

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

**Reserved on: 20.09.2023
Pronounced on: 26.09.2023.**

RP No. 101/2022

1. State (now U.T. of J&K) Petitioner(s)
Through its Principal Secretary to the
Government, Youth Services and Sports
Department, Civil Secretariat, J&K.
2. State (now U.T. of J&K)
Through its Principal Secretary to the
Government, General Administration
Department, Civil Secretariat, J&K.
3. Director General, Youth Services and Sports
Department, Jammu.

Through :- Mr. Suneel Malhotra, GA.

V/s

Madan Lal Respondent(s)
S/o Sh. Sain Dass
R/o 32 Sham Vihar, Agricultural Complex
Road, Talab Tillo, Jammu.

Through :- Mr. Sudershan Sharma, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

JUDGMENT

Sanjeev Kumar-J

1. This review petition arises out of order and judgment dated 22.04.2020 passed by the Division Bench of this Court in LPA No. 134 of 2019 titled '*Madan Lal v. State of Jammu and Kashmir and Ors.*'

2. Review of the judgment is sought primarily on the ground that the respondent herein was never promoted to the post of Deputy Director, Youth Services and Sports and, therefore, his further promotion to the post of Joint Director or Director was not permissible in law.

3. It is submitted that vide Government Order No. 154-Edu (Tech) of 2003 dated 24.11.2003, the respondent herein was merely transferred and adjusted as Divisional Youth Services and Sports Officer for administrative exigency, retaining his lien against the post of Assistant Director without conferring promotional rights against the said post in substantive capacity or in charge basis.

4. It is further submitted that after re-organization of the Department of Youth Services and Sports in the year 2006, the post of Divisional Youth Services and Sports Officer was re-designated/up-graded to the post of Deputy Director but the respondent was never promoted substantively against the said post.

5. It is claimed that the respondent, of his own, made the entries in the service record and claimed himself to be the Deputy Director. It is further case of the review petitioners that a post of the Joint Director was created vide Government Order No. 127-Edu (Tech) of 2013 dated 25.07.2013 and the respondent, by mis-representation, managed to get promotion against the said post in in-charge capacity which was later on regularized retrospectively with effect from 28.01.2011. It is, thus, submitted that these aspects could not be brought to the notice of the Division Bench, nor the same were adverted to by the Division Bench while passing the judgment sought to be reviewed.

6. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that no case is made out for reviewing judgment dated 22.04.2020 and, therefore, this review petition is not maintainable.

7. It is trite law that an application for review of a judgment can be made on the following grounds:-

- (I) discovery of new and important matter or evidence; or
- (II) mistake or error apparent on the face of record; or
- (III) any other sufficient cause.

8. We have examined the memorandum of review and have also gone through judgment dated 22.04.2020 sought to be reviewed by the review petitioners and we find that this Court has considered all these aspects in great detail.

9. It is not in dispute that the respondent was regularized as Assistant Director, Youth Services and Sports with effect from 01.11.1992 in terms of Government Order No. 149-Edu (Tech) of 2004 dated 24.06.2004. While he was working as Assistant Director, Youth Services and Sports, he came to be transferred and post as Divisional Youth Services and Sports Officer which was a post equivalent to the post of the Assistant Director. In the year 2006, two posts of Divisional Youth Services and Sports Officer were upgraded to the post of Deputy Director. The respondent who, at the relevant point of time, was holding the post of Divisional Youth Services and Sports Officer, also came to be upgraded and re-designated as Deputy Director, Youth Services and Sports.

After having worked as Deputy Director from the year 2006, the respondent was adjusted as Joint Director on 01.01.2011 in his own pay and grade with the benefit of charge allowance. After rendering three years' service as Joint Director, the respondent became eligible for consideration against the post of Director in terms of the Jammu and Kashmir Youth Services and Sports (Gazetted) Service Recruitment Rules, 2013 ["the Rules of 2013"].

10. The respondent, who was continuously performing his duties as Joint Director and had acquired eligibility for the post of the Director, made a representation to the petitioners herein. When the representation was not decided, the respondent filed SWP No.1244/2014 in which the interim order was passed by a Single Bench directing the review petitioners herein to decide the representation of the respondent. The representation was rejected by the petitioners herein vide order dated 07.07.2014 which was assailed by the respondent in SWP No. 1875/2014. The writ petition was contested by the review petitioners herein by filing their reply affidavit in which the claim of the respondent for the post of Director was refuted on the ground that in the year 2006, the respondent was only holding the post of Assistant Director substantively when two posts of Divisional Youth Services and Sports Officers were upgraded to the post of Deputy Director. It was also the stand taken by the petitioners herein that under the Rules of 2013, the post of Director is provided to be filled up from KAS cadre and, therefore, the respondent was not eligible.

11. The Writ Court dismissed the writ petition and the respondent feeling aggrieved filed LPA No. 134/2019 which has been allowed by a Division Bench of this Court in terms of judgment sought to be reviewed. The issue which the

petitioners have tried to rake up in this review petition has already been elaborately considered and dealt with by the Division Bench. Aggrieved, the petitioners herein also approached the Hon'ble Supreme Court by filing a Special Leave Petition. Hon'ble Supreme Court, however, declined to entertain the SLP and dismissed the same *in limine*.

12. We are aware that despite the dismissal of SLP *in limine*, the review petition before this Court would still be maintainable. However, we do not find it a fit case for undertaking such exercise.

13. It is not denied by the petitioners herein that the respondent was holding the post of Assistant Director since 17.11.1992 and was adjusted against the equivalent post of Divisional Officer on 24.11.2003. In the year 2006, the post was upgraded to the post of Deputy Director and the respondent was adjusted against such post in the year 2006. He was given in-charge promotion to the post of Joint Director with effect from 01.01.2011 against which he was later regularized vide Government Order dated 22.11.2018 with effect from 01.01.2011. That being the admitted position emerging from the service record of the respondent, even if we assume that he was not regularly promoted to the post of Deputy Director yet with his regularization as Joint Director with effect from 01.01.2011, he shall be deemed to be holding the post of Deputy Director when he was promoted as Joint Director. The entire relief granted by the Division Bench is on the basis of substantive promotion of the respondent to the post of Joint Director with effect from 01.01.2011. It is not the case of the petitioners herein nor it was a case before the Division Bench that the promotion of the respondent to the post of Joint Director, given with effect from

01.01.2011, has been withdrawn by the petitioners after following due process of law.

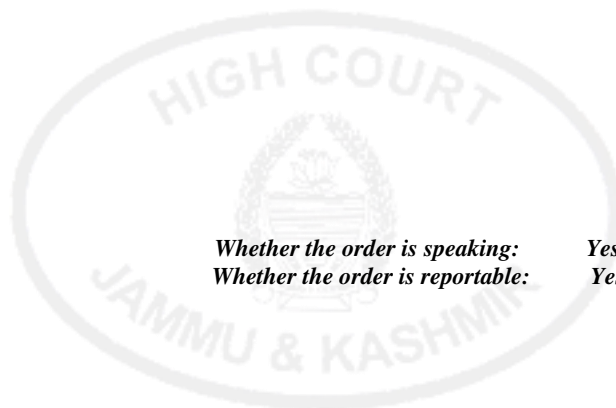
13. The plea taken in the review petition that, the respondent was never promoted as Deputy Director on substantive basis, is totally after-thought and is an attempt to come out of the contempt proceedings which have been filed by the respondent against the review petitioners herein for willful dis-obedience and non-compliance of the judgment passed by the Division Bench.

14. For all these reasons, we find no merit in this review petition and the same is, accordingly, **dismissed**.

(Sanjeev Kumar)
Judge

(Tashi Rabstan)
Judge

Jammu:
26.09.2023
Neha-1



Whether the order is speaking:
Whether the order is reportable:

Yes/No
Yes/No