

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(virtual mode)**

Pronounced on : 05.02.2025

Case :SWP No. 177/2005

Inder Singh Slathia, aged 43 years,
S/o Shri Ganpat Singh Slathia,
R/o Near Little Flower Public
School, Bye Pass (Greater Kailash),
Jammu.

....Petitioner(s)..

Through: Mr. M.P.Sharma, Advocate.

Vs

1. State through,
Commissioner/Secretary to Govt.,
Housing and Urban Development
Department, Civil Sectt. Jammu.
2. Director,
Urban Local Bodies, Jammu.
3. Chairman/Administrator,
Municipal Committee, Vijaypur.
4. Romesh Kumar,
Secretary, Notified Area Committee,
Vijaypur.

.....Respondent(s)..

Through: Mr. S.S.Nanda, Sr. AAG for R-1 to 3.
Mr. K.K.Janidal, Advocate for R-4.

CORAM: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The case of the petitioner is that he was appointed as Khilafwarzi Inspector on 29.04.1991 in the pay scale of Rs.950-1500/- and is still in the same grade. The respondent No.4 entered the service as Khilafwarzi Inspector on 02.06.1992 in the grade of Rs.950-1500/-, however he is getting his salary in the grade of Rs.6500-10500/- with effect from 2003. The seniority list which was tentative one was issued wherein the petitioner figured at Serial No.4 and the respondent No.4 figured at Serial No.6. The petitioner was required to be upgraded in the pay scale of Rs.5000-8000/- prior to the up-gradation of respondent No.4. The respondent No.4 was transferred as Secretary to Notified Area, Vijaypur vide Order No. 185-DLBJ of 2002 dated 18.06.2002 in the grade of Rs.5000-8000/-. The petitioner aggrieved by this

order made a representation before the respondents; however, no reply was given to the said representation. The aforesaid order dated 18.06.2002 is challenged on the ground that the same is discriminatory qua the petitioner as the petitioner is senior to the respondent No.4 as Khilafwarzi Inspector and, therefore, was required to be upgraded in the grade of Rs.5000-8000/- prior to the respondent No.4. The petitioner was also asked to function as Secretary is also mentioned in the petition. The petitioner seeks setting aside of order dated 18.06.2002 and further seeks direction to allow the petitioner to hold the post of Secretary in the pay scale of Rs.5000-8000/- with effect from 18.06.2002. It is further prayed that the petitioner be considered senior to the respondent No.4.

2. The objections to the petition have been filed by the respondents. The official respondents in their reply submit that the writ petition is delayed and is hit by laches. It is submitted that the petitioner was appointed on consolidated basis vide order dated 29.04.1991 in the grade of Rs.950-1500/- and thereafter he was given scale of Rs.900-1830/- vide order dated 25.03.1995. The respondent No.4 was appointed as Khilafwarzi Inspector vide order dated 02.06.1992 in the pay scale of Rs.900-1830/- and vide order dated 03.09.1992 he was placed in the pay scale of Rs.3050-4590/- which later on was again given pay scale of Rs.4000-6000/- pursuant to the clearance of the DPC. The petitioner was regularized in the pay scale of Rs.3050-4590/- on 11.06.1992 in the lower pay scale and later on placed in the pay scale of Rs.4000-6000/- on 25.03.1995. The petitioner cannot claim seniority vis-à-vis the respondent No.4. The seniority list is not finalized till date and what is reflected in the seniority list that petitioner is senior to respondent No.4 is wrong. The respondent no.4 has also filed objections wherein the said respondent has also taken the same plea and also submits that the name of the petitioner wrongly figures as senior to the respondent No.4 in the tentative seniority list issued by the respondents. He had even

filed objections to the tentative seniority list issued by the respondents. The order transferring the respondent as Secretary is also valid and legal order. He further submitted that the petitioner was otherwise granted pay scale of Rs.6500-10500/- in view of the judgment passed by this Court in SWP No. 1312/1997 and which attained finality in the LPA also.

3. The rejoinder has also been filed by the petitioner wherein more or less the petitioner has taken the same stand. The petitioner has also submitted of the order passed by the Director Local Bodies in April, 2017 whereby the petitioner was placed in the pay scale of Rs.5000-8000/- with effect from November 22, 2000. The promotion granted to the respondent No.4 was not in terms of the Rules 2005 which are applicable to the employees of the department. In nut-shell, it is pleaded that the petitioner is entitled to the same grade as given to the respondent No.4 right from the day he entered the service.
4. The respondent No.4 has since retired and, therefore, no relief qua the said respondent can be allowed in favour of the petitioner. The only question which remains to be seen is as to whether the petitioner was otherwise entitled to the grade as sought for by the petitioner in the writ petition. The petitioner was initially appointed on consolidated basis vide order dated 29.04.1991 and was regularized as Khilafwarzi Inspector in the pre-revised grade of Rs.950-1500/- though initially was granted grade of Rs.800-1500/-. It cannot be disputed that the respondent No.4 was appointed as Khilafwarzi Inspector on substantive basis vide Order No. NAC/K/179-80 dated 2nd June, 1992 in the pay scale of Rs.900-1830/- (pre-revised) which was later on revised to Rs.4000-6000/-. The petitioner was regularized vide order dated 11th June, 1992 whereas the respondent was regularized on 2nd of June, 1992. The petitioner in the light of the aforesaid position cannot seek parity with the petitioner or claim any benefit on that basis.

5. The petitioner also contends that he is senior to the respondent No.4 as the tentative seniority list issued in 1999 of Khilafwarzi Inspectors record the seniority of the petitioner at Serial No.4 and the respondent No. 4 at Serial No.6. The contention raised by the other side is that the tentative seniority list was not finalized as per the own showing of the petitioner and, therefore, the tentative seniority list does not give any edge to the petitioner. Mr. Sharma, learned counsel appearing for the petitioner has argued that the tentative seniority list has been deemed as final seniority list by the respondents. The court is not in agreement with the learned counsel for the petitioner in this regard. The official respondents have categorically mentioned in the objections that the tentative seniority list had not been finalized and remains tentative. They also plead that in fact respondent No.4 is senior to petitioner though the tentative seniority list otherwise places the respondent No.4 at Serial No.6 and the petitioner at Serial No.4. The Court cannot consider the tentative seniority list as final seniority list as contended by the petitioner.
6. The record further reveals that much water has flown down after the filing of the writ petition by the petitioner herein. The respondent No.4 was not only made Secretary in the pay scale of Rs.5000-8000/- vide Order No. 185-DLBJ of 2002 dated 18.06.2002 but has been granted further scale as Secretary and the final seniority list of Secretaries has also been issued with pay scale of Rs.6500-10500/- vide order dated 22.12.2010 and later on confirmed as Executive Officer vide Government Order No. 21-HUD of 2015 dated 23.01.2015 with notional effect from 25.02.2014. Not only this, the final seniority list of Executive Officer was issued vide Government Order No. 167-HUD of 2016 dated 18.07.2016 wherein the petitioner was confirmed as Executive Officer in the final seniority list with effect from 25.02.2024. Admittedly, the subsequent orders of the respondent No.4 have not been challenged by the petitioner though passed by the official respondents during the pendency of the present writ

petition. The petitioner cannot seek any remedy against the respondent qua the subsequent promotion/grades received by the respondent No.4.

7. Learned counsel for the petitioner has submitted that the relief can be molded in favour of the petitioner as the petitioner has challenged the basic order which was passed in favour of the respondent No.4 vide dated 18.06.2002. He has referred to the judgment of Hon'ble Supreme Court reported in 2014 Legal Eagle 370 in order to plead that the court can take into consideration the subsequent events which have taken place during the pendency of the writ petition and mold the relief accordingly. There can be no dispute with the principle laid down by the Apex Court. However, the relief sought for by the petitioner can be granted depends upon the facts and circumstances of the case. In the case in hand, as mentioned above, the respondent has been granted multiple promotions/ grades and which remained unchallenged till date and the respondent No.4 has otherwise retired from the services. In the aforesaid scenario, no relief can be granted in favour of the petitioner.
8. The relief sought for by the petitioner is without any basis and cannot be sustained. The writ petition is, accordingly dismissed.

(Puneet Gupta)
Judge

SRINAGAR:

05.02.2025

Pawan Chopra

Whether the Judgment is speaking? Yes/No
Whether the Judgment is reportable? Yes/No