

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 229/2023 in
SWP No. 1905/2016

Mudasir Amin.

...Petitioner(s)/Appellant(s)

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. A. Hanan, Advocate.

Vs.

Union Territory of J&K and Others.

...Respondent(s)

Through: Mr. H. Aman Ali, Advocate for R-1.
None for R-2 to R-16.

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE

ORDER
10.05.2024

1. Despite service none appears on behalf of respondents 2 to 16 they are accordingly set as exparte.
2. The present intra-court appeal is directed against the order passed by the learned Single Judge in SWP No. 1905/2016 dated 15.09.2023 whereby the writ petition filed by the petitioner has been disposed of with a direction to respondents 2 & 3, to not only consider the objections filed by the petitioner to the tentative select list but also shall take note of the submissions made in the writ petition while finalising the seniority list, if not already finalised. The case projected by the appellant herein that the writ petitioner, appellant herein has filed the writ petition bearing SWP No. 1905/2016 seeking the following relief:
 - i. Writ of Certiorari quashing the seniority list as on 31st March, 2015 issued by the Respondent no. 2 with respect to the seniority of the above respondents 4 to 16.
 - ii. Writ of Mandamus directing the respondents to reframe the said seniority list by restoring the seniority of the petitioner over and above the respondents 4 to 16 at Serial No. 85 in the said re-framed seniority list.
 - iii. Writ of Certiorari quashing the promotion order bearing No. LA-6072-77/Adm/2016 dated 09.11.2016 issued by the respondent no. 2

with respect to the promotion of Rehana Akhter (Respondent No. 8) as Head Assistant being junior to the petitioner.

- iv. Writ of Mandamus directing the respondents to promote the petitioner as Head Assistant retrospectively from the date the said promotion became due in favour of the petitioner with all the consequential service and monetary benefits.**

3. The learned senior counsel appearing for the appellant argued that the learned writ court notwithstanding the relief prayed for, has decided the writ petition altogether on different grounds without considering the main prayer as sought by the writ petitioner, appellant herein.
4. It is further submitted that the controversy which has arisen between the parties continues to exist as the same has not been adjudicated or settled by the learned writ Court.
5. It is also argued that the writ Court while disposing of the writ petition should have addressed the issue in its entirety including the main prayer viz. writ of Certiorari quashing the seniority list as on 31.03.2015 and also writ of Certiorari quashing the promotion of respondent no. 8 as Head Assistant being junior to the petitioner. It is submitted by the learned Sr. Counsel appearing for the appellant that the Writ Court has erred in not considering the main prayers and the matter requires to be remanded back for fresh consideration of the writ petition.
6. Heard learned counsel appearing for the parties.
7. Admittedly the writ petitioner, appellant herein, had sought a writ of Certiorari seeking quashment of seniority list as on 31.03.2015 with respect to the seniority of the respondents 4 to 16 as also the promotion order bearing no. LA-6072-77/Adm/2016 dated 09.11.2016 issued by respondent no. 2 with regard to the promotion of Rehana Akhter (Respondent no. 8) as Head Assistant being junior to the petitioner. However the learned Writ Court without considering the main prayer as prayed for by the petitioner before the Writ Court has disposed of the writ petition by directing respondents 2 & 3 to consider the objections filed by the petitioner to the

tentative seniority list issued during the pendency of the petition. The learned Single Judge should have adjudicated upon the main prayers as had been prayed for by the writ petitioner.

8. We therefore, are of the opinion that non-consideration of the main prayers as sought by the petitioner has given a reasonable cause to the appellant to file the present appeal.
9. In the circumstances, the present appeal is allowed by setting aside the order impugned and restoring the writ petition bearing SWP No. 1905/2016. The writ petition bearing SWP No. 1905/2016 is remanded back to the learned Single Judge for fresh adjudication. We request the learned Writ Court to consider all the prayers made by the writ petitioner strictly under rules after providing opportunity of being heard to the contesting parties.
10. It is made clear that this Court has not expressed any opinion on the merits of the case.
11. Let the matter be listed before the learned Writ Court on 03.07.2024.
12. **Disposed of as above.**

(MOHAMMAD YOUSUF WANI)
JUDGE

(TASHI RABSTAN)
JUDGE

SRINAGAR:
10.05.2024
Shaista-PS