

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

LPASW No. 93/2004,  
MP Nos. 187/2005, 136/2004  
LPASW No. 187/2004,  
MP No. 226/2004

Date of order: 30.11.2015

## **LPASW No. 93/2004:**

Muhammad Faisal Qureshi, aged 36 years son of Sajad Haider  
Qureshi resident of 15-B Government Quarters Gandhi Nagar  
Jammu

. v

- 1.State of Jammu and Kashmir through its Chief Secretary Civil Secretariat Srinagar.
2. Principal Secretary to Government, General Administration Department, Civil Secretariat Srinagar.
3. Commissioner/Secretary to Government General Administration Department, Civil Secretariat Srinagar.
4. Deputy Secretary to Government, Home Department Civil Secretariat Srinagar.
5. Vikas Kanth son of Jagdesh Raj resident of Gudhali Mohalla Kishtwar District Doda
6. Shafi-ur-Rehman Bhat son of Abdul Gani Bhat resident of Mahore Tehsil Mahore District Udhampur.

## **LPASW No. 187/2004**

- 1.State of J&K through its Chief Secretary Civil Sectt Srinagar.
- 2.The Principal Secretary to Government, Jammu and Kashmir Home Department Civil Sectt. Srinagar.
- 3.The Commissioner/Secretary to Government General Administration Department Jammu and Kashmir Government Civil Sectt Srinagar/Jammu
- 4.The Deputy Secretary to Government Home Department J&K Government Civil Sectt Srinagar/Jammu.

Vs.

1. Vikas Kant son of Shri Jagdish Raj resident of Gudhali Mohalla Kishtwar District Doda
2. Shafiq-Ur-Rehman Bhat son of Abdul Ghani Bhat resident of Mohore Tehsil Mohore District Udhampur.

Respondents.

3. Mr. Faisel Qureshi Dy. Superintendent of Police Jammu.

Proforma respondent.

## **Coram:**

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

**Appearing counsel:  
LPASW No. 93/2004**

For the appellant(s) : Mr. B.S.Salathia Sr. Advocate with  
Ms. Meenakshi Salathia Advocate.

For the respondent(s) : Mr. P.S.Chandel Dy.AG  
Mr. Ahtsham Hussain Bhat Advocate  
Mr. S.S.Ahmed Advocate. .

**LPASW No. 187/2004**

For the appellants: Mr.P.S Chandel Dy.AG  
Mr. Ahtsham Hussain Bhat Advocate.

For the respondents: Mr. S.S.Ahmed Advocate.  
Mr. B.S.Salathia Sr. Advocate vice  
Ms. Meenakshi Salathia Advocate.

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

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**N. Paul Vasanthakumar: CJ:**

1. These appeals are filed against the common order dated 21.04.2004, quashing the appointment of the appellant and giving directions to the Public Service Commission to fill up the post held by the appellant in accordance with rules, granting liberty to the appellant to apply, if he is otherwise eligible and if he is aged-barred, the government would consider his case for relaxation of age bar.

2. The writ petition was filed by respondent Nos. 5 and 6 in LPA No. 93/2004, contending that the appointment given to the appellant as Dy.SP by Government Order No. Home 133 (P) of 2002 dated 13.03.2002 in relaxation of method of recruitment is erroneous and the writ petitioners' right to be

considered for selection to the post of Dy.SP was affected.

3. The contention of the appellant as well as the Government is that the appointment given to the appellant is not by way of direct recruitment, but by transfer from Indian Army. According to the appellant, Home Department of J&K Government through communication dated 12.01.1999 submitted no objection for the proposed appointment of the appellant in Jammu and Kashmir Police and the Ministry of Defence, Government of India expressed its no objection to the adjustment of the appellant in J&K Police Department.

4. Thereafter, Government, by order No. Home-97 of 1999 dated 09.03.1999, accorded sanction to the appointment of the appellant as Dy.SP in Jammu and Kashmir Police for a period of two years on deputation basis and the Ministry of Defence was requested to relieve him, pursuant to which, Ministry of Defence relieved the appellant w.e.f 5<sup>th</sup> April, 1999 and consequently, the appellant joined the Police service on 07.04.1999. By Government Order No.Home-321 of 1999 dated 14.07.1999, the

appellant was appointed on contract basis as Dy.SP for a period of one year after he was relieved from the Army. Accordingly, he reported for duty at Police Headquarters on 14.07.1999 and was adjusted in Sher-e- Kashmir Police Training Academy Udhampur against one leave reserve post of Deputy Superintendent of Police.

5. By Government Order No. 203 of 2000 dated 28.04.2000, the contract period of the appellant was extended for another one year i.e up to 13.08.2001 which was also intimated to the Army authorities. Accordingly, Government of J&K, considering the military service of the appellant, has taken steps for absorbing him in Jammu and Kashmir Police on permanent basis and the Director General of Police, considering the evaluation and the performance of the appellant, recommended his case to the Government on 12.10.2000 for permanent absorption in Police Department as Dy.SP. Again on 20.04.2001, Director General of Police requested the Government to process the case of the appellant for regular appointment in the police department and during the pendency of that process, contractual

appointment of the appellant was further extended for one year w.e.f 14.07.2001. The Director, Sher-e-Kashmir Police Training Academy again submitted the performance and evaluation report of the appellant to the Government and ultimately, Government of Jammu and Kashmir, considering the performance, merit and utility of the appellant, by Order No. Home-133 of 2002 dated 13.03.2002 appointed the appellant as Dy.SP on regular basis against the direct recruitment quota post in relaxation of method of recruitment.

6. On the basis of the above facts and circumstances, learned senior counsel appearing for the appellant argued that the appellant is not a stranger, who was not appointed for the first time as Dy.SP, ignoring the rule position and the Army authorities also granted their consent. Learned senior counsel also submitted that initially, the appellant was deputed and thereafter, the appointment was made on contract basis and after watching the performance and utility of the appellant in the police service, the Government thought fit to appoint him permanently in relaxation of the process of direct recruitment

which power is available with the Government as per Rules. Learned senior counsel further argued that the private respondents, who were the writ petitioners in the writ petition, cannot object to the power of the Government to appoint the appellant by transferring him from military service and the discretion having been vested with the Government and the same has been exercised by it without any arbitrariness, considering the service rendered by the appellant in the Army. Learned senior counsel submitted that after assessing the merit, ability and performance of the appellant, the Government thought fit to absorb the appellant on permanent basis in J&K Police as Dy.SP and there is no illegality in the order of appointment of the appellant.

7. Learned senior counsel appearing for the appellant submitted that the judgment relied upon by the learned Single Judge are distinguishable on facts and the appellant was not stranger to the disciplined force.

8. Learned State counsel while supporting the submissions made by learned senior counsel, submitted that the Government also being aggrieved

by the order of learned Single Judge challenged the same separately in LPASW No. 187/2004. Learned State counsel argued that the appellant's service is exemplary and his service is required by the J&K Police in order to control militancy related activities being faced by the J&K State.

9. Learned counsel for the private respondents submitted that by virtue of relaxation granted to the appellant, appointing him as DySP which is a direct recruitment post, the right of the private respondents to be considered for appointment by the Government is affected and being aggrieved, they have every right to challenge the appointment of the appellant in relaxation of recruitment rule. Learned counsel for the private respondents in support of his submissions, has relied upon the judgment of Hon'ble the Supreme Court, reported in **(2000)7 SCC 561 (Suraj Prakash Gupta vs. State of J&K)**.

**10.** We have considered the rival submissions made on behalf of learned counsel for both the sides.

11. It is to be noted at this juncture that the appellant has passed B.Sc and LLB from University of Jammu. He appeared in the UPSC examination in

the year 1991 and was selected in the Indian Army as Commissioned Officer i.e 2<sup>nd</sup> Lieutenant. Thereafter, he was promoted as Lieutenant in the year 1994 and then, he was promoted to the rank of Captain in the Indian Army in the year 1996. He served to 7 years in Indian army from 1992 to 1999. Thereafter, the appellant was appointed as DySP in J&K Police on deputation basis and subsequently, on contract basis by the J&K Government in the year 1999 after obtaining no objection from the Ministry of Defence and Army. By Government Order dated 13.03.2002, the appellant was appointed as Dy.SP on permanent basis in J&K Police. During the period of contract, the appellant served in Police Academy Udhampur wherein the appellant attended basic training to the gazette officers i.e Probationary DySPs in the year 1999 to 2001 and after being appointed on permanent basis in the year 2002, the appellant also underwent successfully basic training for two years on probation in the J&K Police.

12. The appellant was also adjudged as best shooter of his course during his basic training in year 2003. In the year 2004, the appointment of the appellant



was quashed by the learned Single Judge. Thereafter, the appellant immediately preferred appeal and interim stay was granted by this Court on 13.12.2005 and as of now, he has put in a total of seventeen years of service in J&K Police i.e. w.e.f 1999 and by counting the military service, he has 24 years of unblemished record of service. The appellant has been promoted as Superintendent of Police in the year 2013 by Government Order dated 14.07.2013 after being recommended by the DPC and Public Service Commission. He is also a recipient of various medals from the Indian Army and J&K Police i.e High Altitude Medal, Counter Insurgency Operations in J&K State, DGP Commendation Medal by J&K Police etc. The appellant also participated in various anti militancy operations in J&K State at Samba District and he also recovered large quantity of narcotics which were smuggled and thus, the appellant's utility to the military service as well as J&K Police is beyond doubt.

13. All the aforesaid facts are not in dispute. Considering the said facts, the J&K Government thought fit to absorb the appellant in J&K Police as

Dy.SP on permanent basis in relaxation of recruitment rules for direct recruitment. In such circumstances, the power exercised by the Government cannot be treated as arbitrary.

14. The judgments relied upon by the learned counsel for respondent Nos. 5 and 6 is factually distinguishable as ad-hoc promotees were given seniority. In such circumstance, the Hon'ble Supreme Court in Suraj Parkash Gupta and others' case (supra) has held that power of relaxation is expected to be exercised in any particular case or group of persons and cannot be exercised in a routine manner but only in exceptional cases.

15. Here in this case, the power of relaxation under Rule 5 of the J&K Classification, Control and Appeal Rules, 1956 is exercised by the Government, considering the meritorious and unblemished services of the appellant, as mentioned above in the Army as well as in J&K Police. It is not the case of the respondent Nos. 5 and 6 that they are disputing the merit possessed by the appellant for appointing him permanently as Dy.SP in relaxation of rules. In such circumstances, we are of the view that the

learned Single Judge has not considered the said aspects in its right perspective.

16. Hence, we are unable to sustain the order of learned Single Judge. Accordingly, order of learned Single Judge dated 21.04.2004 is set aside and the writ petition filed by respondent Nos. 5 and 6 stands dismissed. Both the appeals stand allowed. No costs.

**(Bansi Lal Bhat)**  
**Judge**

**(N. Paul Vasanthakumar)**  
**Chief Justice**

Jammu,  
30.11.2015  
*Sanjeev*