

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

Reserved on :14.03.2024

Pronounced on:03.04.2024

**WP(C) No.1208/2021
CM Nos.904/2023,
5467/2022, 4950/2021
and 4951/2021**

1. Jasvinder Singh, Aged 54 years
Son of S. Nihal Singh, R/o 26-B,
Extention, Karan Nagar, Jammu
2. Kuljeet Singh Jamwal, Aged 55 years
Son of Sagar Singh Jamwal,
R/o 260/10, Shakti Nagar, Jammu.
3. Tajinder Khajuria, Aged 53 years,
Son of Som Nath Khajuria,
R/o 118, Subash Nagar, Sector No.A,
Jammu.
4. Dewakar Khajuria, Aged 53 years,
Son of K.N. Khajuria,
R/o 427-A, Gandhi Nagar, Jammu.
5. Rajeshwar Singh, Aged 55 years,
Son of Surinder Singh,
R/o H.No.136, Dogra Hall, Jammu.
6. Pawan Dev Singh Jamwal,
Aged 52 years,
Son of Ajaib Singh Jamwal,
R/o Village Saruinsar, P.O. Jammu.
7. Jagmohan Singh, Aged 56 years,
Son of Late S. Satwant Singh,
R/o Akhali Kour Singh Nagar,
Digiana, Tehsil & District Jammu.
8. Parveen Sharma, Aged 55 years,
Son of Sh. Babu Ram,
R/o H.No.50, Patel Nagar, Talab Tillo,
Jammu.

...Petitioners

Through: Mr. Sunil Sethi, Sr. Advocate, with Mr.
Ravi Dogra, Advocate.
Mr. Rajesh Bhushan, Advocate

versus

1. Union Territory of J&K
through Financial Commissioner,
Home Department,
Civil Secretariat, Jammu.
2. Director General of Police,
Jammu & Kashmir State,
Police Headquarters, Jammu.
3. Commissioner/Secretary,
General Administration Department,
Civil Secretariat, Jammu.

.....Respondent(s)

Through: Ms Monika Kohli, Sr. AAG

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

JUDGMENT**Tashi Rabstan – J**

1. This petition is directed against the order/judgment dated 18.03.2021 passed by the learned Central Administrative Tribunal in T.A. Nos.061/1629/2020, 061/1661/2020 and 61/1674/2020, whereby the petitions filed by the petitioners herein came to be dismissed.
2. The facts-in-brief are that pursuant to Advertisement Notice No.AIG(P)33159-219 dated 20.08.1991 applications were invited from the permanent residents of the Jammu and Kashmir State for the post of Sub Inspectors in the Executive Police. The petitioners herein along with other intending candidates participated in the selection process. The petitioners qualified all the tests including the written test and appeared in the interview also. The select list was issued in the month of November, 1992. However, the petitioners could not find their place in the select list. They submitted

representations to the competent authority projecting their grievance that they were more meritorious and qualified than number of persons selected against the post of Sub Inspectors, but despite that they were illegally and arbitrarily ignored by the respondents. When nothing happened, petitioners 1 & 2 herein, namely, Jasvinder Singh and Kuljeet Singh Jamwal and some other candidates filed SWP No.221/1993, titled as, Jasvinder Singh and others vs State of J&K and another. The said writ petition along with connected matters came to be disposed of by the learned Single Judge on 22.08.1996 with a direction to the official respondents that all those writ petitioners falling in the general category, who had obtained 56 marks or above in the written examination, shall be entitled for appointment as Sub Inspectors in the Police Department (as the last selected in general category had obtained 56 marks in the written examination). Similarly, if any writ petitioner, who belongs to any reserved category and had secured equivalent or higher marks than the last selected candidate in the written examination in such a particular category, shall also be entitled for appointment as Sub Inspector.

3. Against the order/judgment of learned Single Judge, the official writ respondents-State filed LPA(SW) No.85/1997, which came to be allowed vide judgment and order dated 29.05.1998 and the writ petitions filed by the writ petitioners came to be dismissed. The writ petitioners filed SLP before the Apex Court being Appeal (civil) No.4793-4802 of 1999, titled as, Jasvinder Singh & ors. vs State of J&K & ors. The Supreme Court vide judgment dated 20.12.2002, while upholding the decision of Division Bench, dismissed the appeals filed by the writ petitioners.

4. Thereafter, in the year 2005, one Mr. Jagmohan Singh filed SWP No.1095/2005, titled as, Jagmohan Singh vs State of J&K & others. The main ground taken by petitioner-Jagmohan Singh was that pursuant to Advertisement Notice No.AIG(P)33159-219 dated 20.08.1991 one of the selected candidates, namely, Jabeen Akhtar had secured only 161 marks, whereas he was having higher merit, as he had secured 164 marks, but despite that the official writ respondents ignored him for selection against the post of Sub Inspector. It was stated in the said writ petition that aforesaid Jabeen Akhtar was selected under “women category” whereas no such category was provided in the advertisement notice.

5. The stand of official writ respondents in the said writ petition was that petitioner-Jagmohan Singh had secured 164 marks, whereas the last selected candidate in the open category had secured 180 marks. Since petitioner-Jagmohan Singh could not make the grade, therefore, his claim was rightly rejected. So far as appointment of aforementioned Jabeen Akhtar is concerned, it was stated that in terms of Government instructions U.O. No. 1204/PA/GAD/91 dated 17th of Sept’91, 5% seats were reserved for Women candidates and it was under this quota, the case of Jabeen Akhtar was considered and she was appointed as Sub Inspector.

6. The learned Single Judge in SWP No.1095/2005 filed by Jagmohan Singh was of the opinion that the official writ respondents themselves had recommended the case of petitioner-Jagmohan Singh for appointing him to the post of Sub Inspector, therefore, he cannot be denied of his rightful claim merely because the file was mis-placed. The learned Single Judge further held that while inviting the applications for the post of Sub Inspector, the official

writ respondents had not mentioned in the advertisement notice that there will be reservation for women candidates, therefore, the aforesaid plea of official writ respondents that Jabeen Akhtar though lesser in merit was appointed under the aforesaid category cannot sustain. Accordingly, the learned Single Judge, while allowing the writ petition, vide judgment dated 08.05.2007 directed the official writ respondents to issue appointment order in favour of petitioner-Jagmohan Singh against a post having the same pay scale as that of Sub Inspector in the Home Department after relaxing the age limit.

7. Against the order/judgment of learned Single Judge in SWP No.1095/2005, the official writ respondents went in appeal, bearing LPASW No.55/2008. However, a Division Bench of this Court vide judgment/order dated 06.07.2009 set aside the judgment and order of the learned Single Judge delivered in SWP No.1095/2005. Consequently, the writ petition filed by petitioner-Jagmohan Singh came to be dismissed.

8. Against the order of Division Bench, petitioner-Jagmohan Singh filed SLP, being Special Leave to Appeal (Civil) No.23085/2009 before the Apex Court, however, the same too met with the same fate on 18.07.2011.

9. The controversy did not rest here. In the year 2014 said Jagmohan Singh again filed SWP No.919/2014, titled as, Jagmohan Singh vs State of J&K and others on the same very issue. Petitioners herein, namely, Jasvinder Singh and Kuljeet Singh Jamwal (also petitioners in SWP No.221/1993) along with other candidates also filed SWP No.7/2009; one more petition being SWP No.25/2011, titled as, Parveen Sharma vs State of J&K and others also came to be filed on the same issue. In the year 2020 all the three writ petitions came to be transferred to the Central Administrative Tribunal, Jammu. The learned

Tribunal vide order dated 18.03.2021 dismissed all the three petitions. Hence, the present petition against the order of learned Tribunal.

10. Heard learned counsel appearing for the respective parties, considered their rival contentions and also perused the file. Relevant record was also called from the Record Room of the Registry for perusal.

11. The main ground taken before the learned Tribunal by the petitioners herein was that pursuant to Advertisement Notice No.AIG(P)33159-219 dated 20.08.1991 one of the selected candidates, namely, Jabeen Akhtar had secured only 161 marks, whereas the petitioners herein were having much more marks than said Jabeen Akhtar, but despite that the official writ respondents ignored the petitioners herein for selection against the post of Sub Inspector. It was argued that aforesaid Jabeen Akhtar was selected under the “women category”, whereas no such category was provided in the advertisement notice.

12. One of the petitioners before the learned Tribunal was Mr. Jagmohan Singh, who actually filed SWP No.919/2014 before the High Court, which petition came to be transferred to the Central Administrative Tribunal, Jammu in the year 2020 after the enactment of J&K Reorganization Act, 2019 and was renumbered as T.A. No.61/1661/2020.

13. One of the petitioners before the learned Tribunal was Mr. Jagmohan Singh. Said Jagmohan Singh in the year 2014 actually filed SWP No.919/2014 before the High Court, which petition came to be transferred to the Central Administrative Tribunal, Jammu in the year 2020 after the enactment of J&K Reorganization Act, 2019 and was renumbered as T.A. No.61/1661/2020. Said Jagmohan Singh filed SWP No.919/2014 only after the dismissal of his SLP by

the Apex Court in July, 2011. Interestingly, the issue taken in the SLP as well as in SWP No.919/2014 was the same issue.

14. Anyhow, it is to be seen here that said Jagmohan Singh first filed SWP No.1095/2005 taking the same very plea, as taken in the instant petition. Although said SWP No.1095/2005 came to be allowed by the learned Single Judge 08.05.2007, but a Division Bench of this Court vide judgment/order dated 06.07.2009 in LPASW No.55/2008 set aside the judgment/order of learned Single Judge, consequently the writ petition being SWP No.1095/2005 also came to be dismissed by the Division Bench. Special Leave to Appeal (Civil) No.23085/2009 filed by petitioner-Jagmohan Singh before the Apex Court also met with the same fate on 18.07.2011; meaning thereby the issue raised in the present proceedings has already attained finality upto the Apex Court and there remains nothing to be adjudicated upon by this Court, therefore, cannot be looked into in the present proceedings. Since the submissions made on behalf of petitioners herein have already been dealt with on merit in LPASW No.55/2008 and was upheld by the Apex Court, as such the same cannot be open to question anymore or allowed to be re- agitated inter partes in the instant petition, as the same recourse would not be in accordance with the law, further the same is barred by the principle of estoppel and res judicata. Therefore, on this score alone the petition deserves to be dismissed.

15. Further in SWP No.221/1993 two of the petitioners were Jasvinder Singh son of S. Nihal Singh and Kuljeet Singh Jamwal son of Sagar Singh. In the said petition as well as in connected matters the challenge was with regard to the criteria against the post of Sub Inspectors pursuant to advertisement notification dated 20.08.1991. Nowhere in the said petitions it was argued that

one Jabeen Akhtar was having less merit than the petitioners in the said petitions, but despite that she came to be selected nor did they challenge the selection of said Jabeen Akhtar. Their challenge was restricted to only two grounds, i.e., (i) the marks allocated for viva-voce being in excess of 12 ½ % stood vitiated on account of the law declared by the Apex Court in Ashok Kumar Yadav vs State of Haryana, AIR 1987 SC 454, and, (ii) that the marks was not properly awarded in viva-voce, rather the interview was a farce. Though the said writ petitions came to be allowed, but a Division Bench of this Court set aside the judgment/order of learned Single Judge and the judgment/order of Division Bench was also upheld by the Apex Court in December 2002.

16. Thereafter, in the year 2009, petitioners 1 & 2 herein, namely, Jasvinder Singh and Kuljeet Singh Jamwal and some other candidates filed SWP No.7/2009 questioning the selection of said Jabeen Akhtar. Once the petitioners Jasvinder Singh and Kuljeet Singh Jamwal did not question the selection of Jabeen Akhtar in the year 1993 in SWP No.221/1993, they cannot be allowed to take the said ground after more than fifteen years as having been barred by the principles of constructive res judicata. Therefore, on this score too the petition deserves to be dismissed.

17. Therefore, in view of what has been discussed above, we do not intend to take a view other than the one taken by the learned Tribunal. The petition is, accordingly, dismissed along with connected CMs.

Jammu
03.04.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

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

Yes/No
Yes/No