

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP No. 1630/2013

Date of Order: of March, 2018.

Ghulam Nabi Shah & Anr.

Vs.

State of JK & Ors.

Coram:

Hon'ble Mr Justice M. K. Hanjura, Judge.

Appearance:

For the Petitioner(s): Mr. Zaffar Shah, Sr. Advocate.

For the Respondent(s): Mr. Irfan Andleeb, Dy. AG vice

Mr. B.A. Dar. Sr. AAG

i) *Whether approved for reporting in
Law Journals etc.:* Yes/No

ii) *Whether approved for publication
in Press:* Yes/No

01. The petition of the petitioners is that on 07.08.1982 they were appointed as Sub-Inspectors on substantive basis in the Executive Police and came to be promoted as Inspectors on 31.12.1983. Subsequently on 27.03.2000 the petitioners were promoted as Deputy Superintendent's of Police in their own pay and grade vide Government Order No. Home-149 (P) of 2000 dated 27.03.2000. The petitioner No.1 was confirmed as Dy.SP from 16.04.2003 Vide government Order No. 367 (P) of 2007 dated 01/08/2007 and the Petitioner No.2 was, confirmed from 01.07.2002 in terms of the same order. Vide of SRO 132 dated

03.04.2002, 25% of sanctioned strength of the cadre of Dy. SPs with at least 5 years service in class IV (Dy. SP) are entitled to be placed in the selection grade of Dy. Superintendent of Police.

02. The first grievance of the petitioners is that they were entitled to their confirmation as Dy. SP's from 27.03.2000 when they were promoted as such in their own pay and grade. The petitioner No.1 continued to officiate as Dy. SP till 16.04.2003 when he was confirmed as Dy. SP. The petitioner No.1 was entitled to be regularized from 27.03.2005 in light of the rules applicable to the service. The said petitioner was promoted within his own quota (in-service promotes). Similarly the claim of the petitioner for his regularization as Dy. S.P had to be considered from 27.03.2000.

03. The second contention of the petitioners is that ordinarily they would complete five years of service on 26. 03. 2005. The petitioners were entitled to be placed in the selection grade of Dy. S.P from that date. The petitioner No.1 was confirmed as Dy. S.P. on 16.04.2003. The petitioner would accordingly complete five years of service on 15.04.2008 and the petitioner No.2 would complete this period on 30.06.2007. The petitioner No.1. therefore, was entitled to selection grade from 15.04.2008 and the petitioner No.2 was fit for such induction from 30.06.2007. The petitioners attained the age of superannuation on the dates 29.02.2012 and 30.11.2012 respectively.

04. It is further contended that the Government issued an Order bearing No. Home-224 of 2013 dated 6.6.2013 (copy of which is placed on record as Annexure "C") in terms of which several Dy. SPs were

placed in the selection grade from the date of the order. The petitioners who had already attained the age of superannuation did not figure in the said Government Order. The petitioners state that they became entitled to “selection grade” before they attained the age of superannuation and as a consequence of their superannuation, they did not lose their right to be placed in the “selection grade”. The petitioners also state that the benefit of the Government Order dated 6.6.2013, was extended to their colleagues and they were excluded from consideration. The petitioners submit that there is no justification for the official respondents to deny and withhold the “selection grade” in favour of the petitioners after completion of five years service. In terms of the rules 25% of the sanctioned strength of the cadre of Dy. SP is earmarked for being placed in the selection grade. The total sanctioned strength of the cadre is 335. 25% of the said sanctioned strength would mean that an approximate number of 80 posts would be available in the selection grade. The petitioners, therefore, were entitled to be placed in the “selection grade” immediately upon completion of five years. On the above set of facts the petitioners have implored the grant of following reliefs in their favour:

- a) By a writ of mandamus respondents be directed to substantive promote the petitioners as from 27.03.2000 as Dy. Superintendent of Police and the order of confirmation bearing No. 367 (P) of 2007 dated 01.08.2007 be directed to be given effect to from the said date.*
- b) That by a writ of mandamus respondents be directed to place the petitioner in the selection grade as on 26.3.2005 and or from 15.04.2008/30.06.2007. The respondents by a writ of mandamus be directed to pay the arrears to the petitioners and workout their pensionary benefits accordingly.*

c) Any other writ petition or order as the Hon'ble Court may deem appropriate be also passed in favour of the petitioners.

05. Heard and considered.

06. By order dated 24.09.2013 of this court, the petition was admitted to hearing and by the same order this Court directed the respondents to file the counter affidavit. Despite repeated opportunities, the respondents failed to file the counter affidavit and finally it was by order dated 31.12.2017 of this Court that the right of the respondents to file the counter affidavit was closed. The respondents have failed to rebut the pleadings of the petitioners. The settled principle of the law of pleadings is that an averments made by the applicant is expected to be specifically denied by the replying party. If there is no specific denial then such an averment is deemed to have been admitted by the respondents. In the present case it is evident that the averments set up in the writ petition were relevant and material to the case. The entire case of the petitioners hinged on the pleadings detailed in the writ petition. It was thus for the respondents to reply these averments specifically, with reference to the record relevant to the case. The omission on the part of the respondents to refer to the relevant record and their failure to deny the averments made in the petition, in not filing the counter affidavit would mean and convey that they have admitted the pleadings of the petitioners and therefore, they are entitled to the relief as prayed for by them in the petition on this ground alone.

07. Looking at the petition of the petitioners from another perspective, the petitioners were temporarily placed as Deputy Superintendents of

Police on stop gap basis in their own pay and grade with charge allowance as admissible under rules with immediate effect as against available vacancies vide Government Order No. Home- 149 (P) of 2000 dated 27.03.2000, wherein they figured at Serial Nos. 34 and 45 respectively. Subsequently vide another Government Order No. Home 367 (P) of 2007 dated 07.08.2007, their promotion to the rank of Deputy Superintendent of Police (General Executive Cadre) was regularized with others. They figured at Serial Nos. 22 and 41 in order of seniority. The petitioner Bashir Ahmad Khan, was promoted/regularized to the post of DSP w.e.f 16.04.2003 and the petitioner No.2 namely Kailash Chibber was promoted/regularized to the post of DSP w.e.f 1.07.2002. In terms of SRO- 132 dated 03.04.2002, 25% of the sanctioned strength of the DSP's with at least five years of service as Class IV (DSP) were entitled to be placed in the selection grade of Deputy Superintendents of Police. On the strength of the said SRO, the petitioner Bashir Ahmad Khan would complete five years of service on 15.04.2008 and the petitioner No.2 would complete this period on 30.06.2007.

09. The petitioner No.1 is said to have attained the age of superannuation on 29.02. 2012 and the petitioner NO. 2 it is pleaded has retired from the service on 30.11.2012. On the basis of the above, the petitioners were entitled to induction in the selection grade before they attained the age of superannuation and as a consequence of this superannuation, they did not loose their right to such induction subject, however, to the availability of the posts. Having said so the right of considering the petitioners for their placement in the selection grade has accrued to them during the tenure of their service, and, therefore, their

superannuation after such date shall be inconsequential and will not bar their inclusion into the selection grade, if these posts were available.

12. In view of the proceeding analysis, this petition is disposed of with the direction to the respondents to consider the case of the petitioners for their induction into the selection grade with effect from the dates they had completed 5 years of service as Dy.SP(s) on substantive basis or thereafter if and when the posts were in existence upto the dates of their retirement from service.

(M.K. Hanjura)
Judge

SRINAGAR

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