

Vikrant Sharma Vs. State and ors.

Vikrant Sharma Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/903601

Court : Jammu and Kashmir

Decided On : Feb-10-2010

Judge : Gh. Hasnain Massodi, J.

Appellant : Vikrant Sharma

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

Gh. Hasnain Massodi, J.

1. The petitioner was temporarily appointed as Protocol Officer in the pay scale of Rs. 2125- 3600 Vide Government Order No. 1814-GAD of 1997 dated 19-11-1997 against a post created vide Order No. 34/HP/1997 dated 17-11-1997. The petitioner claims to have been so appointed in relaxation of rules on compassionate grounds , as petitioner's father, a government servant, died in harness at the prime age of 34 years. . The post of Protocol Officer against which the petitioner was temporarily appointed was later re-designated vide Government Order No. 24/HP of 1999 dated 13-12-1999 as Assistant Director(Protocol) and the petitioner after the aforesaid re-designation, continued to discharge his duties as Assistant Director(Protocol).

2. The grievance voiced in the petition is that the petitioner despite having served as Protocol Officer and thereafter Assistant Director (Protocol) for a period of about four years without any interruption, the respondents have taken no steps to regularize the services of the petitioner and treat the petitioner as permanent employee of the Government in the Hospitality and Protocol Department. The petitioner aggrieved of apathy and indifference shown by the respondents, has been constrained to file the instant Writ Petition and seeks the following relief:

Writ of Mandamus directing the respondents to treat the petitioner as confirmed/permanent employee of Government in the Department of Hospitality and Protocol with effect from 19-11-199, the date of appointment of petitioner with all consequential benefits.

3. The petitioner claims the relief prayed in the writ petition on the following grounds:

a) that the Government while re-designating the post of Protocol Officer has not attached the condition subject to which the petitioner was initially appointed as Protocol Officer and the Government thus, impliedly waived the condition on petitioner's taking over as Assistant Director (Protocol)

b) that the Government had ignored to put any condition at the time of re-designation of the post of Protocol Officer, as the Government in case of one Shri Abdul Rashid War appointed as Assistant Director vide Government Order No. 3-GAD of 1998 dated 1-1-1998 in relaxation of rules had not made the temporary appointment of Shri War subject to any condition.

c) that whenever a person is appointed on vacant and clear post subject to any condition, any subsequent appointment to the same post made in relaxation of the rules impliedly removes the conditions imposed at the time of initial appointment .

d) that in terms of Jammu and Kashmir Civil Services(Temporary Service) Rules, 1961, the Government Servant is eligible for being declared as quasi permanent, if he has been in continuous government service for a period of three years and the petitioner having rendered uninterrupted service for a period of more than three

years, was entitled to be declared as quasi permanent.

4. The respondents opted not to file any reply within the period granted vide order dated 13-8-2003. The respondents' right to file counter thus stands closed in terms of the aforesaid order.

5. The reply filed by Mrs. Deepika Mahajan, GA on behalf of respondents on 19-11-2009 though on the file, cannot be looked .

6. Heard.

7. The petitioner has laid down in the petition that he has been temporarily appointed as Protocol Officer in the pay scale of Rs. 2125-3600 against the post created vide Government Order No. 34-HP of 1997 dated 17-11-1997. In order to understand the nature of appointment of the petitioner against the aforesaid post, it would be advantageous to reproduce Government Order No. 1814-GAD of 1997 dated 19-11-1997, which reads as under:

Sanction is hereby accorded to the temporary appointment of Shri Vikrant Sharma S/O Late Des Raj Sharma R/O Udhampur as Protocol Officer, in the pay scale of Rs. 2125-3600, against the post created vide Government Order No. 34/HP of 1997 dated 17-11-1997, till such time the post is filled up on regular basis through Public Service Commission

The candidate shall be allowed to join on production of the following certificates:

1. Qualification certificate.

2. Age and Health Certificate.

3. Character certificate from the concerned agency.

4. State Subject Certificate.

5. Certificate from the DIC that no loan under self employment scheme has been taken by the candidate. By order of the Government of Jammu and Kashmir.

Sd/-

ComMr. Secretary to Government

General Administration Department.

8. The aforesaid order does not make mention of the appointment of the petitioner having been made on compassionate grounds as claimed in the petition . Though, this does not in any manner change the complexion of the case. It is pertinent to note that the appointment of the petitioner has been made till such time the post is filled up on regular basis through Public Service Commission. In the circumstances, the appointment even if labeled as temporary appointment is in essence a adhoc and stop gap appointment giving rise to no right to the petitioner to hold the post . The respondents while making temporary appointment of the petitioner have made their intention loud and clear that the respondents intend to fill up the aforesaid post in accordance with the rules after giving all eligible candidates a fair and adequate opportunity to compete against the post. Government Order No. 24-HP of 1999 dated 13-12-1999 , re- designating the post of Protocol Officer as Assistant Director, (Protocol) does not in any manner make any departure in the stand of the respondents qua the position held by the petitioner . The government while re-designating the post of Protocol Officer as Assistant Director(Protocol) has not made any reference to the petitioner nor made any fresh appointment order in favour of the petitioner against the post of Assistant Director (Protocol) . The exercise appears to have been made in the interest of administration so that affairs of the Hospitality and Protocol Department are made efficient and smooth. Since there was no other post of Protocol Officer in the Hospitality and Protocol Department , it was found necessary that the post of Protocol Officer without any change in grade and other amenities attached to the post, should be re-designated as Assistant Director (Protocol), so that the competent authority has a free hand to effect transfers and make proper use of human resources available in the department. The claim put fourth by the petitioner that as his subsequent appointment as Assistant Director (Protocol) was not made subject to condition incorporated in his initial order of appointment as Protocol Officer, the respondents must be deemed to have waived the condition, is bereft of any merit and runs contrary to the facts. It needs to be recalled that the petitioner was never appointed as Assistant Director (Protocol) and the order re-

designating the post of Protocol Officer as Assistant Director (Protocol) had made no reference to the petitioner. The petitioner , obviously in wake of re-designation of the post of Protocol Officer against which the petitioner was initially appointed on adhoc basis, continued to hold the post of Assistant Director (Protocol) on adhoc basis or subject to the same conditions as were laid down in the initial appointment order.

9. Against the said background, the case set up by the petitioner that the government after appointing one Abdul Rashid War S/O Abdul Aziz War R/O Warpora, Ganderbal as Assistant Director , Hospitality and Protocol Department in relaxation of the rules, decided not to put any condition to the appointment of the petitioner against the post of Assistant Director(Protocol) , is devoid of any basis. The government for the reasons best known to it, temporarily appointed Shri Abdul Rashid War vide aforesaid order, without attaching any condition as were put to the appointment of the petitioner. The petitioner does not throw any challenge to the appointment of Shri Abdul Rashid War but makes an effort to use it as an instance to impart creditability to his plea that the respondents intended subsequently to give same treatment to the petitioner . The averment merely gives vent to the imagination of the petitioner and is based on conjectures and surmises. The petitioner against the aforesaid backgrounds cannot claim any benefit under the Jammu and Kashmir Civil Service (Temporary Service) Rules, 1961. It may be stated at the cost of repetition that having regard to the appointment order of the petitioner (Annexure-A) and other record available on the file, the appointment of the petitioner has been nothing but an adhoc/stop gap arrangement without clothing the petitioner with any right to hold the post or claim confirmation against the aforesaid post.

10. Temporary appointments, as in case in hand, are sometimes made as stop gap arrangement to meet the administrative exigencies. Such an appointee has no right to hold the post to which he is appointed as such, neither any right to seek regularization even if the appointee holds the post for a long period. The adhoc appointments , like present case, are temporary appointments, pending regular recruitment without conferring on the appointee any right of regularization in service. No person favoured with adhoc appointment has a right to claim

permanent absorption or continuance on the post. Reference in this regard may be made to law laid down in AIR 1975 SC 2292, AIR 1996 SC 2775 and 1993 KLJ 471. When adhoc appointment is made against a clear vacancy subject to selection on regular basis, the only right the appointee gets is to continue till the selection is made, unless of course an adhoc employee is ousted earlier because of his having been for some reasons rendered unsuitable for retention in the government service.

11. The conclusions drawn are inconformity with the stand of the petitioner in SWP No. 415/2001, which was directed to be listed alongside the instant petition vide order dated 27-7-2009. In the said petition, the appointment of the petitioner, who figured as respondent-4 in the petition was called in question on the ground that the appointment was a back door appointment, against the rules and in violation of constitutional mandate and depriving the eligible candidates of a right to compete against the post. The stand taken by the petitioner in the said petition was that his appointment was only adhoc appointment and to continue till the post was filled up on regular basis through the Public Service Commission. It would be profitable to extract the following para (s) from the order dated 21-9-2004 in SWP No. 415/2001:..(Learned) counsel appearing for respondent No. 4 submitted that appointment of respondent No. 4 is only adhoc and is to continue till the post is filled on regular basis through Public Service Commission . It is submitted that vide subsequent order dated 15th March , 2000, referred to above ,the post of Protocol Officer though was re-designated as Assistant Director , yet it did not change the nature of original appointment i.e. Adhoc . Thus, according to them , the appointment of respondent No.4 continues to be adhoc till the post is filled on regular basis by the Public Service Commission. Mr. Naik, learned Advocate General further stated that the State intends to fill up the post on regular basis and in this regard the State would notify the vacancy and fill the same in accordance with the rules through Public Service Commission. It is stated that the entire process i.e. issuance of notification and filling up of the post would be completed within a period of six months.

Learned Counsel appearing on behalf of respondent No. 4 states that since respondent No. 4 has been allowed to continue for such a long time and no

process has been undertaken to fill the post on regular basis, respondent No. 4 has become overage and would be ruled out from consideration . He thus submits that in the facts and circumstances of the case , respondent No. 4 should be allowed to compete alongwith others against the post, which may be advertised by the State Government and the condition of age in his case be ordered to be relaxed.

In the circumstances of this case, the submission made by the learned Counsel for respondent No. 4, is just and reasonable especially having regard to the fact that respondent No. 4 is in job since 19th Nov. 1997, when the Government Order No. 1814-GAD of 1997, appointing him as Protocol Officer came to be issued.

Accordingly, this writ petition qua respondent No. 4 is disposed of with a direction to respondents No. 1 and 2 to fill up the post of Assistant Director in the department of Hospitality and Protocol , J&K; ,Jammu , against which respondent No. 4 is working on adhoc basis by process of regular selection and complete the said process within a period of six months. Respondent No. 4 , if eligible in all other respects , would be allowed to compete against the said post and in case, he may have become overage on the date of issuance of notification inviting applications, then the condition of age in his case would be relaxed....

12. The above observations thus make contours of controversy abundantly clear and dispel all doubt regarding merits of the case projected before the Court.

13. In the circumstances and for the reasons discussed above, the petition is merit less and destined to fail . The petition is, accordingly, dismissed alongwith connected CMP.