

**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

SWP No.968/2003

MP No.01/2016

MP No.1001/2003

Date of order :26 .07.2016

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Pardeep Kumar Sharma and anr.      vs.      State & Ors.

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Coram:

***Hon'ble Mr. Justice Janak Raj Kotwal, Judge***

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Appearing counsel:-

For petitioner(s)      :   Mr.P N Bhat,Advocate.

For Respondent(s) :   Mr. Ravinder Gupta, AAG with  
Ms. Pallvi Sharma, Advocate.

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i. Whether approved for  
reporting in Press/Media      :      Yes/No/Optional

ii. Whether to be reported in  
Digest/Journal      :      Yes/No

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1      Head learned counsel for the parties and perused the  
record.

2      Petitioners pursuant to Advertisement Notification  
dated 08.05.2000 issued by ZEO, Khour-respondent No.  
4 applied against four vacancies of Rehber-e- Taleem  
(ReT) in MS, Khui-Millan and one vacancy in PS, Khui-  
Millan. In the merit panel of thirteen applicants  
prepared by the Village Level Committee, petitioners  
figured at merit-position 1 and 2 and were the only  
graduate candidates among the total thirteen.  
Petitioners, however, were not engaged whereas

candidates lower in merit were engaged. Petitioners assailed the engagement of the candidates lower in merit in SWP No.1229/2001 before this Court. The writ petition was allowed by this court vide judgment dated 20.07.2002. Operative part of that judgment reads:

“That the petitioners figured at Sr. No: 1&2 is not being denied by the respondents. As a matter of fact the petitioners are Graduates and private respondents who have been selected do not hold this qualification. This is a case where recommendation was made in favour of the petitioners by the Village Level Committee. The only reason which stated for non-selection of the petitioners that they are not the residents of Mohra/Mohalla where the Schools are situated and Schools are only one kilometer away from the place where the petitioners are residing. This is hardly a distance which could stand in their way for getting appointment. The stand taken by the respondents is arbitrarily and is also violative of Article 14 and 16 of the Constitution. As such the official respondents are directed to reconsider the issue and take remedial measures within a period of one month from the date copy of the order is made available by the petitioners to the respondents.”

- 3 Pursuant to and in compliance with the judgment of this Court the petitioners have been engaged as ReTs. Date of their engagement is not given in the writ petition but it is stated that orders were issued pursuant to communication dated 08.11.2002 of the Chief Education Officer Jammu to Respondent No.4.
- 4 By the medium of this writ petition, petitioners seek **Mandamus** directing respondents to give their engagement retrospective effect from 01.06.2001

when the candidates lower in merit were engaged, according to them fraudulently and for *mala fide* and extraneous consideration, and pay them all consequential monetary benefits.

- 5 Mr. P N Bhat, learned counsel for the petitioners, argued vehemently that the respondents in order to give undue benefit to other candidates, who were lower in merit, had illegally and fraudulently deprived the petitioners of their right of engagement even though they figured at merit position 1 and 2 and were the only graduates in the entire list of thirteen candidates, who had applied against available vacancies. Their grievance was redressed by this Court and they came to be engaged pursuant to the direction issued by this Court but injustice has been done to them as they have been rendered junior to the persons who have been fraudulently engaged over and above them. Mr. Bhat submitted that injustice done to the petitioners can be mitigated only by giving retrospective effect to their engagement from the date when the candidates lower in merit were engaged. Mr. Bhat placed reliance on a Division Bench judgment of this Court dated 03.12.1998 in Dolly Kumari's case, LPA(SW) No.44/1998 and a single Bench judgment in Sarfraz Maqbool Bhat v. State and ors. 2015 (3) JKI 227.

- 6 Per contra, Mr. Ravinder Gupta, learned AAG appearing for the respondents, argued that engagement orders of the petitioners were issued immediately after judgment of this Court dated 20.07.2002. The learned Writ Court in that case had not issued any direction for retrospective engagement of the petitioners nor was such a prayer made in that writ petition by the petitioners. Petitioners having been engaged immediately after the judgment and having accepted the engagement, are estopped from claiming retrospective effect and other benefits by filing another writ petition. Such a relief cannot be granted submitted learned AAG and in support placed reliance upon the judgment of a learned Division Bench of this Court dated 23.02.2016 in LPA (SW) No.87/2015.
- 7 The only question arising in this writ petition is, whether retrospective effect to the engagement of the petitioners from the date when candidates lower in merit to them were engaged can be granted or not.
8. The fact situation of the case covered under LPA(SW)No.87/2015 disposed of by the learned Division Bench vide judgment dated 23.02.2016 (supra) is identical to the fact situation of the case on hand. Respondent of that case was given engagement pursuant to and in compliance with the judgment of this Court dated 22. 2. 2007 in SWP No. 1297/2004 filed by him. He, however,

had not prayed for retrospective engagement in that writ petition. Engagement order was issued in his favour on 17.7.2013. The respondent filed another writ petition, SWP No.2546/2013, in which writ court vide order dated 19.12.2014 issued direction to the respondents therein to treat the petitioner as having been appointed/engaged as ReT w.e.f. 22.09.2003 though notionally, that is, with effect from the date when Ms. Janko Devi was engaged whose appointment subsequently was found to be illegal and an outcome of fraud. In LPA filed by the State, learned Division Bench, while relying upon Hon'ble Supreme Court judgment dated 02.05.2011 in SLP (Civil) 9415-9416/2008, modified the order passed by the Writ Court to the effect that the engagement of respondent shall be treated from the date of judgment notionally, that is, from 22.02.2007, for the purpose of getting regularization. It is apt to quote paragraphs-3 and 4 of the judgment dated 23.02.2016:

“3. It is a fact that the respondent has not prayed for retrospective appointment in the earlier proceedings. A similar issue was considered by Hon'ble the Supreme Court in SLP (Civil) No.9415-9416/2008 and by judgment dated 02.05.2011, in respect of RET. Hon'ble the Supreme Court directed to consider the appointment of the petitioner as RET w.e.f the date of judgment of writ Court. Hon'ble the Supreme Court further ordered that the said appointment should be without monetary benefits. However, for regularization, the said period was directed to be taken into consideration.

4. In this case, judgment of the writ Court in the earlier proceedings was rendered on 22.02.2007 (supra),

therefore, the order passed by the writ court granting appointment w.e.f 22.09.2003 stands modified to the effect that the appointment of the petitioner shall be treated from the date of judgment notionally i.e from 22.02.2007 for the purposes of getting regularization. However, he is entitled to get pecuniary benefits only from the date of joining the post.”

9. Judgment dated 20.07.2002 (supra) rendered by this court in the earlier writ petition filed by the petitioners would show that retrospective effect to their engagement neither was claimed by the petitioners nor ordered by the Court. Retrospective effect to their engagement, therefore, in view of the aforementioned judgment of learned Division Bench, can be accorded only from the date of judgment in their earlier writ petition, that is, from 20.07.2002 and from no other date earlier thereto, not even the date when the candidates lower in merit to the petitioners were engaged.
10. Matter needs to be looked from another angle too. It is noticed that stand taken by official respondents in the earlier writ petition filed by the petitioners was that Mohra/Mohalla in which they reside is located one kilometer away from the two schools in which engagement was to be made as compared to the appointed candidates, who are residents of the same Mohalla in which schools are located. The stand of the official respondents, however, did not find favour of

this Court and was held as arbitrary and violative of Articles 14 and 16 of the Constitution. On this finding, this Court allowed the writ petition without, however, directing retrospective appointment of the petitioners. The allegation of *mala fide* or ulterior motive leveled against the concerned authorities by the petitioners cannot be said to have been accepted by this court.

11. The Division Bench judgment in Dolly Kumari's case dated 3.12.1998 (*supra*) relied upon by the learned counsel for the petitioners does not apply in the fact situation of this case. In that case the basic writ petition filed by the petitioner therein was dismissed by the learned Single Bench as case set up by the respondents therein was that her name did not figure in the select list. In appeal, the learned Division Bench on examining the selection record, however, found that she figured at serial no.49 in the merit list and, therefore, while issuing direction for her appointment, learned Division Bench also directed the respondents to give her seniority from the date other candidates selected with her were appointed taking into consideration her placement in the merit list. The retrospective effect to the appointment of the petitioner in effect was given in the basic writ petition though at LPA stage and not in a subsequent writ petition as is the position in the case on hand.

12. Likewise Judgment in Sarfraz Maqbool Bhat (supra) is distinguishable in its application to fact situation of this case. It is noticed that in that case the writ petitioner therein was recommended for appointment by the selection board vide communication dated 20.05.2009. He, however, could not be appointed because one Naseema Bashir filed a writ petition challenging his selection. The writ petition filed by Naseema Bashir was dismissed on 10.06.2011 and the Letters Patent Appeal filed by her was dismissed on 23.08.2012. In the meantime, petitioner therein was appointed on 20.08.2011. The petitioner therein filed writ petition seeking retrospective effect to his appointment which came to be granted notionally from the date the other selected candidates were appointed in the year 2009. The distinguishing factor of judgment in Sarfraz Maqbool Bhat is that the vacancy for which petitioner was recommended and would have been appointed in 2009 was not filled up because of Court orders issued in writ filed by Naseema Bashir. In such a situation, it was possible to give him retrospective effect against available vacancy. In contrast, the case on hand indisputably the post against which petitioners would have been appointed were filled up so retrospective effect to their appointment could not have been given and such effect indeed was not given by this court while disposing of the earlier writ petition filed by



them. Even otherwise, the judgment of learned Single Bench in Sarfraz Maqbool case cannot be relied upon in view of the DB judgment dated 23.02.2016 (supra).

13. For all that is said and discussed above, relief as sought by the petitioners cannot be granted and is, therefore, refused. Nonetheless, it is noticed that pursuant and in compliance with the judgment dated 20.07.2002 in the earlier writ petition of the petitioners, engagement orders in their favour seem to have been issued somewhere in or after November, 2002. In view of the judgment of the learned Division Bench dated 23.02.2016 (supra), it is ordered that the engagement of the petitioners shall be treated from the date of judgment, that is, from 20.07.2002 for the purpose of fixing their seniority, though without any monetary benefit up to the date of their joining the post.

14. Writ petition, disposed of, accordingly.

Jammu  
26.07.2016  
Raj Kumar.

(Janak Raj Kotwal)  
Judge