

Mohd. Sultan Ganai

Vs

State of J&K and Others

Civil Appeal No. 2569 of 1998

(S. P. Bharucha, V. N. Khare JJ)

05.05.1998

JUDGMENT

V. N. KHARE, J. –

1. Leave granted.

2. Heard counsel for the parties. This appeal is directed against the order dated 22-4-1997 passed by the High Court of Jammu & Kashmir in LPA No. 106 of 1997, whereby the High Court has, after modifying the order dated 12-3-1997, directed the Director, School Education, Respondent 2 herein, to post an officer other than the appellant, as Chief Education Officer, Pulwama.

3. In the year 1994, Respondent 3, Syed Zuhara Jabeen, was posted as Chief Education Officer, Pulwama, when the State Government, on the allegations that she committed a number of irregularities, malpractices and misappropriated government funds, by an order dated 5-10-1994 withdrew from her the drawing and disbursing power. Respondent 3 challenged the said order by means of a writ petition before the High Court which was dismissed.

4. In the meantime certain more irregularities committed by Respondent 3 came to light with the result the State Government by an order dated 11-2-1997 attached her with the Directorate of School Education, Kashmir, and posted the appellant as Chief Education Officer, Pulwama in his own pay and grade. Consequent upon the said order, the appellant assumed charge and started functioning as Chief Education Officer, Pulwama. As soon as Respondent 3 learnt that the Government is going to transfer her and post the appellant in her place, she filed another writ petition (SWP No. 216 of 1997) before the High Court and obtained an interim order dated 4-2-1997 directing the State Government to allow her to continue as Chief Education Officer, Pulwama, till the said post is filled up by the Department in accordance with the rules. Aggrieved by the said order, the appellant filed an appeal [LPA(SW) No. 106 of 1997] against the grant of interim order. A Division Bench of the High Court by its order dated 12-3-1997 stayed the operation of the interim order passed by the learned Single Judge. Subsequently, upon an application filed by Respondent 3, the High Court by its order dated 22-4-1997, after vacating the said interim order has directed the Government not to post the appellant as Chief Education Officer. That is how this appeal has come up before this Court.

5. A perusal of record shows that there were serious charges against Respondent 3 and her continuance on the post of Chief Education Officer was found detrimental to the public interest and, as such, the Government attached her with the Directorate of School Education, Kashmir pending inquiry against her and the appellant, who was then working as Deputy Chief Education Officer,

was posted as Chief Education Officer. This was by way of administrative arrangement. Otherwise also, the appellant being next in the order of seniority was entitled to be posted as Chief Education Officer. On the other hand, Respondent 3 was transferred to the Directorate in her own pay and grade and she was not put to any financial loss and her stay in the Directorate was till completion of inquiry against her. Under such circumstances, the High Court was not justified in directing the Government not to post the appellant as Chief Education Officer. While passing the impugned order, the High Court did not consider whether prima facie the appellant is entitled to be posted as Chief Education Officer keeping in view the principle of seniority-cum-suitability. In fact, the principles governing the grant of interim order were not kept in regard by the High Court while directing that the appellant be not appointed to the post of Chief Education Officer.

6. Under such circumstances, we are of the opinion that the impugned order deserves to be quashed. Consequently, the order dated 22-4-1997 passed in LPA No. 106 of 1997 is set aside and the appeal is allowed. However, there shall be no order as to costs.