

State of Jandk and Others Vs. Mohammad Hassan

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Court : Jammu and Kashmir

Decided On : Jun-04-2014

Judge : The Honourable Chief Justice Mr. M. M. Kumar & Muzaffar Hussain Attar

Appeal No. : LPA No. 71 of 2008 & IA No.122 of 2007

Appellant : State of Jandk and Others

Respondent : Mohammad Hassan

Judgement :

M.M.Kumar, CJ

1. The State of Jammu and Kashmir and Deputy Inspector General of Police have filed the instant appeal under Clause 12 of the Letters Patent challenging the judgment and order dated 14.02.2007 rendered by the learned Single Judge of this Court, accepting the prayer made by the petitioner- respondent that he was entitled to promotion as Selection Grade Constable in the Executive Cadre. The order no. 9 of 1994 dated 06.01.1994, withdrawing his promotion as Selection Grade Constable has been quashed by the Writ Court restoring his promotion. The view of the learned Writ Court is discernible from the following para of the judgment which reads thus:-

The grievance of the petitioner in nutshell is that in terms of order No. 65 of 1991 dated 31.1.1991 he came to be absorbed in the Photo cadre as constable. His lien

had to come to an end on the date when he actually joined in the Photography cadre. Petitioner in terms of the said order came to be relieved by SP Kargil on 17.03.1992 itself and joined in District Photo Section, Kargil on 17.3.1992. The promotion order dated 25.5.1992 had taken effect from 1.1.1992 when he was working as Constable, Kashmir Range and was rightly considered for promotion and accordingly order dated 25.5.1992 came to be passed. But without any enquiry and hearing the petitioner, the said order of promotion came to be cancelled/ revoked. Thus the order dated 26.12.1994 being violative of principles of natural justice merits to be quashed.

2. Brief facts of the case may first be noticed. The writ petitioner-respondent was appointed as Constable in police organization in March 1979 in District Leh. Thus he was substantive holder of the post of Constable in the Executive Police. He applied for his absorption in Photography Cadre Unit of the Police organization. It is appropriate to mention that the Photography cadre of the Police department is a distinct cadre for all intends and purposes including seniority and promotion. The request made by the petitioner- respondent was accepted and vide PHQ Order no. 65 of 1991 dated 31.01.1991 he was adjusted as Cameraman Constable in the Photography cadre. The aforesaid order is directly relevant to the controversy in hand and therefore the same is set out below in extenso:-

Order no. 65 of 1991

Dated: January 31st 1991

Constable Mohammad Hassan No. 10/KL and Constable Shabir Hussain No. 23/KL have requested for absorption as Constable-Cameraman in Police Photography Cadre. They were put on the photography test and found fit for being absorbed as Constable- Cameraman, as recommended by the DIG of Police Crime and Rlys. Vide his letter no. CR/Estt-PHQB-7/88- 15777-78 dated 10.08.89.

As such, they are hereby absorbed as constable Cameraman in the photography Cadre with immediate effect. Their seniority shall be determined with effect from the date of issue of this order. However their inter-se seniority shall be determined with reference to their length of service in Executive Police. Their pay shall remain

protected and their previous service in Executive Police shall count for pensionary benefits. Their lien from their parent Range viz Kashmir Police Range shall be treated to have been terminated with effect from the date of their joining in the photography wing of Crime Branch.

The DIG of Police Crime and Rlys. JandK will issue their posting order after which the SP Kargil will relieve them to join their respective places of posting. (Emphasis added)

No: Estt/PHT-2/89/978-82/PHQ

Dated: 31/01/1991.

Sd/-

(J.N. Saxena)

(Director General of Police,

JandK Camp. Sgr.

DISTRICT POLICE OFFICE KARGIL No. Estt/2-III/91-968-72 Dated 27.02.91

3. A perusal of the aforesaid order would show that the lien of the petitioner-respondent on the post of Constable in the Executive cadre was to be deemed to have been terminated with effect from the date of his joining in the Photography Wing of the Crime Branch. However, the petitioner-respondent was given promotion as Selection Grade Constable vide order No. 328 of 1992 dated 25.05.1992. The promotion was to take effect from 01.01.1992. It has also come on record that the petitioner-respondent joined as Cameraman in the Photography cadre on 17.03.1992. It is thus evident that the lien of the petitioner-respondent on the post of Constable in the Executive Cadre continued up to 17.03.1992 as per the terms and conditions of absorption letter dated 31.01.1991 (supra). Therefore, on 01.01.1992 the petitioner-respondent is deemed to be in the Executive Cadre although the promotion order is dated 25.05.1992.

4. Mr. Khan, learned Additional Advocate General, faced with the aforesaid factual and legal position has tried to argue that on account of inadvertent error the petitioner-respondent has been given promotion as Selection Grade Constable because no entry could be carried in the service record of the petitioner-respondent with regard to transfer of his lien to the Photography cadre. In view of the fact that the petitioner-respondent was promoted as Selection Grade Constable in the Executive cadre vide order dated 25.05.1992 with effect from 01.01.1992, the argument advanced by Mr. Khan would not survive because the petitioner-respondent has to be regarded as member of the Executive cadre on 01.01.1992. His lien is terminated from the post of Constable in the Executive cadre only on 17.03.1992 as per the terms of absorption letter dated 31.01.1991. In view thereof the judgment and order of the learned Single Judge does not suffer from any legal infirmity warranting interference of this Court.

5. As a sequel to the above discussion this appeal fails and the same is dismissed.

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