

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 18.10.2023
Pronounced on : 03.11.2023

LPA No.64/2019

1. Kavita Gupta Age 48 years
W/o Sh. Suresh Gupta R/o H.No.173,
Street No.2, Shakti Nagar, Rajpura,
Jammu
2. Pawan Kumar Age 40 years
S/o Sh. Khem Raj R/o Village
Dhamyal R/o Satura, Teshil Hiranagar,
District Kathua

....Appellant (s)

Through :- Mr. Abhinav Sharma, Sr.
Advocate with
Ms. Saba Atiq, Advocate

V/s

1. State of J&K
Through Commisisoner/Secretary,
Power Development Department, J&K Govt. Civil
Secretariat, Jammu
2. Development Commissioner,
Power Development Department, J&K Govt.,
Power House, Janipur, Jammu
3. Chief Engineer,
Electric, Mainteance & RE Wing,
Jammu
4. Altaf Hususain Dar
Junior Stenographer in the office of
Development Commissioner Power, Janipur,
Jammu
5. Ghulam Hussain Wani
Junior Stenographer in the office of
Chief Engineer System and Operation Wing,

Kashmir

6. Miss Kulwant Kour Wazir
Junior Stenographer in the office of
Chief Engineer, M&RE Wing Canal Road,
Jammu
7. Farhat Kousar
Junior Stenographer in the office of
Chief Engineer, System and Operation Wing,
Kashmir
8. Arshad Ahmed Patoo
Junior Stenographer in the office of
Chief Engineer, Procurement Material
Management Wing, J&K, Gladani Narwal,
Jammu
9. Tariq Ahmed Ganai
Junior Stenographer in the office of
Development Commissioner Power,
Janipur, Jammu
10. Ajay Sharma
Junior Stenographer in the office of
Superintending Engineer, M&RE Circle-I,
Panama Chowk, Jammu

....Respondent(s)

Through :- Mr. Amit Gupta, AAG

AND

LPA No.59/2019

Rakesh Kumar Dabgotra Age 41 years
S/o Sh. Sat Pal Dabgotra
R/o Village Smailpur, P.O. Smailpur
Tehsil and District Samba

.... Appellant(s)

Through :- Mr. Abhinav Sharma, Sr.
Advocate with
Ms. Saba Atiq, Advocate

V/s

1. State of J&K
Through Commisisoner/Secretary,
Power Development Department,
J&K Govt. Civil Secretariat,
Jammu
2. Development Commissioner,
Power Development Department,
J&K Govt., Power House,
Janipur, Jammu
3. Chief Engineer,
Electric, Mainteance & RE Wing,
Jammu
4. Altaf Hususain Dar
Junior Stenographer in the office of
Development Commissioner
Power, Janipur, Jammu
5. Ghulam Hussain Wani
Junior Stenographer in the office of
Chief Engineer System and
Operation Wing, Kashmir
6. Miss Kulwant Kour Wazir
Junior Stenographer in the office of
Chief Engineer, M&RE Wing
Canal Road, Jammu
7. Farhat Kousar
Junior Stenographer in the office of
Chief Engineer, System and
Operation Wing, Kashmir
8. Arshad Ahmed Patoos
Junior Stenographer in the office of
Chief Engineer, Procurement
Material Management Wing, J&K,
Gladani Narwal, Jammu
9. Tariq Ahmed Ganai
Junior Stenographer in the office of

Development Commissioner
Power, Janipur, Jammu

10. Ajay Sharma
Junior Stenographer in the office of
Superintending Engineer, M&RE
Circle-I, Panama Chowk, Jammu

....Respondent(s)

Through :- Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT

Sanjeev Kumar J

LPA No.64/2019

1. The appellants are aggrieved of and have called in question a judgment dated 18.12.2018 passed by a learned Single Judge of this Court [“the Writ Court”] in SWP No.48/2014 titled Kavita Gupta and another v. State of J&K and others, whereby the Writ Court has dismissed the petition of the appellants filed to challenge the seniority list of Junior Scale Stenographers on multiple grounds.

2. Briefly stated, the facts leading to the filing of instant appeal, as are projected by the appellants in their petition and reiterated in the memo of appeal, are that the appellants came to be appointed as Junior Assistants in the Power Development Department (PDD) pursuant to their selection made by Jammu & Kashmir Services Selection Board w.e.f. 05.10.2000 and 26.04.2001 respectively. In the similar manner,

respondent No.10 was appointed as Junior Assistant in PDD on 03.04.2001. Respondent No.6 came to be appointed as Junior Assistant by way of promotion. Respondent No.5 and 7 to 9 were the Junior Assistants appointed in the Divisional Cadre Kashmir. The Recruitment and conditions of service of various non-gazetted posts borne on Jammu & Kashmir Power Development Subordinate Service are governed by the Jammu & Kashmir Power Development Department (Subordinate Service) Recruitment Rules, 1981 [“the Rules of 1981”] issued by the Government vide SRO No.381 dated 26.08.1981.

3. As per the Rules of 1981, post of Steno Typist is required to be filled up 50% by promotion from Class-IV Category i.e. Junior Assistant/Revenue Clerk/Typist from amongst persons having minimum speed of 60 words and 35 words per minute in shorthand and typewriting respectively. It is true that no separate sanction strength of Steno-Typist is indicated in the Rules and the post of Steno Typist is shown clubbed with the post of Senior Assistant and Store-Keeper with sanction strength of 419 as indicated in Part-B of the Schedule of the Rules of 1981.

4. Insofar as the post of Junior Stenographer is concerned, same amongst others is required to be filled up 75% by promotion from Class-III Category –C (Steno-Typist) on the basis of a test and having minimum speed of 65 and 35 words per minute in shorthand and typewriting respectively. This is how the promotion from the post of

Steno Typist to the post of Junior Stenographer is provided in the Rules of 1981.

4. It seems that ignoring the Rule position, the respondent-department initiated process to fill up the vacancies of Junior Stenographers through State Level Departmental Promotion Committee and a request in this behalf was made by the Administrative Officer in the office of Development Commissioner Power, Jammu to the Chief Engineer, M&RE, Jammu for furnishing the detail/particulars of all Junior Assistants. Responding to the communication of the Development Commissioner, the Chief Engineer concerned forwarded the list of Junior Assistants which included the names of the appellants herein as also the private respondents including respondent No.10. The Development Commissioner vide his order No.DCP/II/629 of 04 dated 29.11.2004 constituted two Divisional Level Committees to conduct shorthand and type test of all eligible Junior Assistants/Revenue Clerks and Typists for considering their promotion against the post of Steno-Typists.

5. In the type and stenography test conducted by the Committee on 25.04.2004, both the appellants along with respondent No.10 and one Rakesh Kumar qualified. The matter was considered by the Divisional Level Departmental Promotion Committee headed by the Chief Engineer M&RE Wing, Jammu in its meeting held on 23.07.2005 and on the basis of the recommendations made by the Committee, the Chief Engineer, EM&RE Wing, Jammu vide his order No.CEJ/DPC-II/85 of

2005 dated 18.08.2005 accorded sanction to the placement of respondent No.10 and Sh. Rakesh Kumar in the pay scale of Rs.4000-6000 as Steno-Typist on the basis of their merit in the test conducted by the Committee constituted by the Development Commissioner. This was followed by another order issued by the Chief Engineer, EM&RE vide his No.CEJ/DPC/20 of 2006 dated 28.04.2006, whereby appellant No.2 was also similarly placed as Steno-Typist. In terms of order No.CEJ/DPC-II of 2006 dated 07.04.2006 appellant No.1, too, was placed in the pay scale of Rs.4000-6000 as Steno-Typist on the basis of her merit in the shorthand and type test conducted by the Committee constituted by the Development Commissioner.

6. It needs to be noted down that the promotion of respondent No.10 and Rakesh Kumar made in the year 2005 on the basis of merit in the stenography test conducted by the Committee was not ruled or challenged by the appellants, who were more than satisfied with their promotions as Steno Typists w.e.f. 07.04.2006 and 28.04.2006 respectively. It seems that from amongst the Steno Typists appointed by way of promotion in the Jammu Division as well as Srinagar Division, the candidates who were eligible to be promoted as Junior Stenographer were picked up and promoted as such on the availability of vacancies of Junior Stenographers. Respondent No.10, who had achieved the speed of 69 words per minute in stenography in the test conducted in the year 2005 and had otherwise acquired the eligibility to be promoted to the post of Junior Stenographer was promoted as Junior Stenographer in the

pay scale of Rs.5000-8000 retrospectively w.e.f. 18.08.2005. This was done by the Chief Engineer, EM&RE Jammu vide his No.CEJ/DPC/II/PF/1634-38 dated 26.09.2006. This order was also within the knowledge of the appellants but the same was not assailed for reasons best known to the appellants.

7. Since both the appellants had not acquired the eligibility to be promoted to the post of Junior Stenographer, as such, they were put to fresh test on 04.10.2010 and on the basis of the result of the shorthand-typewriting test conducted by the Divisional Level Departmental Promotion Committee, the appellants herein and Rakesh Kumar, who achieved the shorthand speed of 65 words per minute with permissible mistakes were cleared for promotion as Junior Stenographer by the DPC. Consequently, the Chief Engineer, EM&RE, Jammu took up the matter with the administrative department for accord of necessary administrative approval to the release of grade of Junior Stenographer in favour of the appellants and Rakesh Kumar. While the matter was pending approval of the administrative department, seniority list of Junior Stenographers came to be issued by the Development Commissioner, Power Development Department, J&K vide Circular dated 01.10.2013 in which the names of the appellants and even respondent No.10 did not figure.

8. Issuance of seniority list to their exclusion was taken as a provocation by the appellants to file a writ petition before this Court. The writ petition was considered by the Writ Court and vide order and

judgment impugned the same was dismissed being devoid of any merit. It is this order and judgment passed by the Writ Court which is called in question before us by the appellants on numerous grounds.

9. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the manner in which the promotions have been made by the Power Development Department of which the appellants and the private respondents are beneficiaries, is totally illegal, arbitrary and in violation of the Rules of 1981.

10. Indisputably, appellants as well as private respondents were appointed either by direct recruitment or by promotion as Junior Assistants in the Power Development Department. They were entitled to next promotion of Steno-Typist to the extent of 50% from amongst the persons having minimum speed of 60 words and 30 words per minute in shorthand and typewriting respectively and, therefore, with a view to making promotion, conduct of shorthand/type test was sine qua non. The Committee constituted by the Development Commissioner Power conducted such test of all eligible Junior Assistants desirous of seeking promotion to the post of Steno Typist on 25.04.2005. This test ought to have been only of qualifying nature but the official respondents prepared the merit list of all the candidates, who had participated in such test. Respondent No.1 with a speed of 69 per minute in stenography was placed at serial No.1 followed by Rakesh Kumar and the appellants

herein, who were placed at serial Nos. 2, 3 and 4 respectively. As a matter of fact, only four candidates qualified the test.

11. Promotion to the post of Steno Typist, as per the Rules of 1981, should have been on the basis of inter se seniority of the Junior Assistants, who had qualified the test but on the contrary the promotions to the post of Steno Typist were made on the basis of inter se merit in the type test conducted by the official respondents. Respondent No.10 having been appointed as Junior Assistant on 03.04.2001 was admittedly junior to appellant No.1 but was senior to appellant No.2. Rakesh Kumar who was also promoted as Steno Typist on 18.08.2005 i.e. prior to the appellants, was not a party respondent in the writ petition. As a matter of fact, the appellants accepted the manner in which the promotions were accorded to the appellants, Rakesh Kumar and respondent No.10, on the basis of their inter-se merit in the shorthand test conducted by the official respondents on 25.04.2005.

12. Having accepted the aforesaid position and without raising any protest, the appellants cannot be permitted to rake up the issue after more than eight years of such promotions. This brings us to the question as to whether respondent No.10 or for that matter respondent Nos.5 to 9, who were working as Steno Typists in the Kashmir Division could have been further promoted as Junior Stenographers without subjecting them to further test. So far as the post of Junior Stenographer is concerned, same is admittedly a divisional level post and, therefore, the appellants cannot have any grievance with regard to the promotion, if any, made in

Kashmir Division nor do we have any material placed on record by the appellants to substantiate the allegation that respondent Nos. 5 to 9 were promoted as Junior Stenographers in Kashmir Division without conducting fresh test and without the aforesaid respondents having acquired requisite eligibility for such promotion.

13. Insofar as respondent No.10, Ajay Sharma is concerned, undoubtedly he was promoted as Steno Typist in the year 2005 pursuant to the recommendations made by the DPC on the basis of merit obtained in the shorthand test conducted on 25.04.2005. It needs to be noticed that for promotion to the post of Junior Stenographer, a Steno Typist is required to clear a test by attaining 65 words per minutes in stenograph and 35 words per minute in typing. Respondent No.10 had achieved that speed in the test conducted on 25.04.2005, though such test was conducted for giving promotion to the post of Steno Typist. Ordinarily, in view of clear mandate of the Rules, respondent No.10 along with other eligible candidates was required to be put to a fresh test. However, since the vacancy of Junior Stenographer was available in the year 2005 itself and respondent No.10 had the requisite eligibility to hold the post and, therefore, he was promoted as such in the year 2006. Respondent No.10 was, however, promoted as Junior Stenographer retrospectively w.e.f. 18.08.2005 on the date he was promoted as Steno Typist.

14. Strictly speaking, the manner in which the official respondents have acted, is a tantamount to granting double promotion to respondent No.10. However, having regard to the fact that the promotion of

respondent No.10 against the post of Junior Stenographer made in the year 2006 was not objected to or challenged by the appellants within reasonable time, as such, we are not inclined to interfere with his promotion. As a matter of fact, the appellants have not specifically called in question the order of his promotion even in the petition disposed of by the Writ Court in terms of the judgment impugned.

15. In the absence of specific challenge laid to the promotion of respondent No.10 as Junior Stenographer, we cannot entertain the grievance of the appellant as against respondent No.10. Otherwise also, the writ petition was hit by gross delay and laches, inasmuch as cause of action, if any, accrued to the appellants in the year 2006 only and not in the year 2014 when the writ petition was filed.

16. For the reasons given by the Writ Court in the judgment impugned and the reasons which we have assigned herein above, we find no merit in this appeal, the same is, accordingly, dismissed. However, before parting, we caution the Department of Power Development to remain careful in future and adhere to the recruitment rules in letter and spirit and do not act as per its whims and caprices and generate unnecessary litigation for the Courts. We further caution the official respondents not to flout recruitment rules in future, failing which the officers, who have or at whose instance deliberate deviation from the recruitment rules is resorted to confer wrongful benefit on some chosen few, shall be liable to be proceeded in departmental action.

LPA No.59/2019

Since this appeal arises from a common judgment passed in SWP No.47/2014 and SWP No.48/2014. Therefore, this appeal shall also stand dismissed in view of the reasons recorded in LPA No.64/2019.

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

Jammu:
03.11.2023
Vinod, PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No