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Court : Jammu and Kashmir

Decided On : Apr-05-2006

Reported in : 2007(1)JKJ210

Judge : Bashir A. Kirmani, J.

Appellant : Bashir Ahmad Najar

Respondent : State and ors.

Judgement :

Bashir A. Kirmani, J.

1. Claiming to have been appointed as Jhewar in Hospitality and Protocol Department in unrevised scale of Rs. 345-460 under order No. 166/85 dated: 18.9.2005 the petitioner maintains that he was terminated from service by Governors order No. 527-GAD of 1990 dated: 6.3.1990 which was challenged by him in writ petition bearing No. 669/94 disposed of on 26.3.1997 with direction against respondents for taking him back in service with all consequential benefits. Subsequently he was reinstated in service with all benefits but since he was given a regular posting he filed a contempt petition being No. 452/94, during pendency whereof he was formally taken back and posted against a post vide order dated: 24.7.1999. During his ouster from service promotions were made in the department whereunder other incumbents, including some of his juniors, were promoted to higher posts while petitioner was not considered for the same. Giving

instances of private respondents, the petitioner has alleged that they were so promoted under order dated: 9.2.1999, which persuaded him to represent his case before the respondents but his request was not considered prompting him to institute another writ petition bearing No. 1416/2002, which was later permitted to be withdrawn with liberty to file a fresh one, and hence this petition for issuance of a direction to respondents 1 to 3 for promotion/adjustment of petitioner to a higher post. Meanwhile however, the petitioner appears to have been transferred from Hospitality and Protocol Department to Legislative Assembly Secretariat. Materials appended with the writ petition include copies of judgments passed in above mentioned writ petitions and administrative orders purporting to have been passed with reference to petitioner etc.

2. In their reply the official respondents while admitting that petitioner has been transferred to Legislative Assembly Secretariat vide Government order No. 1052-GAD of 1999 dated: 18-9-1999 passed in terms of Government order No. 885-GAD of 2001 dated: 3.8.2001, have among other things pleaded that since petitioner is no more their employee, they were not concerned with anything in the matter. During course of threshold arguments the counsel for parties have reiterated their respective pleadings.

3. I have heard learned Counsel and considered the matter. The fact that petitioner was originally employed in Hospitality and Protocol Department, and after his termination was reinstated in service alongwith all consequential benefits, is admitted. That during his ouster from service some of his colleagues including certain juniors to him were promoted to the higher scale too is not denied, and transfer of his post/service from Hospitality and Protocol Department to the Legislative Assembly Secretariat is established. Cumulatively, this factual position suggests that while petitioner was out of service under the termination order, later quashed with direction for his reinstatement alongwith all consequential benefits, some of his colleagues were promoted to the higher scale and he left out, obviously because he was out of service. Had it not been so he too would probably have been considered for promotion. Now that consequent upon court order he is back in service alongwith all benefits, it would mean continuation of his service right from initial date of appointment till date which suggests that the

benefit of seniority must accrue to him and if the same entitles him to promotion in the cadre to which he presently belongs, the same cannot be denied for the simple reason that his reinstatement in service under the court order alongwith all consequential benefits carries that relief also into its fold.

4. Accordingly the petition is disposed of with a direction to respondents which would be deemed to include petitioner's present department to consider petitioner for promotion to the next higher cadre under rules on his own merit with due regard to his seniority as aforesaid, within a period of three months whereafter he shall be at liberty to re-agitate the matter if the cause survives. Nothing contained herein shall however affect the rights of any other person not a party to this litigation.

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