

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

SWP No.2090/2015

Date of Order: 27<sup>th</sup> of June, 2018.

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Mohammad Saleem Darzi & Anr.

Vs.

State of JK & Ors.

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**Coram:**

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

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**Appearance:**

For the Petitioner(s): Mr H. A. Wani, Advocate.

For the Respondent(s): Mr M. A. Wani, Sr. AAG.

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i) Whether approved for reporting in Law Journals etc.:	Yes/No
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ii) Whether approved for publication in Press:	Yes/No
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**01.** In this petition, the petitioners seek a writ of Certiorari for setting aside the orders bearing Nos. 581 DRDK of 2015 dated 31<sup>st</sup> of August, 2015, DRDK/Estt/9752 dated 29<sup>th</sup> of June, 2015 & RD/Legal/49/2015 dated 14<sup>th</sup> of August, 2015. A writ of Mandamus is also sought for directing the respondents to promote the petitioners as Panchayat Inspectors Grade-II/Plantation Rangers and BDOs retrospectively from the date, the private respondents have been promoted.

**02.** The facts germane to the decision of the instant petition are that in the year 1998, the petitioners were appointed as Village Level Workers (VLWs) in the Rural Development Department under and in terms of the J&K Rural Development Department Subordinate Service Recruitment Rules 2007, which provides for the reservation of 5% quota for the Village Level Workers (VLWs) having the Post Graduate Diploma in the Rural Development Department (PGDRD), to be entitled to be promoted to the post of Panchayat Inspectors – Grade-II/Plantation Rangers. The petitioners have further stated that, contrary to the said rules, the official respondents have promoted the private respondents by considering the seniority of the employees from the date of passing of Post Graduate Diploma in Rural Development and in the process, they have completely ignored the petitioners. The petitioners, feeling aggrieved, filed a representation before the authorities, which has been rejected. The petitioners have further stated that, without appreciating the legal position, the official respondents have issued the impugned orders by the dint of which their case for promotion to the post of Panchayat Inspector Grade-II/Plantation Ranger and, thereafter, for Block Development Officer has been rejected. It is further stated that the petitioners have passed their Post Graduate Diploma in Rural Development Department in June, 2000 and December, 1999, respectively and the private respondents, i.e. respondent Nos. 3 and 4, have been promoted as Panchayat Inspector Grade-II and Incharge BDOs in the years 2009 & 2014 respectively.

**03.** In an earlier round of litigation, the petitioners, by the medium of SWP 169/2015, sought indulgence of this Court for commanding the respondents to promote them to the post of Panchayat Inspector Grade-II/Plantation Ranger,

and the Court disposed of the same with the direction to the respondents therein to take a decision in the matter in light of the rules aforementioned. The petitioners have further stated that since the respondents did not comply with the terms of the said order, they were constrained to file a contempt petition against the respondent–department. While on notice in the contempt petition, the respondents, immediately took a decision and rejected the claim of the petitioners in terms of the order No. 851 DRDK of 2015 dated 31<sup>st</sup> of August, 2015, impugned herein.

04. The respondent Nos. 1&2 have filed the objections, wherein the maintainability of the writ petition has been questioned. It is stated that the petitioners have earlier also filed a writ petition (SWP 169/2015) on the same cause and they are guilty of suppression and concealment of the material facts before the Court, which is enough for the dismissal of the writ petition in *limine*. The respondents have further contended that the claim of the petitioners has been considered in terms of the order dated 6<sup>th</sup> of February, 2016, of this Court, passed in SWP 169/2015, leading to the issuance of the order dated 31<sup>st</sup> of August, 2015, impugned herein. Respondents have further stated that the petitioners were appointed as Village Level Workers (VLWs) in the months of August & October, 1998, respectively and the respondent No. 3 was appointed as Village Level Worker (VLW) on 14<sup>th</sup> of September, 1990. The respondent No.3, being the senior most Village Level Worker (VLW), besides having the Post Graduate Diploma in Rural Development, was placed as Incharge Panchayat Inspector vide order dated 1<sup>st</sup> of October, 2011. Thereafter, on the basis of his seniority, outstanding performance & Post Graduate Diploma in Rural Development, the Departmental Promotion Committee (DPC) accorded

sanction for his promotion against the post he was holding vide an order dated 8<sup>th</sup> of July, 2014. The respondent No.4, having the requisite qualification/eligibility as also having completed the prescribed tenure of service, was also promoted as Panchayat Inspector on 2<sup>nd</sup> of December, 2009, by the Departmental Promotion Committee (DPC). It is further stated that the petitioners had completed only 11 years of service at the relevant point of time and the criteria for being eligible for promotion to the post of Panchayat Inspector is 13 years, viz. 8 years in the pay scale of Rs.3050-4910 and 5 years in the pay scale of Rs. 4000-6000. Respondents have further stated that the well settled principal of law is that no employee can claim the promotion as a matter of right. The answering respondents considered the case of the petitioners and found that they are not entitled for promotion to the post of Panchayat Inspector/Planation Ranger Grade – II under 5% quota because they (the petitioners) were lagging behind in seniority, which is a *sine qua non* for being promoted. The respondents have submitted that keeping the above averments in view, the writ petition deserves to be dismissed in *limine*.

**05.** **Heard** and considered.

**06.** The pivot round which the instant petition revolves is whether the seniority of an employee in the Rural Development Department for the purpose of promotion to the next higher post has to be determined from the date of the initial appointment or from the date of acquiring the qualification of Post Graduate Diploma in the Rural Development Department (PGDRS), for which 5 percent quota has been reserved/ earmarked under the rules cited above.

**07.** SRO 178 dated 9<sup>th</sup> of May, 2007, running under the caption “The Jammu & Kashmir Rural Development (Subordinate) Service Recruitment Rules, 2007”, provides for the constitution of the service, strength and composition of the service, qualification and method of recruitment, probation, training and departmental examination, etc., etc. Rule 5 of the said SRO is relevant in the context of the dispute raised here in this case and it provides as under:

*“5. Qualification and method of recruitment: - (1) No person shall be eligible for appointment by direct recruitment or by promotion to any post in any class, category or grade in the service unless he possesses the qualification as laid down in Schedule II-A and II-B and fulfils other requirements as is provided in the relevant rules and orders for the time being in force.*

*(2) Appointment to the service shall be made: -*

- a) By direct recruitment (which shall include appointment by transfer provided the concerned candidate fulfils the required eligibility criteria as prescribed in the rules and the appointment shall be made in consultation with the Jammu and Kashmir Subordinate Service Selection Board or any other selecting agency);*
- b) By promotion; and*
- c) Partly by direct recruitment and a partly by promotion in the ratio and in manner mentioned against each post as per Schedule-II:*

*Provided that all the posts under direct recruitment shall be filled through Jammu and Kashmir Subordinate Service Selection Board/ any other selection agency as per the rules/ orders of the Government issued for the purpose from time to time:*

*Provided further that all posts to be filled by promotion/ transfer shall be filled through Departmental Promotion Committee (DPC)/Service Selection Board respectively.”*

**08.** The grouse of the petitioners is that they were appointed as Village Level Workers in the Rural Development Department in the year 1998, but they have not been promoted to the next higher post of Panchayat Inspectors, Grade-II/Plantation Rangers, though they hold the Post Graduate Diploma in the Rural

Development Department (PGDRD). Schedule II, which provides for class, category, grade, minimum qualification for direct recruitment and the method of recruitment, under different ranks of the posts, at class 3, category A, lays down as under:

<i>Class</i>	<i>Category</i>	<i>Designation</i>	<i>Grade</i>	<i>Minimum qualification for direct recruitment</i>	<i>Method of recruitment</i>
<i>III</i>	<i>A</i>	<i>Panchayat Inspector G-II/ Plantation Ranger</i>	<i>5000-8000</i>	<i>...</i>	<p><i>100% by promotion from Class IV Category B with five years' experience in that category in the following manner:</i></p> <p><i>a) 75% from general seniority of VLWs/MPWs in the grade 4000-6000;</i></p> <p><i>b) 20% from Graduate VLWs/MPWs in the grade 4000-6000; and</i></p> <p><i>c) 5% from VLWs/MPWs in the grade of 4000-6000 with Post Graduate Diploma in Rural Development from recognized University/Board provided that where sufficient number of eligible persons in this feeding category is not available; the balance posts will go to (b) above.</i></p>

**09.** From a bare look of the schedule detailed above, what comes to the fore is that 5 percent of the posts of Panchayat Inspector, Grade-II/Plantation Rangers have to be filled up by way of promotion from amongst the VLWs/MPWs having Post Graduate Diploma in the Rural Development

Department (PGDRD); 75 percent of the posts have to be filled up from the general seniority of Village Level Workers (VLWs) and 20 percent of the quota has to be maintained by the Graduate Village Level Workers (VLWs), meaning thereby that the seniority of the Post Graduate Diploma holders in the Rural Development Department has to be determined from the date they have acquired the said qualification. The schedule creates three classes of Village Level Workers (VLWs) under the categories of the Graduate Village Level Workers (VLWs), the general Village Level Workers (VLWs) and the Post Graduate Diploma Holders. In each category the seniority has to be reckoned and calculated from the date the required eligibility in terms of the Schedule detailed hereinbefore is acquired. The petitioners, as is reiterated here, put forth their claim under the 5% percent quota of Village Level Workers (VLWs) in the grade of 4000-6000 with Post Graduate Diploma in the Rural Development Department (PGDRD).

**10.** The petitioner No.1 has been appointed as a Village Level Worker (VLW) on 29<sup>th</sup> of September, 1998 and the petitioner No.2 has been appointed as such on 1<sup>st</sup> of August, 1998. The petitioner No.1 passed the Post Graduate Diploma in the Rural Development Department (PGDRD) in June, 2000, whileas the petitioner No.2 acquired the said qualification in December, 1999. The respondent No.3, came to be appointed as a Village Level Worker (VLW) in the year 1990 and the respondent No.4 has been holding the said post from the year 1992. The respondent No.3 was promoted as Panchayat Inspector, Grade-II on 8<sup>th</sup> of July, 2014 and, subsequently, he has been promoted as I/C, BDO on 4<sup>th</sup> of September, 2014. The respondent No.4 was promoted as Panchayat Inspector, Grade-II on 12<sup>th</sup> of December, 2009 and has been

promoted as I/C, BDO on 4<sup>th</sup> of September, 2014. The respondent No.3 acquired the Post Graduate Diploma in June, 2001 and the respondent No.4 passed the Post Graduate Diploma in December, 2000.

**11.** From a bare glimpse of the above, what can be seen is that the petitioners acquired the Post Graduate Diploma prior in point of time than the private respondents. The law is lucid and clear on this point. In the case of “**Shailendra Dania & Ors. v. S.P. Dubey & Ors.**”, decided by the Apex Court of the country on 17<sup>th</sup> of April, 2007, it has been held as under:

*“.....Large number of authorities are cited by learned counsel appearing for both sides raising various issues, viz., whether a diploma-holder after obtaining a degree would be compulsorily shifted to the group of graduate Engineers giving a go-by to their claim for promotion to diploma-holders quota or they have a choice to select and continue with either of them. What should be the seniority position of the diploma-holders after they have qualified as graduates, etc. We have refrained ourselves from expressing any opinion on these points and have confined ourselves to the specific issue raised before us and answered by the High Court in the impugned judgment.*

*In the matter of N. Suresh Nathan and Another v. Union of India and Others, 1992 Supp. (1) SCC 584, a three- Judge Bench was called upon to decide a similar question as involved in the present case, namely, whether the three years' service experience for promotion for graduate Engineers would mean three years' service prior to obtaining the degree or three years' service after obtaining the degree. The relevant Rule 11 provided for recruitment by promotion from the grade of Junior Engineers. Two categories were provided therein, viz., one of degree-holder Junior Engineers with three years' service in the grade and the other of diploma-holder Junior Engineers with six years' service in the grade, the provision being for 50% from each category. While interpreting the rule, this Court said that the entire scheme did indicate that the period of three years' service in the grade as a degree-holder and, therefore, that period of three years can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma-holder prior to obtaining the degree cannot be counted as service in the grade with a degree for the purpose of three years' service as a degree- holder. The Court observed as follows:*



*"4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents diploma-holders that the practice followed in the department for a long time was that in the case of diploma-holder Junior Engineers who obtained the degree during service, the period of three years' service in the grade for eligibility for promotion as degree-holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter-affidavit of respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined."*

.....

*"A perusal of the above observations made by this Court clearly show that the respondents diploma-holders in that case had admitted the practice followed in that department for a long time and the case was mainly decided on the basis of past practice followed in that department for a long time. It was clearly laid down in the above case that if the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It was clearly said "it is in this perspective that the question raised has to be determined". It was also observed as already quoted above that the Tribunal was not justified in taking the contrary view and unsettling the settled practice in the department. That apart the scheme of the rules in N. Suresh Nathan case was entirely different from the scheme of the Rules before us. The rule in that case prescribed for appointment by promotion of Section Officers / Junior Engineers provided that 50 per cent quota shall be from Section Officers possessing a recognized degree in Civil Engineering or equivalent with three years' service in the grade failing which Sections Officers holding Diploma in Civil Engineering with six years' service in the grade. The aforesaid rule itself provided in explicit terms that Section Officers possessing a recognized Degree in Civil Engineering was made equivalent with three years' service in the grade. Thus, in the scheme of such rules the period of three*

*years' service was rightly counted from the date of obtaining such degree. In the cases in hand before us, the scheme of the rules is entirely different."*

.....

*As a necessary corollary, we are of the view that the diploma-holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers.*

*For the above reasons, the appeals are allowed and the impugned judgment of the High Court is set aside. The writ petitions shall now be decided by the Division Bench of the High Court in accordance with law laid down herein. The writ petitions which were transferred to, and registered as Transferred Cases in, this Court, shall also be sent back to the High Court for their decision in accordance with law."*

**12.** The same view has been repeated and reiterated by the Hon'ble Supreme Court in its decision dated 5<sup>th</sup> of September, 2014, rendered in the case of **"K.K. Dixit & Ors. v. Rajasthan Housing Board & Anr."**, wherein it has been laid down as under:

*"27.....The relevant rule provided for recruitment by promotion from the grade of Junior Engineers which consisted of two categories, viz., one of degree holder Junior Engineers with three years' service in the grade and the other of diploma holder Junior Engineers with six years' service in the grade. There, the quota was 50% from each category. The Court interpreted the rule in the light of entire scheme to conclude that the period of three years can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma holder prior to obtaining degree cannot be counted as service in the grade with a degree for the purpose of three years' service as a degree holder. Besides explaining and following the judgment in N. Suresh Nathan's case (supra), the judgment in Shailendra Dania's case (supra) also considered and distinguished some later judgments on the basis of difference in facts and rules such as in the case of M.B. Joshi (supra); D. Stephen Joseph v.*

*Union of India & Ors. (1997) 4 SCC 753; Anil Kumar Gupta (supra) and A.K. Raghumani (supra).”*

**13.** From an analysis of the law laid down above, a person with Post Graduate Diploma has to be promoted to the next higher post from the date he/she attains the eligibility, i.e. from the date he/she acquires the qualification for the said post as laid down in the rules. This does not make the rule arbitrary and the benefit has to go to the person who attains the higher qualification at first, for the simple reason that the moment a person acquires a degree, he/she falls in a different category and stream, having faster avenues of promotion. The aim and object of the rule appears to be to encourage the Village Level Workers (VLWs) to acquire a degree, on the pedestal of which, they become eligible for holding a higher post under the 5 percent quota reserved for them. A Village Level Worker (VLW) in the Rural Development Department will become eligible to be promoted to the higher post, i.e. Panchayat Inspector, when he/she obtains the Post Graduate Diploma in comparison to a person who obtains the degree later in point of time and his eligibility has to be determined first. The person obtaining the degree first will fall within the zone of consideration for promotion to a higher post and has to rank higher for that purpose. It is the date of having acquired the degree that is crucial and material. Therefore, a person who acquires the status of having the Post Graduate Diploma first in point of time will be eligible for further promotion and those who obtain the same subsequently cannot be promoted to hold the post to his detriment. Testing the instant case from that perspective, the petitioners passed the Post Graduate Diploma in June, 2000 and December, 1999, respectively and the respondent Nos. 3 and 4, who have marched ahead of the petitioners, acquired the said degree much later in point of time, i.e. in June, 2001 and December, 2000,

respectively and, therefore, it is the petitioners who are and were eligible to be promoted against the 5 percent seniority quota and not the private respondents.

**14.** In view of the preceding analysis, the petition of the petitioners is **allowed**, as a consequence of which, the impugned orders bearing Nos. 851 DRDK of 2015 dated 31<sup>st</sup> of August, 2015, DRDK/Estt/9752 dated 29<sup>th</sup> of June, 2015 and RD/Legal/49/2015 dated 14<sup>th</sup> of August, 2015, are quashed. The respondents are directed to redraw the seniority list in relation to the posts in question and accord consideration to the claim of the petitioners for their promotion to the post of Panchayat Inspectors Grade-I/Plantation Rangers from the date the petitioners became eligible for such promotion in tune with the rule position governing the field, as extracted hereinbefore.

**15.** Writ petition, alongwith connected MP(s), **disposed** of as above.

(M. K. Hanjura)  
Judge

**SRINAGAR**  
June 27<sup>th</sup>, 2018  
"TAHIR"