Sr. No. 68
Supp. List

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

LPA No. 150/2023 in
CPSW No. 98/2017

Sudeershan Kumar …Petitioner(s)/Appellant(s)

Through: Mr. Aseem Kumar Sawhney, Advocate (Th. VC)

Vs.

Fareed Ahmad Ganie ...Respondent(s)

Through: Mr. B.A. Misri, Advocate

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

O R D E R
13.12.2024

1. The present appeal has been filed by the appellant who is aggrieved by an order dated 26.07.2023 passed in CPSW No. 98/2017.
2. By the said order, the learned Single Judge hearing the contempt petition which was seeking the enforcement of an order in favour of the respondent herein dated 04.02.2016 passed in SWP No. 1380/2015 whereby the petition came to be disposed of after taking into account the objections of the respondent (appellant herein), was directed to consider the claim of the petitioner/

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respondent herein in terms of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 (hereinafter referred to as Act of 2010) for his permanent absorption and regularization and pass orders preferably within

eight weeks from the date copy of the order is served upon the respondents.

3. Learned counsel for the appellant is aggrieved by the said order which according to him goes way beyond the principal order to be enforced inasmuch as the two reports of compliance were placed before the learned court hearing the contempt case, wherein the stand that was taken by the appellant, was that the respondent herein was ineligible to be made permanent.
4. In order to buttress his arguments, learned counsel for the appellant has referred to an order dated 14.03.2017 which is the first consideration order passed by the Union Territory of J&K, whereby the case of the respondent was rejected by the UT on the grounds mentioned hereunder:-

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i. *That the respondent has not been appointed on consolidated or contractual basis;*
ii. *That the post of the **Night Chowkidar** is a direct recruitment quota so the post cannot be filled up in violation of rules;*
iii. *No formal order has been issued in favour of the respondent;*
iv. *The qualification of **Night Chowkidar** has been prescribed as matriculation while as the petitioner is middle pass with no technical qualification;*
v. *The approval for utilization of services of the petitioner as Naib Chowkidar is still the formal appointment is made by the competent authority.*

5. Therefore, on the aforementioned grounds the case of the respondent was rejected.

6. Thereafter the notification dated 07.04.2008 has also been brought to the notice of this Court whereby SRO 99 dated 07.04.2008 prescribed that the minimum qualification required for appointment of Class IV post under direct recruitment shall be matric and 10+2 respectively.

7. Based upon this, learned counsel for the appellant submitted that the respondent was not qualified, and,

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therefore, he could not have been made permanent.

8. It is essential to refer to the principal order under the enforcement which has been referred to by the learned Single Judge in the contempt petition which is dated 04.02.2016.

9. It is important to mention herein that appellant who is respondent before the learned Single Judge, in his objections had submitted that the respondent herein is not eligible in terms of Rules as he is only middle pass, however, the learned Single Judge referred and relied upon the submission made by the learned counsel for the petitioner therein who refers to the Jammu and Kashmir Technical Education

(Subordinate Recruitment) Rules, 2002, and submitted that the eligibility qualification for the post of Chowkidar is 8th pass which academic qualification was possessed by the respondent herein. Accepting the said submission, the learned Single Judge in the writ petition directed that the appellant herein was

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duty bound to consider the claim of the petitioner for his permanent absorption in the service in terms of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 and it also directed to consider the claim of the petitioner within a period of eight weeks from the date on which the copy of the order was served upon the appellant herein. Thereafter, when the said order was not complied with, the contempt petition came to be filed in the year 2017.It has been pending ever since.

10. The order under compliance clearly discloses that but for the qualification of the petitioner no other ground was agitated by the appellant herein before the learned Single Judge, who accepted that the respondent being 8th Pass was possessed of the qualification for the post, and therefore, the appellant was bound to consider the claim of the

petitioner for permanent absorption.

11. The first report of compliance which rejected the case of the respondent herein on several grounds which

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were never germane, as the same were never agitated before the learned Single Judge in the writ petition for consideration and the said order passed by the learned Single Judge in the writ petition was never sought to be reviewed on the ground that other arguments/ objections were raised by the appellant which were never considered by the learned Single Judge and, as therefore, the order ought to have been reviewed and as no LPA was preferred before the Division Bench seeking an order for setting aside the order passed by the learned Single Judge in the writ petition on the grounds of perversity and non-consideration of the case of the appellant herein in the impugned order, the order passed by the learned Single Judge in the writ petition became final a long time ago and the only issue which was there before the learned Single Judge was with regard to his educational qualification which the learned Single Judge held in the affirmative.

12. Thus, the appellant cannot now give additional grounds for disqualifying or rejecting the claim of the

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petitioner on such grounds other than those which were considered by the learned Single Judge in the writ petition.

13. Under the circumstances, this Court does not see any perversity in the order passed by the learned single in the writ petition dated 26.07.2023 and the said order is well within the confines of the principal order sought to be enforced by the contempt petition.

14. The appeal is **dismissed.**

15. This Court requests the learned Single Judge if possible, to expedite the conclusion of the contempt petition as the same has been pending more than seven years.

(MOHD YOUSUF WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

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"S.Nuzhat"

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