

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Dated: This 18th day of March 2021

Hon'ble Mr. Rakesh Sagar Jain, Member – J

Hon'ble Mr. Anand Mathur, Member – A

T.A. No. 061/1629/2020

Connected with

T.A. No. 061/1661/2020

&

T.A. No. 061/1674/2020

T.A. No. 61/1629/2020

1. Kuljeet Singh Jamwal, S/o Sagar Singh Jamwal, R/o 260/10 Shakti Nagar, Jammu, Age 42 years.
2. Jasvinder Singh, Son of S. Nihal Singh, R/o 26-B Extension, Karan Nagar, Jammu, Aged-42 years.
3. Tajinder Nath Khajuria, Son of Som Nath Khajuria, R/o 11 Subash Nagar, Sector No. A, Jammu, Aged 39 years.
4. Deevakar Khajuria, Son of K.N. Khajuria, R/o 427-A Gandhi Nagar, Jammu Aged 40 years.
5. Rajeshwar Singh Sambyal, Son of Surinder Singh, R/o H. No. 136 Dogra Hall, Jammu, Aged 43 years.
6. Pawan Dev Singh Jamwal, Son of Ajaib Singh Jamwal, R/o Village Saruinsar, P.O. Jammu, Aged 40 years.
7. Sunil Singh Sambyal, Son of Shamsher Singh, R/o Subash Nagar, Jammu. H. No. 731, Aged 42 years.

..... Applicants

By Advocate: Mr. Sunil Sethi, Sr. Advocate with Ms. Veenu Gupta
Versus

1. State of Jammu and Kashmir, through Financial Commissioner, Home Department, Civil Secretariat, Jammu.
2. Director General of Police, Jammu and Kashmir State, Police Headquarters, Jammu.
3. Principal Secretary, General Administration Department, Civil Secretariat, Jammu.

..... Respondents

By Advocate: Mr. Amit Gupta, A.A.G./Mr. Sudesh Magotra, D.A.G.

T.A. No. 61/1661/2020

Jagmohan Singh, S/o Late. S. Satwant Singh, Age 50 years, R/o Akali Kour Singh Nagar, Digiana, Tehsil & District Jammu.

..... Applicants

By Advocate: Mr. Sunil Sethi, Sr. Advocate with Ms. Veenu Gupta
Versus

1. State of Jammu and Kashmir, through Financial Commissioner, Home Department, Civil Secretariat, Jammu.
2. Director General of Police, Jammu and Kashmir State, Police Headquarters, Jammu.
3. DIG Police (Personal) PHQ, Jammu.
4. Mst. Jabeen Akhtar, D/o Gulzar Ahmed Lone, R/o Azatabad, Tehsil: Thanamandi District Rajouri.

..... Respondents

By Advocate: Mr. Amit Gupta, A.A.G.

Mr. Sudesh Magotra, D.A.G.

T.A. No. 61/1674/2020

Parveen Sharma, Aged 45 years, Son of Sh. Babu Ram, R/o H. No. 50 Patel Nagar, Talab Tillo, Jammu.

..... Applicant

By Advocate: Mr. Sunil Sethi, Sr. Advocate with Ms. Veenu Gupta
Versus

1. State of Jammu and Kashmir, through Financial commissioner, Home Department, Civil Secretariat, Jammu.
2. Director General of Police, Jammu and Kashmir State, Police Headquarters, Jammu.
3. Commissioner/Secretary, General Administration Department, Civil Secretariat, Jammu.

..... Respondents

By Advocate: Mr. Amit Gupta, A.A.G./Mr. Sudesh Magotra, D.A.G.

ORDER

Per Rakesh Sagar Jain, Member (J)

1. T.A. No. 61/1629/2020 titled Kuljeet Singh Jamwal v/s State of J&K, T.A. No. 61/1661/2020 titled Jagmohan Singh v/s State of J&K and T.A. No. 61/1674/2020 titled Parveen Sharma v/s State of J&K being identical in nature have been taken and argued together.
2. The case of the applicants in all the three T.A.s is that applicants applied for the post of some Sub-Inspectors in the Executive Police of J&K Police as per invitations invited vide advertisement notice AIG(P)33159-219 dated 20.08.1991. It is the case of the applicants that despite having better marks, they were not selected to the post of Sub-Inspectors and that persons having secured less marks than the applicants were selected particularly one lady namely Jaben Akhtar who despite having obtained 164 marks which were less than the marks obtained by the applicants was appointed. It has been further averred in the application that SWP 1095/2005 filed by one Mr. Jagmohan Singh was allowed by the Hon'ble High Court vide judgement dated 08.05.2007 and respondents were directed to appoint the said applicants to the post of Sub-Inspector. Applicants aver that their case is similar to that of Jagmohan Singh and they be accorded similar treatment by the respondents for appointment to the post of Sub-Inspectors. Hence, the applicants pray for the following reliefs:-
 - “(a) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents to consider and appoint the applicants to the posts of Sub-Inspectors in Jammu and Kashmir Police.

(b) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents to grant age relaxation in favour of the applicants keeping in view the fact that the applicants were denied the appointment at the relevant point of time when the select list was issued and presently the applicants have become over-aged.

(c) Any other relief, which this Hon'ble Court in the facts and circumstances of the case deem fit and proper.

3. In the reply filed by the respondents, it has been averred that the cut-off marks for open merit candidates was 180 and that the applicant Jagmohan Singh had secured less than 180 marks and in any case the lady named Jaben Akhtar was selected against the five per cent quota for woman candidate. It is also averred in the reply that LPA (SW) 55 of 2008 was filed against judgement dated 08.05.2007 passed in SWP 1095 of 2005 filed by Jagmohan Singh and vide judgement dated 06.07.2009, the said judgement in SWP No. 1095/2005 was set aside by the Hon'ble Division Bench and which judgment of Hon'ble Division Bench was upheld by Hon'ble Supreme Court.

4. We have heard and considered the arguments of learned counsel for the applicants and Mr. Sudesh Magotra, learned D.A.G. and gone through the materials on record.

5. It has been argued by learned counsel for the applicants that despite securing better marks than other persons particularly one lady namely Jaben Akhtar who despite having obtained 164 marks

which were less than the marks obtained by the applicants was appointed and therefore, the applicants deserve to be appointed as Sub-Inspectors in J&K Police. It was further argued by learned counsel for the applicants that Jagmohan Singh who filed SWP 1095/2005 was given the relief by the Hon'ble High Court vide judgement dated 08.05.2007 directing the respondents to appoint the said Jagmohan Singh to the post of Sub-Inspector and since the case of applicants is similar to the case of Jagmohan Singh, the applicants be accorded similar treatment by the respondents for appointment to the post of Sub-Inspectors.

6. On the other hand, it was argued by learned D.A.G. that the judgement in the case of Jagmohan Singh was set aside by the Hon'ble Division Bench in LPA No. 55/2008 titled State of J&K vs. Jagmohan Singh vide judgement dated 06.07.2009 and even the review application filed against the said judgement was dismissed by the Hon'ble Division Bench on the ground of delay. It has been further submitted by learned D.A.G. that said Jaben Akhtar despite having lower merit than the applicants was given appointment since she was selected under the five per cent quota reserved for women candidates and this has been upheld by the Hon'ble Division Bench in the aforementioned LPA and therefore, there being no merit in the T.A., it deserves to be dismissed.

7. We may refer to the order of the Hon'ble Division Bench in LPA no. 55/2008 (supra) which reads as under:-

“In the circumstances, by the judgement and order under appeal, the Court issued a mandamus directing appointment

of the petitioner, for, he was adjudged to have better merit than Smt. Jabeen Akhter. In the present appeal, the appellant is contending that the petitioner respondent could not compare himself with Smt. Jabeen Akhtar, inasmuch as she belonged to a category to which the petitioner did not belong. In this connection, reliance has been placed upon an order dated 15th May, 1976, which suggests 5% reservation for women in all direct recruitment quota available in non-gazetted posts. The learned counsel for petitioner-respondent contended that the reservation policy of the State was initially enshrined in the Jammu & Kashmir Scheduled Castes & Backward Classes (Reservation) Rules, 1970, which was the subject matter of a litigation and which in turn ultimately reached the Hon'ble Supreme Court in terms of the order passed by the Hon'ble Supreme Court, a Committee was constituted, which submitted its report and accepting such report, the Government issued a Notification on 3.7.1982, altering many parts of the said Rules of 1970. It was submitted that by the order notified on 3.7.1982, all previous orders in consistent with the contents of the said notification were repealed. It was submitted that the said rules, as stood altered in 1982, did not treat women as belonging to Backward Classes and, as such, no reservation has been made in their favour. It was submitted that the order of the Government dated 15.5.1976 described women as socially and educationally backward. It was contended that by reason of the action of the Government, as translated in the Notification dated 3.7.1982, since 3.7.1982, a woman cannot be treated as socially or educationally backward.

Consequently, it must be deemed that the order of the Government dated 15.5.1976, is of no use.

The said rules dealt with Scheduled Castes and Backward Classes. Women Folk as such do not belong to any of them. It cannot be said that the women folk are backward. If a woman belongs to a backward class community, she may be said to belong to Backward Class. On the other hand, if a woman belong to forward class community, she should be deemed to be belonging to forward class. The reservation made on 15.5.1976 in favour of women although justified the same on the ground that they are socially and educationally backward, but the reservation thus made was also on the ground that they do not adequately represent in the services of the State. Such reservation cannot be said to be on vertical basis, but should be deemed to be on horizontal basis. In such circumstances, the reservation thus made in favour of women does not affect the reservation made in the said rules. A woman within the quota so allotted vide order dated 15.5.1976, may only outplace a male in the class in which she belongs.

In the circumstances, the conclusion would be that the petitioner could not equate himself with Smt. Jabeen Akhtar and accordingly, because Smt. Jabeen Akhtar having had obtained 161 marks was appointed, the petitioner could not ask for a mandamus to appointed him, he had obtained 164 marks.

The petitioner had NCC 'B' and 'C' Certificates. The advertisement made it clear that a person possessing NCC

‘B’ and ‘C’ Certificates will get preference. It was contended that such preference has been ignored. The petitioner has not been able to bring on record any fact which would suggest that the petitioner was equally placed with any person but that person has been appointed ignoring the preference to which the petitioner was entitled to.

In the circumstances, we have no other option but to interfere with the judgement and order under appeal and, accordingly, we set aside the judgment and order under appeal and dismiss the writ petition without any order as to costs.”

8. Reference may also be made to the documents placed on record which pertain to information received under RTI Act. As per the judgement of the Hon’ble Division Bench, the Hon’ble High Court has relied upon order dated 15.05.1976. However, the documents placed on record by the applicants do not include the order of Government dated 15.05.1976 relied upon by the Hon’ble Division Bench.
9. It was argued by the learned counsel for the applicants that the judgement was obtained by the State by practicing fraud upon the court and it is well settled principle of law that any judgement obtained by fraud, it cannot be said to be a judgement or order in law and placed reliance upon A.V. Papayya Sastry Vs Govt. of A.P. , (2007) 4 SCC 221. There cannot be any doubt about the principle that a judgment obtained by practicing fraud on the judicial forum is a nullity and non est in the eyes of the law. However, in the present case, applicants have been unable to show

as to how the fraud was committed so as to obtain a judgement from the Court. Even so, applicants have made no efforts to get the judgment set aside on ground of fraud.

10. We may refer to the objections filed by the State in T.A. No. 61/1674/2020 titled Parveen Sharma v/s State of J&K, wherein it has been averred that judgment passed in SWP No. 1095 of 2005 has been set aside by the Hon'ble Division Bench in LPA No. 55 of 2008 decided on 06.07.2009 and upheld by Hon'ble Apex Court vide judgment dated 18.07.2011 in SLP No. 23085. This averment has not been rebutted by the applicants by way of rejoinder affidavit.
11. In view of the judgement of the Hon'ble Division Bench of the Hon'ble High Court in LPA No. 55/2008 (supra), we are of the view that no case is made out by the applicants. Accordingly, the T.As being meritless are dismissed. No. costs.

(Anand Mathur)
Member (A)

(Rakesh Sagar Jain)
Member (J)

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