

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5189-5192 OF 2017

ASHOK KUMAR AND ORS. ETC. ETC. ... APPELLANT(S)

VERSUS

THE STATE OF JAMMU AND KASHMIR &
ORS. ... RESPONDENT(S)

WITH

CONTEMPT PETITION (C) NOS.392-395 OF 2019

in

CIVIL APPEAL NOS.5189-5192 OF 2017

J U D G M E N T

V. Ramasubramanian, J.

1. Challenging a common order passed in a batch of Letters Patent Appeals confirming the Judgment of the learned Single Judge, quashing an administrative Order of the Chief Justice prescribing certain qualifications for promotion to the post of Head Assistant along with a power of relaxation, persons who were fully

qualified as per the rules at the time of appointment, have come up with the above Civil Appeals.

2. We have heard the learned Counsel for the appellants, the learned Counsel for the High Court of Jammu & Kashmir and the learned Counsel for the contesting respondents.

3. The contesting private respondents were originally appointed as peons (Class-IV) during the period 1989-1995. They were promoted as Junior Assistants in the year 1997 and as Senior Assistants in 1998-1999. Up to this stage of their career, there were no hiccups.

4. In contrast, the appellants in these appeals were directly recruited to the post of Junior Assistants in the year 1998. They were promoted as Senior Assistants on various dates in the years 2001, 2005, 2006 and 2008.

5. The High Court of Jammu & Kashmir is a creation of the Constitution of Jammu & Kashmir. Section 108 of the Constitution of Jammu & Kashmir which is similar to Article 229 of the Constitution of India deals with "*Officers and servants of the High Court*". Under Sub-section (1) of Section 108, appointments of

officers and servants of the High Court shall be made by the Chief Justice of the Court or such other person as the Chief Justice may direct. The conditions of Service of the officers and servants of the High Court, as per Sub-section (2), shall be such as may be prescribed by the Rules made by the High Court with the approval of the Governor. Sub-sections (1) and (2) of Section 108 reads as follows:

“108. Officers and servants of the High Court. - (1) Appointments of officers and servants of the High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct;

Provided that the Governor may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission;

(2) Subject to the provisions of any law made by the Legislature, the conditions of service of the officers and servants of the High Court shall be such as may be prescribed by rules made by the High Court with the approval of the Governor.”

6. In exercise of the powers conferred by Sub-section (2) of Section 108, the High Court issued a set of Rules known as the Jammu & Kashmir High Court Staff (Conditions of Service) Rules, 1968, with the approval of the Governor of the State. While Rule 4 stipulates that all appointments of the staff of the High Court

including promotions shall be made by the Chief Justice, the power to lay down the qualifications and to determine the mode of recruitment is conferred by Rule 6 upon the Chief Justice. Rule 6 reads as follows:

“6. *Qualifications and mode of recruitment.* – The Chief Justice may from time to time lay down the qualifications of a member of service and determine the mode of recruitment.”

7. In exercise of the power conferred by Rule 6, the Chief Justice of the High Court of Jammu & Kashmir issued an Office Order No.579 dated 24.10.2008, prescribing the qualifications as well as the mode of recruitment for appointment and promotion to various posts in the High Court. The method of recruitment, the minimum qualification required, the experience, if any, and the pay scales stipulated for three posts, *namely*, the posts of Head Assistant, Senior Assistant and Junior Assistant, in the Table contained in the Chief Justice’s Order dated 24.10.2008 are of importance for the appeals on hand and hence they are reproduced as follows:-

Post	Method of recruitment	Minimum Educational Qualification	Experience , if any	Pay Scale
Head	By promotion	Graduate from a	Two years	5000-8000

Assistant	from amongst Senior Assistants on the basis of seniority-cum-merit	recognised University		
Senior Assistant	By promotion from amongst Junior Assistants on the basis of merit-cum-Seniority	Graduate from a recognised University	Two years	4000-6000
Junior Assistant	(A) 75% by direct recruitment (B) 25% by promotion from amongst Class-IV employees on the basis of Seniority-cum-merit	(A) Graduate from a recognised University (B) Matriculation	-	3050-4910

8. The Office Order No.579 dated 24.10.2008 issued by the Chief Justice of the State of Jammu & Kashmir, contained a Note towards the end. The Note reads as follows:

“1. If the candidate(s) is/are not available from the relevant feeding cadre then the selection/appointment shall be made from amongst the candidates from other equivalent cadre(s).

2. Since the requirement of graduation for entry into the High Court service was prescribed vide Notification dated 25.4.1987, at that time officials having qualification less than graduation entered the service. Such officials having during this period gained sufficient experience in the working of the administration, the Chief Justice may on his own or on the recommendations of committee, if soconstituted, relax the qualification in cases of officers/officials who have made their entry into the service on or before the 25th April, 1987. Further the minimum period of experience can also be relaxed in exceptional and appropriate cases. The officials can get only one relaxation at the time.”

9. It is relevant to note at this stage that the prescription of the minimum educational qualification of a graduation, was not an innovation by the Chief Justice, made all of a sudden in the year 2008. It appears that even way back on 25.04.1987, graduation was prescribed as a qualification for promotion to the post of Head Assistant. Keeping this in mind, let us now go back to the background in which the controversy on hand arose.

10. On 26.10.2008, persons like the appellants who were directly recruited as Junior Assistants in year 1998 with the qualification of graduation, were promoted as Head Assistants from the post of Senior Assistants. It appears that still some vacancies were available and hence the contesting respondents-*herein* who entered service as Class-IV employees and who had risen upto the position of Senior Assistants, were also promoted as Head Assistants. However, such promotions were intended to fill up the gap till eligible candidates were available.

11. Challenging the promotions so granted to the contesting respondents-*herein*, on the ground that they were not qualified at

the relevant point of time, a writ petition in Writ Petition No.1751 of 2008 was filed. On 22.04.2010 the writ petition was allowed and the Order of the promotion dated 24.11.2008 of the contesting respondents was set aside.

12. The affected parties filed appeals in LPA Nos.45 and 84 of 2010, but those appeals were dismissed on 30.08.2011. As a consequence thereof, all persons like the appellants-*herein*, who were left out earlier, were promoted on 30.08.2011 as Head Assistants.

13. Finding that the benefit promotion that came to them was short lived and also finding that this was on account of the office Order dated 24.10.2008 of the Chief Justice, the contesting respondents-*herein* filed a set of writ petitions in Writ Petition Nos.489 of 2010, 2681 of 2011, 2344 of 2011 and 501 of 2012.

14. By a common Order dated 30.08.2013, a learned Judge of the High Court allowed the set of four writ petitions and quashed the Chief Justice's Order dated 24.10.2008. Primarily, the reasoning of the learned Judge was **(i)** that all persons working as Senior Assistants constituted a homogenous group and hence there cannot

be any differentiation among them on the basis of educational qualifications; **(ii)** that the Chief Justice's order dated 24.10.2008 was not put up before the Full Court for approval; **(iii)** that Note-2 of the Chief Justice's Order restricts the power of relaxation available to the Chief Justice only to cases of persons appointed before 25.04.1987 and hence it is invalid; and **(iv)** that the Order of the Chief Justice had the effect of affecting individuals adversely with retrospective effect.

15. Challenging the Order of learned Judge dated 30.08.2013 passed in favour of the contesting respondents-*herein*, the appellants-*herein* filed a set of Letters Patent Appeals. These appeals were dismissed by a Division Bench of the High Court by a final Order dated 16.04.2016. It is against the said Order that the appellants are before us.

16. On 13.05.2016, notice was ordered by this Court in the special leave petitions. An interim stay of the Order of the Division Bench of the High Court was also granted. Subsequently leave was granted and the appeals are before us.

17. It appears that after this Court granted an interim stay on 13.05.2016, an office order was issued on 29.06.2016 regularising the services of a candidate who was an undergraduate and who was given out of turn promotion. Subsequently a few more orders of similar nature were issued forcing the appellants to move contempt petitions in Contempt Petition (C) Nos.392-395 of 2019. These contempt petitions were also taken up along with the main appeals.

18. The impugned Judgment is assailed on the grounds inter alia: **(i)** that a classification is permissible on the basis of educational qualifications, even within a homogenous group, for the purpose of promotion to a higher post; **(ii)** that an order passed by the Chief Justice in exercise of the power conferred by Rule 6 need not go before the Full Court; **(iii)** that the order of the Chief Justice dated 24.10.2008 does not curtail the power of relaxation available to the Chief Justice; and **(iv)** that the order of the Chief Justice was not actually retrospective in nature.

19. In addition to the above contentions, it is also submitted by the learned Counsel for the appellants that as on date, those

contesting respondents who are now in service, have all acquired a degree and that therefore the question that remains to be answered is only one of seniority. Therefore, it is submitted by the learned counsel for the appellants that if no one is reverted and if the power of the Chief Justice to prescribe the qualifications under Rule 6 is upheld, then the long standing *lis* can be put to an end by fixing seniority on the basis of possession of qualifications at the time of appointment/promotion to the relevant post.

20. However, it is contended by the learned Counsel appearing for the contesting respondents that once a person has been appointed/promoted, he becomes part of a homogenous class within which there can be no differentiation and that what is applicable to the case on hand is only Rule 5 of the Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, (*hereinafter referred to as "CCA Rules, 1956"*) under which the power of relaxation vests with the Government and that under Rule 18 of these Rules, it is for the Government to prescribe the qualifications for appointment to any service.

21. We have carefully considered the rival contentions.

22. Before we proceed to analyse the rival contentions, it must be kept in mind that the contesting respondents-*herein* have actually secured a second lease of life, after having failed in the first round of litigation. After the office Order dated 24.10.2008 was issued by the Chief Justice prescribing the qualifications for direct recruitment/promotion to various posts, the contesting respondents got promoted as Head Assistants on 24.11.2008 only because suitable eligible candidates were not available. Their appointments were set aside in Writ Petition No.1751 of 2008. The appeals filed against the said Order in LPA Nos.45 and 84 of 2010 were also dismissed.

23. It is only after their promotion was set aside in the first writ petition filed by the qualified candidates, that the contesting respondents woke up from the slumber and initiated a second round of litigation by challenging the Order of the Chief Justice.

24. As a matter of fact, the Order of promotion dated 24.11.2008 promoting the contesting respondents as Head Assistants made it clear that their appointments were only till eligible and suitable candidates are posted to these posts and that they can be

considered for regularisation/appointment only if they attain the qualification and experience prescribed for the post. But the contesting respondents did not choose to challenge the Order of Chief Justice dated 24.10.2008, until the writ petition filed against their promotion was allowed by the single Judge and the Order also got confirmed in writ appeal by the Division Bench.

25. If we come to the grounds of attack to the impugned order of the Chief Justice, it is clear that the power of the Chief Justice clearly flowed out of Rule 6 of the Jammu & Kashmir High Court Staff (Conditions of Service) Rules, 1968. These Rules were issued by the High Court in exercise of the power conferred by Section 108(2) of the Constitution of Jammu & Kashmir. These Rules had the approval of the Governor also. Therefore, the contention of the respondents that the office order issued by the Chief Justice was *ultra vires*, is completely untenable.

26. The CCA Rules, 1956 will have only limited application to the employees of the High Court. These Rules, by themselves, do not stipulate the qualifications required for appointment to any particular post in the High Court. Rule 18 of the CCA Rules relied

upon by the learned Counsel for the contesting respondents reads as follows:

“18. Special Qualification

No person shall be eligible for appointment to any service, class, category or grade or any post on the cadre thereof unless he-

- (a) Possesses such qualification and has passed such special tests as may be prescribed in that behalf by the Government, or
- (b) Possesses such other qualification as may be considered by the Government to be equivalent to the said special qualifications or special tests.”

27. But the above Rule has no application to the staff of the High Court, as Section 108(2) of the Constitution of Jammu & Kashmir leaves this issue to the High Court.

28. Similarly Rule 5 of the CCA Rules on which reliance is placed by the learned Counsel for the contesting respondents, also has no application to the case on hand. This Rule 5 reads as follows:

“5. Relaxation of rules

Any of these rules made under them, may for reasons to be recorded in writing, be relaxed by the Government in individual cases if Government is satisfied that a strict application of the rule would cause hardship to the individual concerned or confer undue benefit on him.”

29. In so far as the staff of the High Court are concerned, Rule 5 has no application. When the Rule making power is vested with the High Court (subject to the approval of the Governor) and when the Chief Justice is specifically empowered to prescribe the qualifications and method of recruitment, the CCA Rules which are general in nature cannot be replicated.

30. The High Court was wrong in thinking that Note-2 of the Order of the Chief Justice curtailed or restricted the power of relaxation available with him. If the authority conferred with the power to relax, chooses to regulate the manner of exercise of his own power, the same cannot be assailed as arbitrary. The notification dated 25.04.1987 prescribed for the first time, graduation as a necessary qualification. This is why, the Chief Justice chose by his Order, to limit his own power of relaxation to cases where appointments were made before the cut off date.

31. The contention that the Order of the Chief Justice affects the staff adversely with retrospective effect, is completely incorrect. The Order dated 24.10.2008 did not at all impact the promotions gained by persons upto 24.10.2008. We are concerned in this case with the

competing claims of the appellants and the contesting respondents for promotion to the post of Head Assistant. The entitlement of unqualified candidates to seek promotion to the post of Head Assistant after 24.10.2008, is what was impacted by the Order of the Chief Justice.

32. The High Court erred in thinking that the impugned action of the Chief Justice violated Article 14 by creating a distinction between graduates and non graduates among the same category of persons who constituted a homogenous class.

33. Way Back in 1968, the Constitution Bench of this Court held in the ***State of Mysore & Anr. vs. P. Narasinga Rao***¹, that Article 16(1) does not bar a reasonable classification of employees or reasonable test for their selection. It was further held that the provisions of Article 14 or Article 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Despite the fact that the competing parties who were before this Court in the said case were employed as Tracers, carrying out the same duties and

¹ AIR 1968 SC 349

responsibilities, the Bench held in that case that the classification of Tracers, into two types with different grades of pay, on the basis that one type consisted of matriculates and the other non-matriculates, is not violative of Articles 14 and 16. Again in State of **Jammu & Kashmir vs. Triloki Nath Khosa & Ors.**², another Constitution Bench considered the question whether persons drawn from different sources and integrated into one class can be classified on the basis of their educational qualifications for promotion. The Constitution Bench answered the question in the affirmative holding that the Rule providing for graduates to be eligible for promotion to the exclusion of diploma holders is not violative of Articles 14 and 16 of the Constitution.

34. In **T.R. Kothandaraman vs. Tamil Nadu Water Supply and Drainage Board**³, the legal position in this regard was summarised as follows:- **(i)** Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances; **(ii)** Higher educational qualification can

2(1974) 1 SCC 19
3(1994) 6 SCC 282

be the basis not only for barring promotion, but also for restricting the scope of promotion; **(iii)** restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion.

35. As pointed out in **T.R.Kothandaraman** (supra), the Court shall have to be conscious about the need for maintaining efficiency in service, while judging the validity of the classification. Though the High Court took note of these decisions, the High Court fell into an error in thinking that in the facts and circumstances of the case, the High Court could not establish the necessity for higher qualification for the efficient discharge of the functions of higher posts. It is apparent from the facts and circumstances of the case that the non graduates have had opportunities to qualify themselves, which they have also done. Therefore, the prescription of graduation as a qualification for promotion to the post of Head Assistant cannot be held as violative of Articles 14 and 16.

36. In view of the above, the appeals are allowed and the judgment of the Division Bench of the High Court is set aside. However, in view of the fact that the contesting respondents have been working in the post of Head Assistants for quite some time and have also

acquired the necessary qualifications, they need not be reverted at this stage. But the seniority of the appellants *vis a vis* the contesting respondents shall be based on the dates of acquisition of such qualification and the length of service taken together. In other words, the seniority of the contesting respondents will be decided not on the basis of the date of their promotion but on the basis of the date of their acquiring the qualification while occupying the promoted posts. There will be no order as to costs.

37. In so far as the Contempt Petitions are concerned, no further orders are necessary in view of the Orders passed in the appeals and the directions issued therein. Hence they are closed.

.....CJI
(S.A. BOBDE)

.....J.
(A.S. BOPANNA)

.....J.
(V. RAMASUBRAMANIAN)

New Delhi
January 18, 2021