

**SUPREME COURT OF INDIA**

State of J & K

Vs.

Vinod Kumar Verma

(P. Sathasivam and J. Chelameswar JJ.)

16.01.2012

**JUDGMENT**

**P. SATHASIVAM, J.**

1. These SLPs are directed against the common final judgment and order dated 08.12.2010 passed by the Division Bench of the High Court of Jammu and Kashmir at Jammu in LPAC No. 23 of 2010 whereby the Division Bench dismissed the same as not maintainable.

2. Brief Facts:

a) Vinod Kumar Verma-Respondent No. 1 herein was appointed as Sectional Officer (Civil) in the Public Works Department (PWD) of the State of Jammu and Kashmir on ad hoc basis on 10.08.1981 and he joined the said post on 11.08.1981. On 17.08.1981, Respondent No. 1 herein was further adjusted as Sectional Officer (Civil) on ad hoc basis in the Power Development Department (PDD), Civil Construction Circle, Jammu and subsequently he was adjusted in Seva Hydel Project, an establishment of PDD. The service of the Respondent No. 1 herein was regularized by the State Government vide Government Order No. PW-670 of 1981 dated 31.10.1981 and he was adjusted in the Power Development Department (PDD) figuring at Serial No. 92 of the said Order. In the similar manner, Shiv Dev Singh Jasrotia- Respondent No. 2 herein was also appointed as Sectional Officer (Civil) in the Power Development Department (PDD) on 02.12.1982 and he was also adjusted in Seva Hydel Project.

b) In the year 1985, the Respondent No. 1 was transferred from Power Development Department (PDD) to Public Health Engineering (PHE) as

both these Departments were falling under the Hydraulic Wing and constitute the same cadre and service as the persons from one service could be transferred to the other. Similarly, the persons working in PDD and Hydraulic Wing constitute one service under the PWD and were having the same seniority and the posts were interchangeable from one service to the other which continued till the year 1992. In the same manner, the Respondent No. 2 was posted as Junior Engineer from PDD to Irrigation Department, RB Circle, Leh as a part of his frontier service which is compulsory for every employee in his service career.

c) On 10.03.1989, a combined tentative Seniority List of Sectional Officers of PDD and Hydraulic Wing was issued by the PDD in which all the SOs/JEs were included and most of the similarly situated Junior Engineers have been shown senior to Respondent Nos. 1 and 2. On 16.07.1992, sanction was accorded by the Government of Jammu and Kashmir for setting up of a separate Civil and Mechanical Cadre of the PDD. Vide Government Order dated 09.12.1992, a separate seniority list of Junior Engineers of PDD was issued ignoring the fact that the Respondents herein were still holding their lien on the post in their parental department i.e. PDD.

d) Being aggrieved of the same, the respondents herein filed Writ Petition being SWP No. 1528 of 2001 for inclusion of their names in the final seniority list of SOs/JEs (Civil) in the Power Development Department which was issued in the year 1992. During the pendency of the said writ petition, the Division Bench of the same High Court had passed final order dated 14.10.2004 in SWP No. 2191/2002 titled Ashok Kumar Raina vs. State through PDD Ors and in LPA (SW) 73 of 2003 and LPA (SW) 210 of 2003 filed by the already promoted Junior Engineers wherein it was directed to include the petitioner therein in the Seniority List of Junior Engineers (Civil) PDD issued on 09.12.1992 and in all subsequent lists with all consequential relief of promotions etc.

e) On 14.11.2007, the High Court passed an order in SWP 1528 of 2001 directing the respondents therein to accord consideration to the cases of the respondents herein in the light of the judgment dated 14.10.2004, namely, Ashok Kumar Raina (supra). The respondents herein made representation but despite the same the respondents therein failed to implement the said judgment and their claim has been rejected on the ground that the cadre of JEs (Civil) in PDD has been closed since 24.09.2007.

f) Being aggrieved, respondents herein filed Contempt Petition bearing No. 112 of 2009 in SWP No. 1528 of 2001 for non-compliance of order dated 14.11.2007. By order dated 05.02.2010, the High Court granted last and final opportunity to the State to reply compliance of the order dated 14.11.2007. On 29.04.2010, the State filed a Compliance Report rejecting the consideration of the respondents herein. By order dated 20.05.2010, the High Court, after observing that the Compliance Report filed by the State is not in consonance with the directions issued earlier, directed to file a better affidavit/Compliance Report by showing the names of the respondents herein in the Seniority List.

g) Against the order dated 20.05.2010, the State filed APLPA No. 22 of 2010 before the High Court. Vide order dated 18.10.2010, the High Court dismissed the said appeal. The State again filed an appeal being APLPA No. 23 of 2010 challenging the said order. The Division Bench of the High Court, by order dated 08.12.2010, dismissed the appeal as not maintainable.

h) Aggrieved by the said decision, the State has filed these SLPs.

3. Heard Mr. Gaurav Pachnanda, learned Senior Addl. Advocate General and Ms. Indu Malhotra, learned senior counsel for the respondents.

4. Though learned Senior Addl. Advocate General appearing for the State as well as the contesting respondents advanced arguments about the maintainability of the appeal against the order passed under Section 19(1) of the Contempt of Courts Act, 1971 in view of the fact that the main contempt petition itself is pending on the file of the learned single Judge of the High Court, reserving the legal question about the maintainability of appeal to be considered in an appropriate case, we feel that the ends of justice would be met by asking the High Court to dispose of the main contempt petition. Hence, we request the learned single Judge to dispose of the main contempt petition being Contempt Petition No. 112 of 2009 in SWP No. 1528 of 2001 one way or the other on merits, after affording opportunity to all the parties concerned preferably before 30.04.2012.

5. It is made clear that we have not expressed anything on the merits of the claim of both the parties.

6. With the above direction, the SLPs are disposed of.