

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1732 of 2020
[@ SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 3866/2018]

THE STATE OF JAMMU AND KASHMIR & ORS. Appellant(s)

VERSUS

SWARAN SINGH & ORS. Respondent(s)

O R D E R

Delay condoned.

Leave granted.

We have heard learned counsel for the parties.

This appeal has been filed by the State of Jammu & Kashmir (now Union Territory) challenging the order dated 01.05.2017 passed by the High Court in Review (LPA) No. 1 of 2017. The High Court, by its impugned judgment, allowed the review modifying the judgment dated 14.12.2016 by which LPASW No. 05/2015 was decided.

The brief facts necessary for deciding this appeal are:-

Vide order dated 01.04.2019 passed by this Court, respondent Nos. 9 to 12 have been impleaded as party respondents in this appeal. The writ petition (No. 1930 of 2011) was filed by Chaman Lal & 19 Ors. in the High Court. The following prayers were made:

(1) To direct the concerned respondents to relax the Rule in particular the rule which envisages the qualifying of all the papers prescribed Rules of 2006 and Rules of 1972 as being wholly unworkable due to non holding of Examination by State Public Commission in

last 10 years.

(2) To direct the respondents to grant charge allowance from the time the petitioners have been discharging the duties of Inspectors.

(3) To reserve the posts in the cadre of Inspectors in the Promotion Quota and no to divert the quota in any manner whatsoever.

(4) To pass any other order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

The writ petitioners were substantively holding a post of Sub-Inspector and were governed by the Jammu & Kashmir Excise and Sales Tax (Subordinate) Service Recruitment Rules, 1991 (for short '1991 Rules'). The petitioners, who on local arrangement basis were discharging the duties of Inspector, claim that they should be granted relaxation and should not be asked to appear in any examination. The writ petition was contested by the State. It was stated that the case of the respondents was that as per 1991 Rules, 50% posts were to be filled by promotion by Class III category having rendered not less than 10 years service in that category and have passed the departmental examination prescribed for Excise Taxation Inspectors. It was stated that the writ petitioners who have not passed the examination are not eligible for promotion. The Single Judge by its judgment and order dated 22.11.2014 dismissed the writ petition.

Aggrieved by the judgment of the Single Judge, LPA (being LPASW No. 5 of 2015) was filed by only eight of the writ petitioners which was dismissed by the Division Bench vide order dated 14.12.2016. The Division Bench in paras 6 and 8 made the

following observations:

"6. It is well settled that rules of eligibility cannot be relaxed by the Government nor writ petitioners have succeeded in making out a case for such regularization. It is admitted case of the writ petitioners that passing of prescribed Departmental Examination is sine qua non for seeking promotion to the post of Inspector and that none of them have fully qualified the aforesaid Examination. Similarly because writ petitioners having been appointed as Incharge Inspectors in their own pay and grade for some time, does not entitle them to seek relaxation of rules and regularization as a matter of right, more so, when such rules pertain to the basic eligibility for the post. Learned Single Judge is therefore, correct in holding that the writ petitioners - appellants had no right to seek relaxation of rules and basic eligibility condition, prescribed for promotion to the post of Inspector.

8. Keeping in view the aforesaid facts and circumstances, no case is made out to interfere with the order of the learned Single Judge. Appeal deserves to be dismissed. However, it is observed that the posts of Inspectors in the Excise and Commercial Tax Department, if available, in terms of quota may be filled up by convening Departmental Promotion Committee and consider all eligible candidates in accordance with the rules."

Aggrieved by the order of the Division Bench, a review was filed by the original writ petitioners which has been allowed by the High Court. While allowing the review, the Division Bench has although referred to Rules 5 and 6 of the 1991 Rules but without advertng to the Schedule appended to the Rules came to the conclusion that there is no requirement for passing of departmental examination prior to considering the case of the candidate for promotion and allowed the writ petition.

Aggrieved by the said impugned judgment, the State of Jammu & Kashmir has come up in this appeal.

Learned counsel for the appellants contends that the High Court committed error in allowing the review and in coming to the conclusion that there is no requirement for passing of departmental examination prior to consideration of the case of the candidate for promotion. It is submitted that Schedule III of the Rules which is part of the 1991 Rules specifically provides for eligibility for promotion where passing of departmental examination is a condition precedent. Hence, the very basis of the Division Bench in allowing the review is unfounded.

Learned counsel appearing for respondent Nos. 9 to 12 submits that although respondent Nos. 9 to 12 did not file a review but since benefit has been extended to all eligible, respondent Nos. 9 to 12 have every right to defend the impugned judgment of the High Court delivered in the review. It is further submitted by respondent Nos. 9 to 12 that there has been several earlier cases where the State has relaxed the condition of passing of departmental examination and granted promotion to various persons whereas with regard to respondent Nos. 9 to 12, no such consideration has been made. It is further submitted that most of the writ petitioners have retired and only three are working as on date.

Learned counsel for the State submitted that in pursuance of the impugned judgment, no promotions were granted.

We have considered the submissions of learned counsel for the parties and perused the record.

The writ petitioners who had filed the writ petition were claiming promotion on the post of the Inspector.

Rule 5 of the Rules provides as follows:

"5. Qualification and method of recruitment

(1) No person shall be eligible for appointment or promotion to any post in any class, category or grade in the service unless he possess the qualifications as laid down in the Schedule II and fulfills other requirements of recruitment as provided in the rules and orders for the time being in force.

(2) Appointment to the service shall be made:-

(a) by direct recruitment (which will include appointment by transfer);

(b) by promotion; and

(c) partly by direct recruitment and partly by promotion, in the ration and in the manner mentioned against each post in the Schedule II and III."

The Schedule to the Rules provides for necessary methodology and qualification for promotion. Schedule III relates to the posts of Inspector, Inspector II and some other posts.

In the present case, we are concerned with the post of Inspector II for which the writ petitioners were claiming promotion.

The relevant extract of Schedule is as follows:

Class	Category	Designation of post with Scale of pay	Minimum qualification for direct recruitment	Method of recruitment
II	(a)	Inspector II 1150-2050	Graduate	(i) 50% by direct recruitment. (ii) 50% by promotion from Class III category (a) having rendered not less than 10 years service in that category and passed the departmental examination prescribed for Excise Taxation Inspectors. 50% of promotion quota posts will be reserved for Graduate Sub-Inspectors who have passed the departmental examination of the standard of Inspectors and have rendered not less than 5 years service as Sub-

				Inspectors.
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There is a clear requirement in the Schedule which is part of the Rules that promotion from Class III category is to be granted after passing of departmental examination prescribed for Excise Taxation Inspectors. Admittedly, the writ petitioners have not passed the departmental examination hence they were not eligible for promotion.

The Single Judge and the Division Bench have rightly taken the view that there being no eligibility of the writ petitioners, there is no question for consideration of their promotion.

In the review judgment, the Division Bench of the High Court without adverting to the Schedule and only referring to Rules 5 and 6 came to the conclusion that there is no requirement for passing of departmental examination which is stated in para 7 of the judgment, which is to the following effect:

“From the perusal of the Rules 5 & 6 it is evident that there is no requirement for passing of Departmental Examination prior to consider the case of the candidate for promotion. It is equally well settled law that rules and schedule appended to it cannot be overwritten.

We are of the view that the High Court in the review judgment fell in error in not adverting to the Schedule which is a part of the Rules which specifically require passing of departmental examination as a condition precedent for consideration of promotion.

Therefore, the High Court had erred in observing that there is

no requirement for passing of departmental examination, the very basis of the judgment is non-existent and contrary to the specific provision of the Rules. We, thus, are of the view that the review judgment is unsustainable and deserve to be set aside.

In so far as submissions of learned counsel for respondent Nos. 9 to 12 are concerned that the State Government has granted relaxation in the Rules with regard to certain candidates, we only observe that it is always open for the respondents to approach the Government and make a requisite request and it is for the Government to consider and no observation or any direction in above regard is made by this Court in these proceedings.

In view of what has been stated above, the appeal is allowed and the impugned judgment of the High Court is set aside.

.....J.
[ASHOK BHUSHAN]

.....J.
[K.M. JOSEPH]

NEW DELHI;
February 20, 2020.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 3866/2018

(Arising out of impugned final judgment and order dated 01-05-2017
in RLPA No. 1/2017 passed by the High Court Of J & K At Jammu)

THE STATE OF JAMMU AND KASHMIR & ORS. Petitioner(s)

VERSUS

SWARAN SINGH & ORS. Respondent(s)
(FOR I.R. and IA No.150426/2018-CONDONATION OF DELAY IN FILING and
IA No.150430/2018-CONDONATION OF DELAY IN REFILING)

Date : 20-02-2020 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE K.M. JOSEPHFor Petitioner(s) Mr. M. Shoeb Alam, AOR
Mr. Mojahid Karim Khan, Adv.For Respondent(s) Mr. Tripurari Ray, Adv.
Mr. Balwant Singh Billowria, Adv.
Mr. Atul Wadera, Adv.
Mr. Vivekanand Singh, Adv.
Mr. Medhavi Kumar, Adv.
Ms. Shilpa Singh, AOR

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The civil appeal is allowed and the impugned judgment is set
aside in terms of the signed order.

Pending application, if any, stands disposed of.

(MEENAKSHI KOHLI)
AR-CUM-PS(RENU KAPOOR)
COURT MASTER

[Signed order is placed on the file]