

Sanjay Kumar Rathore Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Jul-14-2011

Judge : J.P. Singh, J.

Appeal No. : SWP No. 1922 OF 2010

Appellant : Sanjay Kumar Rathore

Respondent : State and ors.

Advocate for Def. : Mr. Jagdish Parihar, Adv.

Advocate for Pet/Ap. : Mr. Vipin Gandotra, Adv.

Judgement :

1. Petitioner-Sanjay Kumar Rathore, Junior Environmental Engineer in the State Pollution Control Board has questioned respondent Nos. 6 to 10s promotion as Assistant Environmental Engineer, ordered vide Jammu and Kashmir State Pollution Control Boards Order No. 89-SPCB of 2010 dated 06.04.2010 by his Writ Petition moving Motion for stay of the respondents promotion during the pendency of the Writ Petition.

2. On the Writ Petition and Civil Miscellaneous Petition coming up for consideration, an interim order was passed by this Court, which reads thus:-

3. Appearance and notice as above.

4. The order dated 6-4-2010 bearing No. 89 SPCB of 2010 is also under challenge in another Petition bearing SWP No. 906/2010.
5. The operation of the order stand stayed vide order dated 3.5.2010, while considering CMP No. 1409/2010 in SWP No. 906/2010. Copy of the order is placed on record. Same order of stay shall govern the case of petitioner, until the determination of objections, which the respondents are at liberty to file within notice period.
6. Barring respondent No.6, the other respondents have filed their Response to the Writ Petition and objections to the Miscellaneous Petition.
7. The respondents have filed a Miscellaneous Petition too seeking vacation of the interim order. According to the petitioner, being a Degree Holder in Engineering, he was entitled to consideration for promotion against 60% of the promotional posts, which, in terms of the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978, was available only to those Junior Engineers who possessed Bachelor of Engineering Degree and the Board had acted illegally in according promotion to the respondents using the quota of posts reserved for Assistant Engineers with Bachelor of Engineering Degree.
8. Respondent No.6s promotion has been questioned additionally on the ground that he was ineligible to seek consideration for promotion because he did not possess either a Diploma or a Degree in Engineering.
9. To support his submission that the promotions were required to be made strictly in terms of the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978, the petitioner places reliance on Government Order No. 55-FST of 2009 dated 29.01.2009, in terms whereof, pending finalization of the Recruitment Rules of the Jammu and Kashmir State Pollution Control Board, the promotions in the Board were required to be made in accordance with the Rules in force in sister Engineering Department in the State Government. According to the respondents, the issues projected by the petitioner in the Writ Petition to question the respondents promotion, having been decided against the petitioner in a similar Writ Petition SWP No.906/2010, by a learned Single Judge of this Court, the

petitioners Writ Petition may not warrant consideration and the interim order was, therefore, required to be lifted, in the facts and circumstances of the case.

10. Learned counsel for respondent No.6 additionally submitted that the promotional post being equivalent to the post of Scientist B as it existed in the Central Pollution Control Board, the promotions, in terms of the Government Order No. 55-FST of 2009 dated 29.01.2009 had to be made, in terms of the Rules of the Central Pollution Control Board and even those who did not possess an Engineering Degree would be eligible to seek consideration for promotion if they possessed the alternate prescribed qualification under the Rules.

11. During the course of consideration of the Petition, it was admitted by learned counsel for the parties that the issues raised in the Writ Petition are now pending consideration before a Letters Patent Bench of this Court and the Court, as an interim measure, has reserved one promotional post for the appellant in the Appeal, until further orders from the Bench.

12. I have considered the submissions of learned counsel for the parties.

13. There being no Rules in force governing, inter alia, promotion to various posts on the cadre of the Jammu and Kashmir State Pollution Control Board, the Government in the Forest Department, vide Government Order No. 55-FST of 2009 dated 29.01.2009, has provided that pending finalization of the Recruitment Rules of the Jammu and Kashmir State Pollution Control Board and with a view to according consideration to the eligible employees for promotion against the higher posts, a Committee, as indicated in the order, would consider the cases of eligible employees for promotion.

14. As against the posts falling in the Scientific/ Engineering Wing, the Government Order provides as follows:-

Scientific Wing/Engineering Wing: The eligibility against the higher posts in these wings shall be determined in accordance with the eligibility laid down in the Rules of the Central Pollution Control Board (CPCB)/on the pattern of other SPCBs for such posts.

15. The eligibility in respect of Engineers shall also be determined in accordance with the Recruitment Rules of the sister Engineering Department in the State, in case there is no provision in the rules indicated above.

16. The petitioners plea that the provisions of the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978, would apply mutatis mutandis to promotions against the posts in the Engineering Wing of the Jammu and Kashmir State Pollution Control Board and the respondents promotion having been ordered in violation of the Rules was untenable, has been negated by a learned Single Judge of this Court dismissing Writ Petition SWP No. 906/2010 by taking the view that the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978 would apply to the Jammu and Kashmir State Pollution Control Board only in so far these prescribe eligibility for the promotional post, and the method of recruitment prescribed by the Rules would not be applicable, hence no preferential right of promotion was available to those who possessed Degree in Engineering.

17. Be that as it may, as a Division Bench of this Court is in seizin of the issues which the petitioner raises in the Writ Petition to question the promotion of the respondents and the issues raised, inter alia, by respondent No.6 to justify his promotion, it is considered appropriate to admit the Writ Petition to final hearing.

18. This Writ Petition is, therefore, admitted to hearing.

19. Respondents to file Counter Affidavit within four weeks. Rejoinder, if any, within two weeks thereafter. List for final disposal after eight weeks.

CMP Nos. 2685/2010 & 1526/2011 :

20. The promotion of the respondents was stayed by this Court in the petitioners Writ Petition vide its Order of August 11, 2010 on the ground that a learned Single Judge of this Court had stayed these promotions in a similar Writ Petition, SWP No. 906/2010.

21. With the dismissal of SWP No. 906/2010 with the observations that the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978 would

apply to the Jammu and Kashmir State Pollution Control Board only in so far as the eligibility prescribed for the promotional posts was concerned, there may not be any justification to keep Order dated 11.08.2010 alive.

22. This apart, stay of the promotion of the respondents may not even otherwise be in the interests of the functioning of the State Pollution Control Board.

22. However, as the Writ Petition has been admitted to hearing to decide finally the issues raised by the parties, inter alia, as to the sustainability or otherwise of the respondents promotion, it would be appropriate to keep the promotion of the respondents subject to the orders in the Writ Petition.

23. The interim order issued by the Court, therefore, needs to be modified.

24. Accordingly, modifying Order dated 11.08.2010, it is provided that the promotion of respondent Nos. 6 to 10 as Assistant Environmental Engineer shall remain subject to the final orders in the Writ Petition. The Civil Miscellaneous Petitions are disposed of, accordingly.

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