

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

SWP 667/2017 c/w
i)SWP 9900036/2014
ii)CPSW 359/2017
iii)SWP 440/2017

SHAMEEM AHMAD SHAH AND ORS

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

Through: Mr. Bhat Fayaz, Advocate

Vs.

STATE OF JK AND OTHERS

...Respondent(s)

Through: Mr. Raies-ud-Din Ganie, Dy. AG

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
09.05.2024

Oral:

1. The issues involved in the instant petitions are akin and analogous to each other, as such, are being together disposed of hereunder: -
2. In the instant petition filed under Article 226 of the Constitution, the petitioners herein state to have been appointed against the posts of Death & Birth Reporter, Computer Assistant, Works Supervisor, Demolishing Guard, Mali & Works Supervisor in the Municipal Committees of Hajin, Sumbal and Bandipora pursuant to orders dated 12.09.2006, 12.09.2006, 25.07.2005, 25.07.2005, 21.08.2009 & 25.07.2005 issued by the President of Municipal Committees in question, against clear vacancies in the pay scale of Rs. 2250-3200+other usual allowances.
3. It is being next stated that in the year 2014, the petitioners came to be compelled to approach this Court through SWP No. 75/2014/SWP 9900036/24 after apprehending their replacement/substitution at the

hands of the respondents as also when the respondents withheld the salary of the petitioners and in the application for interim relief accompanying the said petition, an interim relief came to be passed by this Court on 04.08.2015 while disposing of the said application, with a direction to the respondents to release legitimately earned salary in favour of the petitioners in accordance with rules governing the field.

4. It is being next stated that subsequent to the passing of the aforesaid order dated 04.08.2015 by this Court, respondent 2 herein sought an information from respondent 1 in regard to the cases of the petitioners in response to which, the respondent 1 through Senior Law Officer on 19th August, 2015 requested the respondent 2 herein that the legitimately earned salary, if any, due to the petitioners be released and a detailed report be submitted to respondent 1, whereupon the Directorate conveyed the said instructions to the respondents Executive Officers of the Municipalities to implement the Court order dated 04.08.2015.
5. It is being further stated that the respondents Executive Officers, however, sought additional financial assistance from the Directorate for payment of salary to the petitioners, in response whereof, the respondent Director intimated vide order dated 07.05.2016 to the respondents Executive Officers that additional funds for meeting out the claims has been enhanced by 7% to 10% in order to meet the salary expenditure of the Municipal Committees in question, whereafter the salary claims of the petitioners came to be settled by the respondents.
6. It is being further stated that on 23rd February, 2017, Under Secretary to the Government Housing & Urban Development Department,

however, reminded the order of the Director dated 07.05.2016, in terms whereof, the Director had enhanced budgetary expenditure of the Municipal Committees in question by 7% to 10% for meeting the expenditure of payment of salary payable to the petitioners and thereafter from the month of February 2017, onwards the respondents did not pay salary to the petitioners which compelled the petitioners again to approach this Court through the medium of SWP No. 440/2017, wherein the quashment of the communication dated 23rd February, 2017 also came to be sought besides seeking direction against the respondents for release of salary from the month of February 2017 as also the payment of future salary. In the said petition, it is being stated, that this Court on 13th March, 2017 passed an order after hearing the counsel for the petitioners as also the counsel for the respondents being on caveat requiring the counsel for the respondents to obtain instructions in the matter and if need be to file objections.

7. It is being next stated that the respondents did not report any instructions in terms of order dated 13th March, 2017, and instead filed objections to the petition accompanied with an order dated 22nd March, 2017 issued by the respondent Director, whereunder the petitioners services had been disengaged.
8. The petitioners have challenged the said order dated 22nd March, 2017 in the petition being SWP No. 667/2017 on the grounds that the petitioners had been appointed in their respective Municipal Committees in the year 2005-06 and have worked for a period more than 20 years and came to illegally disengaged without issuance of a notice and affording an opportunity of hearing.

9. **Objections** to the petition have been filed by the respondents, wherein it is being *inter alia* stated that SWP No. 667/2017 is not maintainable in view of pendency of the earlier petitions being SWP No. 75/2014 & SWP No. 440/2017. It is further averred in the objections by the respondents that the petitioners basic appointment was made against rules as well as on non-existing posts and since the petitioners came to be allowed to work illegally by the Executive Officers in the month of June-July 2016 passed upon the order of the Director dated 07.05.2016, the competent authority taking cognizance of the said facts issued order under challenge dated 22nd March, 2017, as the appointment of the petitioners otherwise had been made in breach of Section 307 of the Jammu and Kashmir Municipal Act, 2000, inasmuch as without facing any process of selection.

10. The counsel for the petitioners while making his submissions in tune with the contentions raised and grounds urged in the petition/s would contend that the petitioners came to be disengaged by the respondents without issuing any notice to them or affording an opportunity of hearing. It is further contended by the counsel for the petitioners that the respondents in the matter subjected to petitioners to discrimination, in that, the respondents on one hand disengaged the services of the petitioners and on the other hand engaged and allowed similarly situated appointees to continue in service.

11. On the contrary the counsel for the respondents would submit that since the basic appointment of the petitioners was against the law and rules, the petitioners, thus, were not entitled to a notice or an opportunity of hearing before their disengagement and that the

petitioners cannot in law seek negative equality, in that, Article 14 does not envisage.

Heard learned counsel for the parties and perused on record.

12. Having regard to the respective pleadings of the parties coupled with the submissions of the appearing counsel for the parties, the core issue to be addressed herein would be as to whether the petitioners could have been disengaged by the respondents after having worked for a considerable period of time too without following principles of natural justice.

13. It is not in dispute that the petitioners herein came to be appointed against their respective posts by the then President of the respective Municipal Committees without issuing any advertisement notice thereof or subjecting the petitioners of any process of selection recognized by law.

14. Keeping in mind the aforesaid undisputed factual position, the position of law laid down by the Apex court on the subject in this regard need to be referred hereunder.

The Apex Court in case titled ***“State of Orissa and Another Vs. Mamata Mohanty”*** reported in 2011 (3) SCC at paras 36 & 56 has laid down as under:

“36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the

candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

“56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.”

15. Since the petitioners admittedly have been appointed by the respondents without following the mandate of Article 14 & 16 of the Constitution, under these circumstances whether issuance of a notice to the petitioners or else affording them an opportunity of hearing would have led to a different result and inference in the matter as had the respondents issued a notice to the petitioners or affording them opportunity of hearing before disengaging them the issuance of such notice or affording them an opportunity of hearing to the petitioners on account of the aforesaid admitted facts would not have changed the admitted position obtaining in the matter being that the petitioners indisputably have had been appointed against the mandate of Article 14 & 16 of the Constitution. Furthermore, the plea of discrimination alleged by the petitioners viz-a-viz, similarly situated appointees in other Municipal Committees orders not lend any support to the said

alleged plea of discrimination to the petitioners in view of the discrimination to the petitioners in view of the above referred para 56 of the judgment of the Apex Court.

The reliance placed by the counsel for the petitioners in case titled” *BasudeoTiwara Vs. SidoKanhunivrsity and others*”in view of the aforesaid facts and circumstances and the position of law does not lend any support to the case of the petitioners.

16. Viewed in the context of what has been observed, considered and analyzed hereinabove, the petitions fail and are accordingly dismissed.

17. A copy of this judgment be placed on the record file of all the petitions.

CPSW No. 359/2017

18. In view of above dismissal the contempt notice issued in the instant contempt petition shall stand recalled and contempt proceedings closed.

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR
09.05.2024
ARIF

Whether the order is speaking? Yes/No

Whether the order is reportable? Yes/No