

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP No. 1871/2013
CMP No. 3006/2013

Date of Order: 23.07.2015

Fayaz Ahmad Sheikh

vs.

State & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge.

Appearing counsel:

For Petitioner(s): Mr. M.A.Qayoom, Adv.

For Respondent(s): Mr. Moomin Khan, Adv. for no.2.

Mr. M.Y. Bhat, Adv. for no. 5.

None for others.

Oral

1. Vide Government order no. 2980-LD of 2013 dated 23.08.2013, subject to confirmation by the Government, sanction has been accorded to the officiating promotion of respondent nos. 4 & 5 in their own pay and grade against the vacancy of Special Secretary. The said order was issued without prejudice to the seniority and superior claim of any officer or any writ petition pending before the Court. Petitioner has challenged the said order, as according to him his rights would get jeopardized.
2. During the pendency of the writ petition there has been certain developments i.e. petitioner too has been confirmed as against the post of Additional Secretary w.e.f. 29.04.2011, whereas respondent no.4(Dilshada Shaheen), has been confirmed as Additional Secretary w.e.f. 01.01.2013. Respondent no.5 (Dilshad Ahmad Baba) too has been confirmed as Additional Secretary w.e.f. 29.04.2011. Thereafter again vide Government no. 868-LD(Estt)

of 2014 dated 18.02.2014, subject to confirmation by the Government, sanction has been accorded to the officiating promotion of the petitioner as Special Secretary in his own pay and grade.

3. Now the controversy is narrowed down i.e. the *inter se* seniority of petitioner and respondent no.5 is to be determined based on which confirmation to the promotion as against the post of Special Secretary has to be finalized. It is quite clear from the order dated 23.08.2013 that the respondent no. 4 & 5 have been promoted on officiating basis subject to confirmation, without prejudice to the seniority and the superior claim. Similar is the wording employed in the order dated 18.02.2014 which has been issued in favour of the petitioner. Now who is to rank senior is the issue to be determined by the authority concerned.
4. The claim of the petitioner is that he was confirmed as against the post of Additional Secretary w.e.f. 29.4.2011 in category-A, whereas respondent no.5 has been confirmed as Additional Secretary in category-B w.e.f. 29.4.2011. Vis-à-vis respondent no.4 no dispute survives because her confirmation admittedly is later in point of time, therefore, there is no issue of seniority with her.
5. So far petitioner and respondent no.5 are concerned the authorities concerned shall have to ascertain as to how their seniority is to be determined at the level of Additional Secretary, as they have come from two different sources; whether seniority is to be determined from the date of their first appointment or otherwise. It being so, respondent authorities shall accord consideration to the issue of seniority,

based on which their confirmation case for promotion as against the post of Special Secretary with effect from the relevant date shall be finalized, if not already determined. Grant of all consequential benefits as shall be permissible under rules shall also be considered. The exercise shall be undertaken and finalized within a period of four weeks from the date copy of the order is served upon respondent Nos. 1 to 3. Result whereof shall be conveyed to the petitioner as well as respondent no.5. The aggrieved parties shall be at liberty to re-agitate if thereafter cause survives.

6. Disposed of as above along-with connected CMPs.

(Mohammad Yaqoob Mir)

Judge

Srinagar
23.07.2015

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