

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

WP(C) No. 1156/2023

CM No. 2758/2023

Reserved on: 29.08. 2023

Pronounced on: 31.08. 2023

Farooq Ahmad Bhat and Ors.

..... Petitioner/Appellant(s)

Through: Mr. Altaf Haqani, Sr. Advocate with,
Mr. Shakir Haqani, Advocate

V/s

Union Territory of J&K and Ors.

.....Respondent(s)

Through: Mr. Younis Hafiz, Assisting Counsel vice,
Mr. Mohsin Qadri, Sr. AAG.
Ms. Asifa Padroo, Advocate

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE.

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

Rajesh Sekhri-J:-

1. Aggrieved of the combined seniority list dated 22.02.2023, issued by the official respondents, the petitioners approached the Central Administrative Tribunal, Srinagar ("Tribunal" for short) by way of Original Application (OA) No. 336/2023, for quashment of the list as also prohibiting the official respondents from acting upon the said list. Alongside the OA, the petitioners preferred an application for temporary injunction and learned Tribunal passed an interim order on 10.05.2023, impugned in the present petition, which reads as below:

“Heard the parties. Private respondents seek time to file reply. The Official respondents shall also file reply within a period of one month. It is made clear that, meanwhile, if any promotion is made to the post of Dy. Forester, that shall be subject to the result of the OA.”

2. The petitioners have invoked writ jurisdiction of this Court, under Article 226 of the Constitution of India, to assail the aforesaid interim order passed by learned Tribunal, *inter alia* on the grounds that learned Tribunal has failed to appreciate that in the absence of Rules regarding maintenance of combined seniority list, it is the length of continuous service which is required to be adhered to. According to learned counsel for the petitioners, the impugned order passed by learned Tribunal, whereby respondents have been allowed to go ahead with the promotions to the post of Deputy Forester, having regard to the combined seniority list, in question, is in contravention of the provisions of the relevant statute and the Rules framed there under.

3. Heard learned counsels for the parties and perused the record.

4. In so far as the legality or otherwise of the combined seniority list dated 22.02.2023, subject matter of the OA, is concerned, the petitioners have already approached learned Tribunal and this Court, in exercise of writ jurisdiction, against an interim order, cannot go into the merits or otherwise of the lis pending adjudication before the Tribunal. All the pleas raised by Mr. Altaf Haqani, learned senior counsel appearing for the petitioners with respect to the relevant statute and the Rules framed there under are available to the petitioners in the OA sub-judice before learned Tribunal. Any observation made by this Court on the subject matter of OA,

pending adjudication before learned Tribunal, in the present writ petition, against an interim order, shall be construed as an expression of opinion on the merits of the case. Therefore, it should be left to the wisdom of learned Tribunal to take a call on the legality or otherwise of the combined seniority list, assailed in the OA. This is absolute domain of the Tribunal. This Court in exercise of writ jurisdiction, against an interim order, cannot take away jurisdiction of learned Tribunal to decide the list in accordance with law.

5. It is pertinent to mention that this Court vide order dated 15.05.2023, at the motion stage, while issuing notice, expressed hope that Government will not finalise any promotion till the instructions were received from the authorities as to how the Government is proposing to proceed with the promotions. The said order reads as below:

“ Notice.

Notice accepted by Mr. Qadri, learned Sr. AAG, appearing on behalf of the respondent Nos. 1 to 3 as also by Ms. Saima Mehboob, learned counsel appearing on behalf of the respondent Nos. 4 to 14.

We would like to know from the authorities how the Government is proposing to proceed with the promotion by the next date of hearing.

List again on 24.05.2023. Till the instructions are received, we hope that the Government will not finalize any promotion.”

6. Mr. Younis Hafiz, learned Assisting counsel appearing for the official respondents has apprised this Court that official respondents/Government has not finalised the process of promotion till date in view of the aforesaid order passed by this Court.

7. In the aforesaid backdrop, and in view of importance attached to the matter, as the promotion of petitioners and private respondents are at stake, it shall be appropriate that learned Tribunal is requested to take up the OA on board for final consideration and dispose of the same within a time frame, after affording a reasonable opportunity of being heard to the parties.

8. Having regard to the what has been observed and discussed above, the present petition is disposed of with a request to learned Tribunal to consider the OA filed by the petitioners and dispose of the same, as early as possible, preferably within a period of one month from the date a copy of this order is made available. In the meantime, the interim order dated 15.05.2023, passed by this Court shall remain in operation.

9. Disposed of.

SRINAGAR:
31.08.2023
“Mir Arif”

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

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| i. Whether the Judgment is Speaking? | Yes |
| ii. Whether the Judgment is Reportable? | Yes |