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HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(**Through video conference**)

WP(C) No. 1932/2020
CM Nos. 7271/2020,
7272/2020, 7467/2020
Caveat No. 1693/2020.

Avinash Uttam & ors ….Petitioner(s)

Through :- Mr. F.S. Butt, Advocate.

V/s

UT of J&K and others ….Respondent(s)

Through :- Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhimanyu Sharma, Advocate for the
caveators.

Coram: HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, JUDGE
HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT/ORDER
24.12.2020

1. In the present petition, the petitioners challenge the order impugned dated 13.10.2020 passed by the Central Administrative Tribunal, Jammu Bench (for short, 'Tribunal') in O.A No. 61/906/2020 titled Dinesh Kumar & anr vs. UT of J&K & ors.

2. The caveators herein are the applicants before the Tribunal. The case set up by them before the Tribunal was that the Secretary to Govt., Power Development Department had, vide its order dated 17.2.2020, directed the inclusion of the names of the caveators-applicants in the seniority list

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of Junior Engineers (Electric) Degree Holders at serial Nos. 546-C & 546-D. The case further set up was that without including the names of the caveators/applicants in the tentative seniority list of Junior Engineers (Electric) Degree Holders of Power Development Department, the respondents were intending to make promotions as per the tentative seniority list dated 22.10.2019 in which the names of the caveators/applicants did not figure at all. Relief was sought from the Tribunal in the nature of a direction to the respondents not to operate the tentative seniority list unless and until the same was finalized after the inclusion of the names of the caveators/applicants in terms of the aforementioned order dated 17.2.2020.

3. The Tribunal, by virtue of the order impugned dated 13.10.2020 was of the view that the tentative seniority list could not be implemented by itself except after inviting objections and considering the same. It was also of the view that the final seniority list had yet to be prepared. What was held by the Tribunal in paragraph 5 is reproduced hereunder:

> **"5. Looking to the order No. PDD/HRM/17/2019 dated 17.2.2020 (Annexure A-8), the O.A. is disposed of at the admission stage itself with a direction to the respondents to implement the aforementioned order dated 17.7.2020 and include the names of the applicants under Rules before passing the order of promotion, if any. No costs."**

4. Counsel for the petitioners states that in passing the order impugned, the Tribunal fell in error inasmuch as what was treated to be an order dated 17.2.2020 was not an order but a notice, inviting objections from the members of the concerned service, who may be affected by the inclusion of the Diloma Holder Junior Engineers whose names figure in the said

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list, which also include the applicants/caveators herein and figure senior to the caveators.

5. The second issue raised by the petitioners was that the applicants before the Tribunal were not at all entitled to the benefit of the degrees based upon which they sought their inclusion in the seniority list of degree holders inasmuch as they had obtained the same through the correspondence mode. In the alternative, it was urged that if at all benefit was to be allowed, the same could be allowed only if the diploma holders like the applicants had cleared the test which was supposed to be conducted by the UGC and AICTE as per the ratio of the judgment in **Vinit Garg & ors vs. University Grants Commission and ors, (2019) 11 SCALE 658**. Thirdly, it was urged that assuming the applicants had cleared the said test, the benefit of placement in the seniority list of degree holders engineers could be given only w.e.f., the date of clearing the said test and not with effect from a retrospective date. Reliance in this regard was placed upon the judgment of the Division Bench of the Uttarakhand High Court in **Parshuram & ors vs. State of Uttrakhand and ors** decided on 18.3.2019.

6. Counsel for the caveators/applicants, on the other hand, urged that on a reading of the judgment in Vinit Garg's case (supra) as also the judgment of the Apex Court rendered in **Orissa Lift Irrigation Corporation Ltd vs. Rabi Shankar Patro & ors, (2018) 1 SCC 468** with particular reference to the observations made in pargraph 57, the benefit of placement in the seniority list of degree holders could not be denied to the petitioners retrospectively.

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7. Having heard learned counsel for the parties, we feel that what should otherwise have been decided by the Tribunal cannot be decided for the first time in these proceedings. All the issues with regard to whether the caveators/applicants have any right to be considered for inclusion in the seniority list of degree holders and whether the effect could be given from a date other than the date of clearing the test conducted by the UGC and AICTE and other issues connected would be a matter which would first have to be decided by the Tribunal.

8. On a perusal of the order impugned, it appears that the Tribunal has at the very outset not only treated the notice dated 17.7.2020 as an order even when it was only a notice, inviting objections but proceeded further to issue directions to include the names of the applicants under rules before passing the order of promotion. In our opinion, the matter cannot be decided only on the basis of rules and without considering the effect of various pronouncements of the Apex Court. Moreover, we feel that the petitioners were necessary parties and ought to have been heard in the matter.

9. We, therefore, set aside the order impugned dated 13.10.2020 passed by the Tribunal and remand the matter for a fresh consideration on the issue. The petitioners herein shall stand incorporated as a party respondents in the O.A filed by the caveators/applicants. They will be permitted to file their response which shall be considered at the time of arguments. Parties to appear before the Tribunal on 15.1.2021. The issue of grant of any interim relief pending the final disposal of the OA filed by the applicants will be considered on its own merits by the Tribunal. The

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official respondents would be at liberty to consider the objections filed by the petitioners herein to the notice dated 17.7.2020 and would also be at liberty to take an appropriate decision in that regard but the effect shall be given only after the matter is considered and appropriate orders passed by the Tribunal.

10. Disposed of accordingly along with connected applications.

Caveat No. 1693/2020

Caveat stands discharged.

(Sindhu Sharma)
Judge

(Dhiraj Singh Thakur)
Judge

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