

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

PRESENT:-

The Hon'ble Mr. Justice Mohammad Yaqoob Mir-Judge.
APS WP No. 90/2010
COA No. 50/2009

Wali Mohd Ganai, age 47 years,
S/o Ghulam Rasool Ganai
Presently residing at Belicharana, Jammu.

Applicant/Petitioner

Versus

1. Sh. Samuel Vergheese.
Commissioner/Secretary to Government,
Home Department, State of Jammu and Kashmir,
Civil Secretariat, Jammu.
2. Sh. Kuldeep Khoda, Director General of Police,
Police Headquarters, Gulshan Ground Jammu.
3. Sh. Sheikh Owais Ahmad,
Additional Inspector General of Police,
Gulshan Ground Jammu.
4. Mohd Ameen Khan
Commandant JKAP 9th Bn.
Drabha, Poonch.

Non-applicant/respondents

Wali Mohd Ganai Age 46 years
S/o Ghulam Rasool Ganai,
Presently residing at Belicharana, Jammu.

Petitioner

V/S

1. Sh. Samuel Vergheese.
Commissioner/Secretary to Government,
Home Department, State of Jammu and Kashmir,
Civil Secretariat, Jammu.
2. Sh. Kuldeep Khoda, Director General of Police,
Police Headquarters, Gulshan Ground Jammu.
3. Sh. Sheikh Owais Ahmad,
Additional Inspector General of Police,
Gulshan Ground Jammu.
4. Mohd Ameen Khan
Commandant JKAP 9th Bn.
Drabha, Poonch
Respondants/Contemnors

APSWP No. 90/10 in
COA No. 50/09

Appearing counsel

For the Petitioner(s) :Mr. Ajay Kumar Gandotra Adv.

For the Respondent(s) :Mr. Gagan Basotra. A.A G

In terms of the judgement dated. 10-11-2008, it has been directed that till the enquiry is concluded and proceedings are recorded, the petitioner would be entitled to receive subsistence allowance on the post, i.e.” Senior Grade Constable” which he was holding at the time the order of suspension was passed. The respondents as such were directed to pay the subsistence allowance and to complete the enquiry within time frame.

In compliance thereof respondents have considered the maner and have issued the order dated 24th of December 2009. wherein it has been mentioned that in accordance with the directions of the court, the subsistence allowance be drawn and disbursed at earlier, however, same shall be subject to the outcome of enquiry pending before the DIG of Police.

Prior to the passing of the said order dated. 24-12-2009. the petitioner had filed Contempt petition No. 50:09. During the pence of the contempt proceeding, the order dated 24-12-2009 was produced based on which it was concluded that there is no justification to keep alive the Contempt proceeding as such petition was dismissed.

Now again the fresh instant application has been filed which in effect again seeks intuition of Contempt proceeding against the respondents for not having implemented the judgement in its real spirit. In this connection, it is contended that the order dated 24-12-2009 as issued by the respondents was not complied with and the subsistence allowance as was required to be paid to the petitioner was not paid. Respondents have filed detailed objections, wherein it is contended that there is no wilful default. As a matter of fact, order dated. 24-12-2009 viz a viz payment has remained to be carried into effect, because papers were seized by the Crime Branch in connection with the investigation about the wrong inclusion of the name of the petitioner in the list of promoted Senior Grade Constable. The enquiry in that behalf stand conducted by DIG report has been annexed with the objections, which clearly indicated that petitioner was never promoted to the rank of S.G constable.

In the instant proceeding, the only question which is no be looked into is as to proceeding respondents have committed any wilful default in implementing the judgement.

Firstly, matter is not open for re-consideration as the earlier Contempt petition stand dismissed on 5-2-2010. Now the instant application firstly is not covered by any provision of law. Secondly, it is totally misconceived and more so does not require any consideration in view of the final Inquiry report dated. 19-08-2010 wherein, it has been concluded that the petitioner was never promoted to the post of S.G Constable. When it is so he is entitled to subsistence allowance only against the post of Constable.

Petitioner if at all has any grievance against the inquiry report dated 19-08-2010 as well as the other proceeding launched on the same report, he shall be at liberty to have recourse to other available remedial measures.

The instant application does not survive for any consideration as such dismissed.

Jammu
3-12-2010

(Mohammad Yaqoob Mir)
Judge.

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

PRESENT:-

The Hon'ble Mr. Justice Mohammad Yaqoob Mir-Judge.

SWP No. 577/2002

Writ Petition No—of 2002

Chain Lal S/o Kaku Ram R/o Sangar Tehsil Samba District Jammu Age 33 Years
(Petitioners)

V/S

1. State of Jammu and Kashmir through Special Secretary Home Department, civil Secretariat Jammu.
2. Director General of Police, J&K Police Headquarters Jammu.
3. Commandant J&K Armed Police 14th Bn Jammu and Kashmir (Respondent)
4. Sh. Ashwani Kumar son of Narian Dass R/o Badyal Brahamana, Jammu
5. Sh. Harbans Lal S/o Basha Ram R/o Khiddian, The. Samba district Jammu.
(Proforma Respondents)

SWP No. 577/2002

Date of Decision:- 20-08-2010.

Appearing counsel:

For petitioner(s) : Mr. A. Kapoor, Advocate

For respondent(s) : None

Whether approved for reporting: YES/NO

Sh. Mohan Lal, guard Man, brother of the petitioner along with two other guard man, namely Sh. Ved Parkash-brother of respondent no 4 and Sh. Chaman Lal brother of respondent no. 5 were killed in a bomb blast on 26th of January 1995 at MAM Stadium, Jammu. Compassionate appointment as Constable in Auxiliary Police No. 4&5 were appointed as Constable in Auxiliary Police whereas the petitioner came to be appointed as a follower.

Petitioner claimed that he possessed the basic qualification i.e., Matriculation therefore, was entitled to the lowest of the non-gazetted job as permissible under the SRO-43. for enforcing his right, filed the petition No. 357/1999 which came to be decided on 23rd of March 1999 and in terms of the said judgment, respondent were directed to settle the claim of the petitioner for being appointed as Constable within a period of three months. In compliance thereof, respondent no 2—Director General of Police ---- while examine the case of the petitioner found that height measurer standard by one inch was required to be relaxed in favour of the petitioner. The Government vide order dated 13th of June' 2000 has accorded sanction to the appointment of the petitioner as Constable in J&K Police (E) in terms of SRO-43 in relaxation of height measurer standard by one inch. As a follow up action, respondent no 2—Director General of Police----- vide order No. 2067 dated. 4th of July 2000 has accorded approval to the conversion of Follower as Constable in J&K Armed Police. Petitioner accepted the same, but claims that he is entitled to be appointed as Constable in the Executive Wing of the Police w.e.f. 8th of May' 1995 when the similarly situated respondent no 4 was appointed and also claims consequential

benefits of pay and difference of pay emoluments and also grant of seniority as Constable from the said date.

The question pivotal for consideration is as to whether the petitioner was entitled to be appointed as Constable W.e.f. 8th of May 1995. The said claim of the petitioner has been specifically dealt with by the respondent's no. 1 to 3 in their reply wherein they have clearly mentioned that the petitioner was lacking requisite height essential for appointing a person as Constable. Further, it is mentioned that the object of the SRO-43 is to provide minimum relief in the form of subsistence for survival of the family of a person who dies in harness. Keeping in view the object of SRO-43 (Compassionate Appointments) the respondents facing difficulty in appointing the petitioner as Constable the way two other persons were appointed, appointed him as a Follower. It is only after the relaxation of height measurer standard by one inch, the petitioner came to be appointed as Constable. The said relaxation has been sanctioned by respondent no. 1 on 13th of June 2000 and it is only on that date the petitioner became eligible for being appointed as Constable. Therefore, the appointment of the petitioner in any case cannot date back to the year 1995, when he was not eligible for such appointment.

Learned counsel for the petitioner would contend that the brother of the petitioner lost his life in the bomb blast while discharging his duties. Similarly, the brother of respondents no 4 & 5 also lost their lives in the said incident. When other were appointed as Constable, the petitioner was also entitled to be appointed as Constable and as such the petitioner has been discriminated.

The contention of the learned counsel for the petitioner is without any substance because at the relevant time the petitioner's height measurer standard was deficient by one inch, therefore was not eligible for being appointed as a Constable. Still with a purpose of advancing the object of SRO-43, the petitioner has been appointed as a Follower. Therefore, there is no question of discrimination.

Petitioner has accepted the order dated 13th of June 2000 where under on the relaxation of height measurer standard has been appointed as Constable. After two years i.e. in the year 2002, the petitioner has filed the instant petition seeking directions in the name of respondents to accord consideration to the appointment of the petitioner w.e.f. the year 1995, which on the face of it appears to be after thought as after availing the benefit of the order of appointment of Constable and without any murmur enjoying the said status for two years, filed the writ petition, so as to claim appointment and seniority w.e.f. 1995 when he was not eligible for being appointed as Constable in view of the deficiency in his height.

The claim of the petitioner that he should have been appointed as Constable in Auxiliary Police instead of J&K Armed Police has got no basis as the vacancy was available in the Armed Police further there is no difference in the pay and grade of a Constable of J&K Police whether serving in Armed Police or in Auxiliary wing as is clearly pleaded by respondents no. 1 to 3.

While considering whole gamut of the case and keeping in view the reasons as noticed above, petition is found without any substance as such merits to be dismissed, as such is dismissed along with connected CMP.

(Mohammad Yaqoob Mir)
Judge.

Jammu.
20-08-2010