014 and ordering not to give effect to the order which was already given effect to without issuing notice to the appellant who was shown as respondent no.6, who is really aggrieved person.

5. It is admitted position that the learned Single Judge passed the order on 01.08.2014 while admitting the writ petition

and no notice was issued to the appellant-respondent no.6 in SWP no. 2020/2014, who is a really effected/aggrieved person if any, if the order is varied by the department. The order passed being final order, it was incumbent on the Court to issue notice to the aggrieved person or persons likely to be effected in compliance of the principles of natural justice. Allowing the writ petition, without issuing notice to the private respondent no. 6, is impermissible and on that ground the impugned order of the learned Single Judge cannot be sustained. Therefore, the direction issued by the learned Single Judge that the order dated 28.07.2014 need not to be given effect to, when the appellant has already joined as Chief Medical Officer and report was also sent to the higher authorities on 30.07.2014, cannot also be sustained.

6. During the pendency of the appellant, interim order was granted by this Court on 12.08.2014 and pursuant to the said interim order the private respondent has joined at the transferred place and, as on today, the appellant as well as the private respondent are serving in their respective places. The requirement of experience having not been incorporated in the statute, the same cannot be relied on to sustain the order which was impugned in SWP no. 210/2014. The said order having been superseded by a subsequent order dated 28.07.2014, the prayer sought in the said writ petition has really become

infructuous. The said writ petition having not been disposed of, has been placed along with the appeal.

7. Accordingly, SWP no. 210/2014 is dismissed as infructuous and LPASW no. 113/2014 is allowed on the reasons mentioned above.

8. No costs.

(Bansi Lal Bhat)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu
13 .02.2015
Anil Raina, Secy