

G.S. Broca

Vs

State of Jammu and Kashmir and Another

Civil Appeal No. 3155 of 1979

(CJI Y.V. Chandrachud, A. Varadarajan, A.N. Sen JJ)

18.11.1981

JUDGMENT

CHANDRACHUD, C.J. -

1. This case has a chequered history. The appellant started his career way back in 1934 as a constable in the Police Department of the State of Jammu & Kashmir when he was about 18 years of age. He was promoted as a Head Constable in 1946, as an Assistant Sub-Inspector in 1953 and as a Sub-Inspector of Police in 1959. He retired in that post on December 16, 1971 on superannuation at the age of 55.

2. The grievance of the appellant is that he was wrongly denied promotions to higher posts in the Police Department and that his juniors were promoted to those posts over his head not only without justification but in the teeth of order passed by the Home Secretary on April 3, 1958 and January 15, 1963.

3. We have considered the appellant's grievance carefully but we find no merit in it.

4. The appellant had filed three petitions in the High Court of Jammu & Kashmir, namely, Writ Petitions Nos. 255 of 1971, 257 of 1971 and 303 of 1972. Writ Petition No. 255 of 1971 was filed against a punishment imposed upon him with which we are not concerned. Writ Petition No. 257 of 1971 is the one out of which this appeal arises. While that writ petition was pending in the High Court, the appellant filed Writ Petition No. 303 of 1972 which was allowed by a learned Single Judge of the High Court who, by his order dated November 29, 1972, directed the State Government to consider the appellant's case for seniority and consequent promotion to the higher posts. The Government rejected the appellant's case on reconsideration and being aggrieved thereby, the appellant filed yet another writ petition (No. 122 of 1973), the judgment in which is reported in 1976 J & K Law Reports 356.

5. The appellant, in our opinion, cannot have his case examined and reexamined over and over again. He filed Writ Petition No. 303 of 1972 while his earlier Writ Petition No. 257 of 1971, out of which this appeal arises, was pending in the High Court in respect of very same relief. He succeeded in Writ Petition No. 303 of 1972 and though the High Court did not direct in terms that as a result of the judgment therein, Writ Petition No. 257 of 1971 would stand disposed of, that would be the plain effect of the disposal of Writ Petition No. 303 of 1972. In other words, Writ Petition No. 257 of 1971, out of which this appeal arises, must be deemed to have merged in Writ Petition No. 303 of 1972 and disposed of by the judgment in that writ petition. The appellant filed Writ Petition No. 122 of 1973 because the Government, according to him, did not implement the orders passed by the

High Court in Writ Petition No. 303 of 1972. He was granted all the reliefs he was entitled to in that writ petition. He cannot now turn around and hark back to Writ Petition No. 257 of 1971. This appeal has therefore in a sense become infructuous. The reliefs granted to the appellant in Writ Petition No. 122 of 1973 ought to meet his just and reasonable expectations in regard to his career in the Police Department of the State. We may mention that the claim of the appellant is that he should have been promoted as an Assistant Sub-Inspector in 1948, as a Sub-Inspector of Police in 1950, as an Inspector in 1954, as a Dy. S.P. in 1958, as an S.P. in 1963 and as a D.I.G. in 1968. By the judgment of the High Court dated April 30, 1976 in Writ Petition No. 122 of 1973, the Government was directed to promote the appellant as an Assistant Sub-Inspector of Police from 1953, as a Sub-Inspector of Police from December 1, 1959, as an Inspector from May 11, 1963 and as a Dy. S.P. from September 12, 1966. These reliefs admittedly have been granted to the appellant and the aforesaid judgment of the High Court dated April 30, 1976 has been fully implemented.

6. Apart from this consideration, the High Court, in its judgment in the letters patent appeal which is under appeal before us is, in our opinion, right in taking the view that the communications dated April 3, 1958 and January 15, 1963 which formed the basis of the present writ petition are not in the nature of orders passed by the Government; they are merely in the nature of recommendations made by the Secretary, Home Department to the Inspector-General of Police. Therefore, the fact that the Government did not feel itself bound thereby while passing the impugned order cannot vitiate that order.

7. There is one more aspect of the matter which needs to be mentioned. The appellant is asking for promotion to higher posts in the Police Department right from the year 1948 as if he was entitled to the higher posts on the basis of seniority alone. As stated by the Inspector-General of Police, Lt. Col. B.S. Samyal, in his order dated June 25, 1955 while disposing of the appeal filed by the appellant against the orders of D.I.G., Jammu, dated April 13, 1947 and June 11, 1948, the question of promotion to the higher ranks did not depend upon seniority alone; the suitability of the candidate for promotion had to be judged in each individual case on the basis of the reports made by the D.I.G. in regard to his efficiency, integrity and general reputation. It is therefore not possible for us to entertain the grievance of the appellant that, at this distant date, he should be granted a declaration by which he will be carried forward as high as to the post of the Deputy Inspector-General of Police.

8. For these reasons we affirm the judgment of the High Court and dismiss the appeal. There will be no order as to costs.

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