

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW No.200/2005
MP No.208/2005

Date of order: 18.11.2015

1. Managing Director J&K Handicrafts (Sales and Export) Corporation/Head Officer at Srinagar.
2. Secretary J&K Handicrafts (Sales and Export) Corporation Registered/Head Officer at Srinagar.

.....Appellants....

Vs.

1. Prideman Krishan Bhat son of Sh. Prem Nath Bhat resident of at present Durga Nagar Jammu presently posted at Kashmir Government Arts Emporium Jammu.
2. Manager J&K Handicrafts (Sales and Export) Corporation Katra.
3. Mohammad Yousuf Qureshi Superintendent Head Officer J&K Handicrafts (S&E) Corporation Srinagar.
4. Ghulam Nabi Allai Accountant, Head Office J&K Handicrafts (S&E) Corporation Srinagar.
5. Abdul Majid Wani Accountant, Kashmir Government Arts Emporium Mumbai Branch Mumbai (Maharashtra)
6. Ghulam Mohd Bhat Accountant presently posted at Crafts Development Institute Srinagar.
7. Abdul Hamid Bhat Cashier-cum-Accountant Kashmir Govt. Arts Emporium Branch Chandigarh.

.....Respondents.....

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge

Appearing counsel:

For the Appellant(s)	:	Mr. C. M. Koul, Advocate.
For the Respondent(s)	:	Mr. P. N. Bhat, Advocate.

i/ Whether to be reported in Press/Media	:	Yes
ii/ Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar-CJ

1. This appeal is filed by the appellants, namely, the 1st as well as the 2nd respondent before the Writ Court, against the order of learned Single Judge made in SWP No.223/2002 dated 15.10.2005, allowing the writ petition filed by the 1st respondent.

2. The case put up by the 1st respondent before the learned Single Judge that that he joined the se4rvices of the 1st appellant-corporation as Clerk as per Order dated 23.05.1972 in the pay scale of Rs. 75-150. The seniority list of employees as on 16.04.1979 was issued wherein the name of the 1st respondent figured at serial No. 33 and the names of the private respondents before the Writ Court were shown at serial nos. 41,42, 56, 58 and 60 respectively. On 22.10.1980 the Corporation transferred the writ petitioner and posted him as Accounts Clerk at Carpet Training Centre Arwah Beerwah. He continued in the said position from 1980 to 1987. On 27.07.1991 the 1st respondent was promoted as Junior Accountant in the pay scale of Rs. 1000-2050 in the Accounts Branch. Before his said promotion he made a representation on 22.08.1989 for changing his cadre from Ministerial to Accounts cadre as initially there was only one cadre though there were different wings. The request of the 1st respondent was not accepted, however, while treating him as a Ministerial cadre staff only, the private respondents who were junior to him as per the seniority, as stated supra, were included in the Accounts cadre. Due to the said reason the 1st respondent even though served in the Accounts Section in various capacities, he was not granted the pay scale for the said post in the Accounts cadre. The 1st respondent also retired from service during the pendency of this appeal.

3. The learned counsel appearing for the appellants argued that when the 1st respondent having not challenged the seniority assigned to him in the Ministerial cadre and having been promoted in the Ministerial cadre though he was allowed to serve in the Accounts Section, the 1st respondent is not entitled to get promotion in the Accounts cadre. When this submission was made, the learned counsel for the appellants was specifically asked to show as to whether any option was obtained from the persons who were given the Accounts cadre. The learned counsel for the appellants, on instructions received from the appellants, submitted that no option was sought for before including the employees in the Ministerial and the Accounts cadres.

4. Such being the position, the 1st respondent cannot be denied promotion as it has been given to his juniors, merely on the fault of the appellants in placing him in the Ministerial cadre and not assigning him the Accounts cadre. Admittedly the 1st respondent was transferred to the Accounts Division when there was no separate cadre and he continued in the Accounts Division and also retired from the said Division. Hence whatever promotions given to the persons who were placed in the Accounts Division who were juniors in the Ministerial cadre, is bound to be extended to the 1st respondent, which was rightly ordered by the learned Single Judge. We are unable to find any reason to interfere with the order of the learned Single Judge.

5. The appeal is dismissed.
6. No costs.

(Dhiraj Singh Thakur)
Judge

Jammu,
18.11.2015
Anil Raina Secy

(N. Paul Vasanthakumar)
Chief Justice