

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

SWP No. 1853/2010

MP No. 778/2011

Date of order: 26.04.2018

Sheela Devi

vs

State of J&K and others

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearance:

For the appellant/petitioner(s) : Mr. R. Kaul, Adv.

For the respondent(s): Mr. Sanchit Verma, Adv. vice Mr. W. S. Nargal, Sr. AAG

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| i. | Whether approved for reporting in Press/Media | : | Yes/No |
| ii. | Whether to be reported in Digest/Journal | : | Yes/No |

1. Heard and perused the record.
2. Common ground of both the sides is that petitioner was enrolled as Women Constable in JKAP-11th Battalion in November, 1987 with effect from 09.11.1987. In December, 1997, she was promoted to the rank of Selection Grade Constable vide APHQ order No. 1161 of 1997 dated 29.09.1997. On 22.02.2005, petitioner expressed her unwillingness to undergo pre-promotion course for her further promotion to the rank of Head Constable and willfully consented to forego her further promotion in lieu of not undergoing pre-promotion course. In the year, 2007, petitioner submitted an application to the Additional Director General of Police, (Armed) J&K stating in it that earlier she had foregone her promotion as her children were minor/infant and requested that she may now be allowed to go for promotion course for next higher rank. Commandant IR 15th Battalion, Jammu vide No.

Estt/IR.15th/09/16128-29 dated 11.08.2009 (annexure-C) recommended the case of the petitioner to the Inspector General of Police (Armed) J&K that the petitioner had earlier foregone her promotion due to her maternal instincts for her minor kids so her request requires sympathetic consideration of higher authorities. Last three paragraphs of this communication are important and are reproduced:

“No doubt earlier the above said W/Sgct has inadvertently consented to undergo pre-promotion course due to her domestic problems as well as to take care of her minor children’s but as per her version at that time she had claimed that her kids were minor but the real fact was that her first child had expired after six days of his birth and subsequently she had suffered three miscarriages. This fact is corroborated by the leaves she has availed during the said episodes which have been reflected in her character roll. She had foregone her promotion as she did not want to take any chance with the two kids who had survived and were very small at that time.

Thus the circumstances which have been explained above, led to her decision of foregoing her course due to her maternal instincts for her minor kids. Hence it seems that the repeated requests of the said W/Sgct is genuine and requires sympathetic consideration from higher authorities.

Hence, submitted for favour of kind perusal and further course of action please.”

3. The Inspector General of Police, Armed, however, rejected the request of the petitioner in view of the PHQ J&K Circular issued vide No. TRG-486-2008/8054-8153- dated 16.02.2009 and rejection was conveyed to the Commandant IRP 15th Battalion dated 25.09.2009.
4. In this petition under Article 226 of Constitution of India read with section 103 of the State Constitution, petitioner seeks **writ of mandamus** commanding the respondents to allow her to undergo pre-promotion training and consequently to place her in promotion list of Head Constable. She also seeks quashing of Circular dated 16.02.2009.

5. It is indisputable that respondents' refusal to petitioner's request for undergoing pre-promotion training at a later stage, after having foregone her promotion at an earlier stage, is not supported by any rule. No rule has been referred to in support of such a refusal. Nothing in the service rules, in particular the Police Rules of the State deprives a person from a promotion at a subsequent stage even if promotion at the relevant time is foregone. Foregoing promotion at the relevant stage is an option availed by a Government servant which is detrimental to his/her own interest but nothing in the service rules creates a bar in granting him promotion at a subsequent stage. Respondents, it appears, have supported their refusal on the basis of the Circular(supra) issued on 16.02.2009. Legality of this question, may raise a question, which, however, need not be taken up in this petition for the simple reason that this Circular did not exist when the promotion was initially forgone by the petitioner and not even at the time when she made a request for undergoing pre-promotion training. This Circular cannot be given retrospective effect, its legality notwithstanding. To say, precisely, refusal of the respondents (supra) *dehors* the rules, in particular as at the relevant time and cannot sustain.
6. Viewed thus, this petition has strong merit and deserves to be granted. The petition is, therefore, allowed and by issue of **writ of mandamus**, respondents are directed to allow the petitioner to undergo pre-promotion training, if one is otherwise eligible for that and accord consideration to her next promotion under rules.
7. Disposed of.

(Janak Raj Kotwal)
Judge

Jammu:
26.04.2018
Rakesh