

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 2/2022
in[SWP 1732/2013]
CM(175/2022)
CM(176/2022)

Union Territory Of J & K and Ors.

...Appellant(s)

Through: Mr. Mohsin Qadri, Sr. AAG with,
Ms. Maha Majeed, Advocate
Vs.

Mushtaq Ahmad Dar And Ors.

...Respondent(s)

Through: Mr. M.Y. Bhat, Sr. Advocate with,
Mr. Hamza Prince, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

27.12.2023

CM No. 175/2022:

This is an application seeking condonation of delay of 2873 days in filing an appeal against an order and judgment dated 30th January, 2014 passed in SWP No. 1732/2013. It is submitted that the judgment impugned was passed on 30th January, 2014, and a review application was filed by the applicants in November 2014. The review petition remained pending in this Court for a pretty long time and was ultimately dismissed vide order dated 4th March, 2021. There was COVID-19 pandemic at its peak during the intervening period and, thereafter, sometime was wasted in processing the case before different authorities for seeking permission to file an appeal. The appeal was thus filed on 24th September, 2022. This is how the applicants have sought to explain the delay.

We have considered the application and the objections filed thereto by the respondents, and we are satisfied that the applicants have shown sufficient cause for not filing the appeal within time.

The application for the reasons stated therein is allowed, and the delay in filing the appeal is allowed, subject to the payment of Rs. 5000/- as costs to be paid to the respondents through their counsel.

LPA No. 2/2022:

This appeal filed by the appellants under Clause 12 of the Letters Patent is directed against an order and judgment dated 30th January, 2014, passed by learned Single Judge of this Court [“the writ Court”] in SWP No. 1723/2013 titled “*Mushtaq Ahmad Dar and Others Vs. State and Others*”, whereby the writ Court has set aside the order bearing No. 3265 of 2012 dated 22nd September, 2012, passed by Director General of Police Jammu & Kashmir, and has directed the appellants herein to issue an order of appointment in favour of the petitioners by reference to of date of their initial selection.

Briefly stated, the facts leading to the filing of this appeal are that the respondents herein [(“the writ petitioners”) in the petition], came to be selected as Constables in State Disaster Response Fund (SDRF) and their further appointment was subject to verification of their testimonials. It is the case of the appellants that upon verification, the certificates and various communications placed on record by the writ petitioners were found to be not genuine and, thereafter, they were not issued the appointment orders. The Director General of Police, Jammu and Kashmir, passed a formal order bearing No. 3265/2012 dated 22nd September, 2012, canceling the selection of the appellants. It is this order of the Director General of Police, Jammu

and Kashmir, which was called in question by the petitioners in the writ petition *inter alia* on the ground that the matter with regard to the genuineness of the certificates produced by the writ petitioners was subject matter of investigation with the Crime Branch, Srinagar. The Crime Branch, upon investigation, had found that the certificates submitted by the writ petitioners had not been proved to be fake and, therefore, had closed the case as not admitted.

It was also pleaded by the writ petitioners that the State Board of Technical Education, had vide its letter dated 04.07.2012, clarified that the documents furnished by the writ petitioners at the time of selection were not fake. The writ petition was contested by the appellants herein and the stand taken by the respondents before the writ Court was that notwithstanding the closure of the case by the Crime Branch, the certificates submitted by the writ petitioners were subjected to re-verification and were thus found not genuine.

The writ Court considered the rival stand of the parties and came to the conclusion that in view of the clarification issued the State Board of Technical Education, and the closure of case by the Crime Branch, there was nothing left to be determined viz-a-viz the genuineness of the certificates submitted by the writ petitioners. The writ Court allowed the writ petition and quashed the impugned order dated 22nd September, 2012. The writ Court also directed the appellants herein to issue appointment orders in favour of the writ petitioners. This was done by the writ Court vide order and judgment dated 30th January, 2014, which is impugned in this appeal.

Having heard learned counsel for the petitioner and perused the material on record, we are of the considered opinion that the judgment dated

30th January, 2014, deserves to be modified. The order impugned in the writ petition i.e., order No. 3265/2012 dated 22nd September, 2012, passed by Director General of Police, Jammu and Kashmir, which has been quashed by the writ Court is not sustainable in law for the reasons that the same was passed by the Director General of Police, without affording any opportunity of being heard to the writ petitioners.

It is true that after the closure of the case by the Crime Branch, the appellants subjected the certificates submitted by the writ petitioners to re-verification and found the same to be not genuine. They were well within their right to take a decision as per the re-verification report, but they could not have done so without putting the writ petitioners to notice and without providing them an opportunity of being heard.

Needless, to say that the order impugned visited the writ petitioners with adverse consequences, in that, the writ petitioners despite having been selected in the selection process were deprived of their right to be appointed along with the others. In such a situation, the least that was required to be done by the appellants was to put writ petitioners on notice and provide them an opportunity of being heard on the re-verification report received by the appellants with regard to the genuineness of the certificates submitted by the petitioner. For this reason, we uphold the quashing of the order dated 22nd of September, 2012, impugned in the writ petition, however, we give liberty to the appellants to pass a fresh order after providing an adequate opportunity of being heard to the writ petitioners. A decision in this regard shall be taken by the Competent Authority within a period of two months from today. The last part of the impugned judgment, whereby the respondents have been directed to issue appointment orders in favour of the writ

petitioners/appellants, shall remain subject to the fresh order that may be passed after hearing the writ petitioners. The judgment and the impugned order is modified to the aforesaid extent and the appeal is **disposed** of accordingly.

(JAVED IQBAL WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
27.12.2023
“Mir Arif”

