

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW No.88/2015
MP No.1/2015

Date of order: 19.11.2015

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| 1. | State of J&K through Secretary to
Government Finance Department Civil Secretariat,
Jammu/Srinagar. |
| 2. | Director General, Accounts and Treasuries,
Finance Department, Jammu. |
| 3. | Director (previously Dy.Director),
Accounts and Treasuries, Jammu. |
-Appellants.

Versus

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| 1. | Darshan Lal,
S/o Sh. Chuni Lal
R/o Khour, Akhnoor District, Jammu. |
| 2. | Secretary,
Services Selection Board, J&K Jammu. |

.....Respondents.

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.A.Bhat, Advocate.
For the respondent(s) : Mr. S.S.Lehar, Sr. Advocate with
Mr. Aditya Sharma, Advocate.

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| i/ | Whether to be reported in
Press/Media | : | Yes/No |
| ii/ | Whether to be reported in
Digest/Journal | : | Yes/No |
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N.Paul Vasanthakumar, CJ

1. This appeal is filed against the order dated 09.12.2014 made in SWP No.340/2005 by the State, wherein the learned Single Judge allowed the writ petition filed by the 1st respondent seeking direction to allow him to join the service pursuant to his order of appointment issued in Government order No.37-F of 2005 dated 01.03.2005 with all consequential benefits except the monitory benefits.

2. The case of the 1st respondent before the writ Court was that pursuant to the Advertisement issued bearing Advertisement Notice No.02 of 2004 dated 15.04.2004 issued by the Services Selection Board-2nd respondent herein, for filling up the post of Assistant Programmer under Scheduled Caste category, he applied for the said post. The qualification prescribed was M.Sc. with Post Graduate Diploma in Computer Application. Respondent No.1 being the only candidate available in the Scheduled Caste category, he was selected and issued the appointment order by Government Order No.37-F of 2005 dated 01.03.2005. He was directed to report to the Deputy Director, Accounts and Treasuries, Jammu within 21 days along with certificates in original including the certificate of technical qualification. However, on reporting for duty the 1st respondent was not allowed to join the duty on the ground that he did not fulfill the requirement of advertisement notice i.e. possessing of Post Graduate Diploma in Computer Application, as the 1st respondent possessed the Diploma in Computer Science, which according to the Deputy Director was not at par with the Post Graduate Diploma in Computer Application. Hence, the 1st respondent filed the writ petition with the above said prayer.

3. In the writ petition, the appellants contended that the order itself made it clear that 1st respondent be allowed to join duty subject to production of documents including the technical

qualification in original. It was also stated by the appellants that the University of Jammu in its certificate dated 11.07.2007 stated that Diploma in Computer Science obtained by the 1st respondent was not equivalent to the Post Graduate Diploma in Computer Application.

4. It was contended by the 1st respondent before the writ Court that his application was processed by the Selection Committee along with technical qualification he possessed and on satisfaction he was selected and the Government also after applying its mind issued the appointment order and the said appointment order has not been cancelled by the Government by stating in a reason much less not possessing the requisite qualification. The Deputy Director has no jurisdiction to nullify the action of the Government by raising a technical objection that 1st respondent was not possessing the requisite technical qualification.

5. The learned Single Judge accepted the plea of the 1st respondent and held that the selecting authority as well as the Government having considered the technical qualification possessed by the 1st respondent as valid qualification in terms of the advertisement notice, the Deputy Director has no jurisdiction to go into the validity of the certificate as he was only asked to verify the original certificates, copies of which were already produced before the Selection Committee as well as the

Government. The learned Single Judge also gave a finding that candidates with similar Diploma in Computer Science have been appointed for the post and therefore, the action of the Deputy Director in not permitting the 1st respondent is discriminatory and arbitrary. The very same grounds urged before the writ Court were raised in this appeal also by the appellants.

6. It is not the case of the appellants that the Deputy Director has written to the Government and sought for clarification regarding qualification possessed by the 1st respondent. The Deputy Director being the implementing authority cannot go beyond the selection Committee as well as the Government which is the appointing authority. Thus, we are unable to find any reason to interfere with the order of learned Single Judge. The appeal is dismissed with a direction to the appellants to comply with the order of learned writ Court within a period of four weeks from the date of receipt of copy of this order.

7. No costs.

(Bansi Lal Bhat)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
19.11.2015
Anil Raina, Secy