

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

Date:13.03.2024

**LPA No.42/2019
CM No.1766/2019**

Hitesh Kumar Chowdary, Aged 34 years
S/o Lt. Sh. R.P. Chowdary,
R/o 280/5, Channi Himmat, Jammu **.....Appellant**

Through: Mr. P.N. Raina, Sr. Advocate, with Mr.
J.A. Hamal, Advocate.

versus

1. State of Jammu & Kashmir
through its Commissioner Secretary,
General Administration Department,
Civil Secretariat, Jammu.

2. J&K Public Service Commission,
through its Secretary,
Reham Ghar Colony, Bakshi Nagar,
Jammu.

.....Respondent(s)

Through: Mr. D.C. Raina, Advocate General
with Mr. K.D.S. Kotwal, Adv.
Mr. F.A. Natnoo, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Tashi Rabstan – J (oral)

1. This appeal is directed against the order dated 01.04.2016 passed by the learned Single Judge in SWP No.979/2012, whereby the learned Judge dismissed the writ petition filed by the writ petitioner.

2. The facts-in-brief are that the writ petitioner participated in the selection process for making selection for three services through a Combined Competitive Examination, 2010 conducted by the Public Service Commission. He applied in the Open Merit category and secured 1220 marks. Three more candidates also secured the same marks. Accordingly, 02 candidates in the order of merit were selected for appointment, whereas the writ petitioner along with another candidate, namely, Ruppali Phull was left out. It was averred that the writ petitioner figured at Sr. No.112, i.e., next after the last selected candidate in the open merit category.

3. It was averred that the Public Service Commission had advertised 189 posts, however, after selection it recommended only 182 candidates for appointment. It was argued that had the Public Service Commission recommended 189 candidates as per the advertisement notice, the writ petitioner would have certainly been in the list of appointed candidates. Further certain selected candidates did not come forward to join. Even, the Public Service Commission had failed to draw up the waiting list of candidates in the order of merit in terms of Rule-57 of the Jammu & Kashmir Public Service Commission (Business & Procedure) Rules, 1980 and SRO 387 dated 01.12.2008. Since the writ petitioner was next in merit and there was no waiting list, he filed SWP No.979/2012. However, the learned Single Judge dismissed the writ petition. Hence, the present appeal on behalf of writ petitioner.

4. The matter is taken up for final hearing with the consensus of learned counsel appearing for both the parties.

5. Heard learned counsel appearing for the parties, considered their rival contentions and perused the appeal file.

6. When the matter was taken up for hearing, learned senior counsel appearing for writ petitioner stated at the Bar that in the open merit category four candidates had secured 1220 marks. Out of four candidates, two candidates in the order of merit were selected for appointment. The writ petitioner was next in merit, i.e., the writ petitioner figured next after the last selected candidate in the open merit category. Whereas, the fourth candidate, namely, Ruppali Phull, who was next in merit after the writ petitioner in the open merit category, filed a writ petition before the Writ Court and the Writ Court, while allowing the petition, directed the writ respondents to consider the case of Ruppali Phull. Against the order of Writ Court, the writ respondents filed LPA No.263/2019. However, the appellate Court too upheld the order of Writ Court. The appellate Court further directed the writ respondents that in case the posts-in-question have already been filled up, in such an eventuality the State would create supernumerary post for Ruppali Phull without any delay and that she shall be entitled to all consequential benefits including seniority, promotion etc. from the date the other similarly situated candidates came to be appointed minus the monetary benefits.

7. Learned senior counsel appearing for writ petitioner-Hitesh Kumar Chowdary submitted that Ruppali Phull falls below the writ petitioner-Hitesh Kumar in the order of merit in the Open Merit category, therefore, writ petitioner-Hitesh Kumar has better claim than that of Ruppali Phull. He further submitted that against 189 advertised posts, the Public Service Commission had recommended only 182 candidates for appointment; even certain selected

candidates in the open merit category did not come forward to join. Therefore, in such a situation, both, Ruppali Phull and writ petitioner-Hitesh Kumar, can well be accommodated against those vacant posts.

8. Mr. Natnoo, learned counsel appearing for Public Service Commission, has produced the record, a perusal whereof reveals that the rank of writ petitioner-Hitesh Kumar is shown at Sr. No.112, whereas the rank of Ruppali Phull, respondent in LPA No.263/2019, is shown to be at Sr. No.113, i.e., below the writ petitioner-Hitesh Kumar. Therefore, we find force in the submission of learned senior counsel appearing for writ petitioner-Hitesh Kumar.

9. Certainly, LPA No.263/2019 has already been decided, whereby the order of Writ Court to consider the case of Ruppali Phull came to be upheld with a further direction that she shall be entitled to all consequential benefits including seniority, promotion etc. from the date the other similarly situated candidates came to be appointed minus the monetary benefits. But, it is also a fact that the rank of writ petitioner-Hitesh Kumar has been shown to be above the rank of Ruppali Phull in the order of merit in the open merit category. Therefore, the claim of writ petitioner-Hitesh Kumar cannot be ignored or rejected once the claim of Ruppali Phull has been allowed and upheld in LPA No.263/2019. Even after accommodating Ruppali Phull in terms of judgment dated 12.09.2023 delivered in LPA No.263/2019, one more post is still lying vacant due to the non-joining of certain candidates and against the said post writ petitioner-Hitesh Kumar Chowdary can also be considered. We order accordingly. Further, since common question of facts and law are involved in LPA No.263/2019 and present LPA No.42/2019, therefore, the directions

passed in LPA No.263/2019 shall also apply to the writ petitioner-appellant herein. LPA No.263/2019 shall also form part of this order/judgment. Accordingly, the present appeal is allowed. Consequently, order/judgment dated 01.04.2016 passed in SWP No.979/2012, so far as it pertains to writ petitioner-Hitesh Kumar Chowdary, is hereby set aside and quashed. Connected CM, accordingly, stands disposed of.

10. Registry to place a copy of order/judgment dated 01.04.2016 delivered in SWP No.979/2012 in the instant file.

Jammu
13.03.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No