

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

SWP No. 2174/2013, MP No. 3197/2013.

Date of order : 26.07.2016

Vijay Sharma vs. State and ors

Coram:

Hon'ble Mr. Justice B. S. Walia, Judge

Appearing counsel:

For the petitioner(s) : Mr. Sudershan Sharma Advocate.

Mr. Sanjeev Padha, Advocate.

For the respondent(s) : Mr. Ravinder Gupta AAG.

Mr. Ravi Abrol Advocate.

i/ Whether to be approved for reporting : Yes
 in Digest/Journal

ii/ Whether to be approved for reporting : Yes / No
 in Press/Media.

Judgment:

1. Petitioner has sought the issuance of a writ in the nature of Certiorari for quashing order Annexure-A bearing No. DSEJ/Legal/2391 dated 06.06.2013 and No.CEO/D/Legal/8829-32 dated 21.06.2013 passed by respondent Nos. 2 & 3 respectively as also for the issuance of a writ of Mandamus directing the official respondents to notify the vacancy against which respondent No.5 was engaged and to conduct selection process for the said post in accordance with the scheme.

2. Brief facts of the case on the basis of which the instant writ petition has been filed are that one Shri Madan Lal who had joined as R.e.T. on 24.07.2009 in Middle School Bhakhna, Education Zone Gundana resigned from service on 20.12.2010. Instead of advertising the vacancy accruing on account of resignation of said Shri Madan Lal, the post was filled up by appointing respondent No.5 purportedly on account of directions dated 10.09.2012 issued by the High Court in SWP No. 151/2010-Annexure-B whereas the High Court had merely accepted the request of respondent No. 5 to represent against the illegal engagement of Ms. Renu Kumari Parihar as R.e.T. on 19.05.2003 in Government Primary School Shounsh, Jatheli, Tehsil and District Doda. The representation if filed was to be considered by the Director, School Education for taking appropriate decision as warranted under rules. There was no order to appoint respondent No.5.

3. Grievance of the petitioner is that vacancy of R.e.T. was to be filled up as per scheme by notifying the same, inviting applications, considering all eligible candidates belonging to Habitation / Village Bhakhna, preparation of tentative merit panel by the ZEO concerned duly signed by all the Village Level Education Committee members, display of said panel in the village for seven days for inviting objections, if any, preparation of final panel, transmission of the same by the ZEO to the CEO who in turn was to forward the panel of selected candidate(s) to the Director School Education for seeking approval of engagement and on receipt of approval the CEO concerned was to issue the engagement order in favour of the selected

candidate. However, in the instant case, no such selection process was followed to fill up the post which had occurred on account of resignation tendered by Shri Madan Lal after serving for a period of one and a half year. Instead, respondent No.5, who had applied for the post of R.e.T., Primary School Shounsh, Village Jatheli in the year 2003, was engaged as R.e.T. in Middle School Bhakhna, Education Zone Gundana, purportedly in terms of the orders of the High Court although there was no such direction.

4. That it is the contention of learned counsel for the petitioner that the action of respondent Nos. 3 & 2 in recommending engagement of and ordering appointment of respondent No.5 in a school located in another village which was neither the relief claimed by respondent No.5 in his writ petition nor in his representation was illegal and it was beyond comprehension as to how and in what circumstances, respondent Nos. 2 & 3 passed the impugned order giving undue benefit to respondent No.5 and that in the circumstances, it was apparent that the same was done on extraneous considerations.

5. That despite opportunity having been granted, respondent No.5 has chosen not to file objections, whereas respondent Nos. 1 to 4 in their objections have stated that in the year 2003, advertisement was issued by respondent No.3 for engagement of R.e.T. in District Doda including in Primary School Shounsh in Education Zone Gundana, that the then ZEO framed the panel in which one Renu Kumari Parihar, daughter of Surinder Kumar, resident of Jatheli, Tehsil and District Doda who was having merit lower than respondent No.5 was placed at S.No.1

and was illegally appointed as R.e.T. on 19.05.2003, that SWP No.151/2010 was filed on behalf of respondent No.5 which was disposed of vide order dated 10.09.2012 granting liberty to respondent No.5 to seek consideration of his representation by the Director School Education Jammu, that pursuant thereto respondent No. 5 approached respondent No.2 vide representation Annexure R-2 dated 13.09.2012, whereupon communication Annexure R-2 dated 28.09.2012 was forwarded by respondent No.3 to respondent No.2 mentioning therein that merit of respondent No.5 had been ignored by the then ZEO Gundana and instead one Renu Kumari Parihar had been illegally engaged as R.e.T. in Government Primary School Shounsh in Zone Gundana, therefore respondent No. 5 be considered favourably for appointment.

6. That pursuant to report Annexure R-2 dated 28.09.2012 to respondent No.2, communication Annexure R-3 dated 13.02.2013 was issued by the Joint Director, Directorate of School Education Jammu to the Chief Education Officer Doda, requiring furnishing of one vacancy of R.e.T. to engage respondent No.5 as R.e.T. in compliance of the directions dated 10.09.2012 of the High Court in SWP No. 151/2010. In response thereto, respondent No.3 vide communication Annexure R-3 dated 28.2.2013 intimated one vacancy of R.e.T. in Middle School Bhakna to respondent No.2 on account of resignation of the R.e.T. engaged there for necessary action. Pursuant thereto order Annexure R-4 dated 06.06.2013 was passed by respondent No.2 according approval to the engagement of respondent No.5 as R.e.T. in compliance of the

directions of the High Court in Middle School Bhakhna in Education Zone Gundana against the vacancy communicated by CEO Doda vide letter dated 28.02.2013. Respondent No.3 was directed to issue engagement order in favour of respondent No.5 after checking / verifying the original documents. Pursuant to order Annexure R-4 dated 06.06.2013, order Annexure R-4 dated 21.06.2013 was passed by respondent No.3 appointing respondent No.5 as R.e.T. under SSA in Middle School Bhakhna in Education Zone Gundana.

7. That communications inter se official respondent's as referred to above project respondent No.5 having been given appointment as R.e.T. in terms of order of the High Court. The alacrity with which respondent Nos. 2 and 3 acted on receipt of representation i.e. Annexure R-2 dated 13.09.2012 from respondent No. 5 is in stark contradiction to the earlier inaction, indifference and ignoring of claim of respondent No. 5 at the hands of the then ZEO Gundana for appointment as per entitlement on merit, instead one Renu Kumari Parihar being appointed in derogation of merit of respondent No. 5. Respondent Nos. 2 & 3 or for that matter their predecessors did not take any action from 19.05.2003 till receipt of representation dated 13.09.2012 i.e. for close to 10 years on their own but thereafter swung into action and appointed respondent No. 5 allegedly on the ground of directions dated 10.09.2012 having been issued by the High Court in SWP No. 151/ 2010.

8. That directions for consideration of representation implied decision of the representation in accordance with law. There

were no direction to appoint respondent No. 5. Yet, respondent No. 2 & 3 processed the claim and issued appointment order to respondent No. 5 post haste without bothering to consider the directions of the High Court, the law in respect thereto and by reading something into the order of the High Court which was not there. The claim was highly belated, yet respondent Nos. 2 & 3 chose to ignore the issue of delay and laches although the same could have been taken into and was required to be taken into account while deciding the representation. Reference in this connection is made to the decision of the Hon'ble Supreme Court in **C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115**. Relevant extract of the same is reproduced hereunder :

"10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim.....

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action."

9. That needless to mention, on a direction being issued by a Court to an authority to consider and decide the representation in accordance with rules, if the facts so warrant, it would be open to the authority concerned to reject the representation

without examining the claim on merit on the ground of the claim being stale or barred by limitation in view of the decision of the Hon'ble Supreme Court in **C. Jacob's** case (**Supra**).

10. That appointment of respondent No.5, on the one hand can be viewed as undoing injustice done to him by the then ZEO in 2003, yet on the other hand the fact remains that the claim of respondent No. 5 was hit by delay and laches and was not tenable before a Court of Law in view thereof. It was in the aforementioned background that respondent No. 5 chose to withdraw SWP No. 151/2010 on 10.09.2012 so as to move a representation before the authorities. Respondent No. 2 & 3 granted relief to respondent No. 5 by reading something in the order of the High Court which was non existent though the representation could have been decided in the light of the decision of the Hon'ble Supreme Court referred to above.

11. That appointment of respondent No. 5 in the manner aforesaid by respondent No. 2 & 3 has resulted in a situation leading to the filing of the instant writ petition which could have been avoided had appropriate action been taken to remedy the wrong at the appropriate time i.e. in the year 2003 itself by the official respondents or by their deciding the representation in the year 2013 in accordance with law. Failure of the official respondent's to decide the representation of respondent No. 5 in accordance with law resulted in depriving the petitioner of his lawful rights of being considered for selection and appointment against the post of R.e.T. in Middle School Bhukhna against the vacancy created on account of resignation of Madan Lal on 20.12.2010 on account of said vacancy having been utilized for

meeting the claim of respondent No.5 who had, in fact, been a candidate for the post of R.e.T. in Government Primary School Sounsh, Village Jatheli but as per respondent Nos. 1 to 4 was illegally denied appointment in the year 2003 by the then ZEO and instead one Renu Kumari Parihar was appointed despite her not being entitled for appointment.

12. There is no whisper of any action taken against the then ZEO Gundana or for that matter, any other official responsible for denying the appointment to respondent No.5 in derogation of his lawful entitlement in the year 2003 against the post of R.e.T. in Government Primary School Sounsh, Village Jatheli.

13. That in view of the fact that respondent No. 5 was illegally denied appointment in the year 2003 and has rendered close to 3 ½ years service pursuant to his appointment on acceptance of his claim on the basis of representation dated 13.09.2012, I do not deem it proper to interfere with his appointment at this stage even though the claim of respondent No. 5 was accepted by respondent Nos. 2 & 3 by reading a direction in the order of the High Court to appoint respondent No. 5 which in fact was not there, consequentially, even the order appointing respondent No. 5 not being one which could be said to have been passed by respondent Nos. 2 & 3 in good faith.

14. That in the facts and circumstances of the case, it is deemed appropriate to dispose of the writ petition by directing the official respondents to correct the mistake and appoint respondent No.5 in Government Primary School Sounsh Village Jatheli as expeditiously as possible, preferably within a period

of 3 months from today. Pursuant to correction of mistake in the manner aforesaid, vacancy of R.e.T. in Middle School Bhukhna, Education Zone Gundana be advertised for being filled up from amongst the eligible candidates in case of requirement to fill up the said vacancy.

15. The action of the then ZEO concerned who as per respondent Nos. 1 to 4 appointed another candidate in derogation of the merit of respondent No. 5 as also the action of respondent Nos. 3 & 2 recommending engagement of and ordering appointment of respondent No. 5 by reading directions in the order of the High Court to appoint respondent No. 5 despite there being no such direction in the order of the High Court does not reflect exercise of power in Good Faith. In the circumstances, let copy of this judgment be forwarded to the Commissioner cum Secretary, Education Department for action as deemed appropriate in the facts and circumstances in accordance with law.

Writ petition disposed of in aforementioned terms.

(B.S.Walia)
Judge

Jammu
26.07.2016
Sanjeev