

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 08.11.2024
Pronounced on. 26.11.2024**

**CPSW No. 668/2018 in
SWP No. 360/2017**

Rajinder Kumar and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Adv. with
Mr. Ankesh Chandel, Advocate

vs

Dr. Piyush Singla, Commissioner/
Secretary, Revenue Department and
another

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The writ petition filed by the petitioners bearing SWP No. 360/2017 was disposed of vide judgment dated 18.08.2018 with the following directions:

“Therefore, in view of what has been discussed above, I deem it proper to allow the writ petition. Accordingly, the writ petition is allowed and the respondents are directed to consider and issue appointment orders in favour of petitioners selecting/appointing them as Naib Tehsildars and shall be given all the service benefits including seniority from the date other similarly situated candidates have been selected and appointed as Naib Tehsildars. In case of those of the petitioners who might have crossed the upper age limit for entering into Government services, it shall be deemed that relaxation is granted in the upper age limit. It is further directed that in the seniority the petitioners herein be placed over and above the 29 selected ineligible candidates, who were appointed by relaxation of rules that too after the end of selection process. However, it is made clear that although the petitioners herein shall be entitled to all consequential benefits including seniority etc., however, they will not be entitled to any monetary benefit for the period between appointment of selected candidates pursuant to the notifications-in-question and till the date of appointments of

petitioners herein. If as on today there are no posts of Naib Tehsildars available, respondents are directed to create supernumerary posts for the petitioners. Let the relevant orders be issued within a period of eight weeks from today. It is made clear that if the respondents fail to appoint the petitioners against the post of Naib Tehsildars within a period of eight weeks from today, the selection of 29 ineligible candidates shall stand quashed forthwith and, thereafter, they shall not be disbursed with their salaries etc. Connected miscellaneous petition(s), if any pending, accordingly, stands disposed of.”

2. The aforesaid judgment of the writ court was impugned in the appeal. The appeal along with connected appeals were disposed of by the Division Bench vide judgment dated 28.01.2022 with the following directions:

- (i) LPASWs No. 199/2017 and 200/2017 filed before Srinagar Wing of the Court as well as APSWP No.19/2016, SWP Nos. 2608/2015, 577/2016, 1103/2017, 1993/2017, 1876/2018,1980/2018 & SWP No. 2069/2018 filed before Jammu Wing of the Court shall stand dismissed.
- (ii) LPASW Nos. 176/2018, 161/2018, 169/2018 & 171/2018 filed before Jammu Wing of the Court are partly allowed. Consequently the judgment of the Writ Court dated 18.08.2018 passed in SWP No. 360/2017 to the extent it quashes the Government Order No. 158-Rev of 2016 dated 09.11.2016 and directs the official respondents to consider the appointment of the petitioners therein against the posts of Naib Tehsildars including grant of relaxation in upper age limit and to grant to them similar benefits as have been granted to the petitioners in **Inamul Haq Hajjam’s case** (supra), is upheld, whereas the directions made by the writ Court to the extent of placing the writ petitioners over and above 29 selected candidates (appellants herein) in the seniority list as well as the directions regarding quashment of their appointments and consequent stoppage of their salaries etc., are set aside.
- (iii) The appointment of the writ petitioners of SWP No. 360/2017 shall be made on any available vacancies in the cadre of Naib Tehsildars (direct quota).

3. The contempt petition was filed by the petitioners for non-compliance of the directions issued by the writ court, which was closed vide order dated 03.04.2023, after taking note of the submissions made by the learned counsel for the respondents therein that the seniority list is as per

appointment orders of the petitioners and fresh seniority list would be issued within a period of three weeks, showing the petitioners at their appropriate place below 29 selected candidates. The petitioners, subsequently, filed an application for revival of the contempt petition and the contempt petition was revived and restored to its original number on 18.11.2023.

4. In a compliance report filed by the respondents, it is stated that the seniority of the petitioners has been identified and placed at 85-A, 85-B, 85-C and 85-D vide notification dated 21.03.2024. It is contended by the petitioners that they were required to be placed immediately below 29 candidates.
5. The supplementary affidavit has been filed by the respondents stating therein that this Court cannot travel beyond the original judgment and the directions as sought by the petitioners cannot be issued in the contempt proceedings. It is further stated that the date of substantive appointments of 20 petitioners in **Inamul Haq Hajjam's** case and other clubbed matters is 30.06.2016 and the date of substantive appointments of the petitioners in the instant case is 16.03.2023. The claim of the petitioners to fix their seniority over and above the petitioners in Inamul Haq Hajjam's case is not in tune with the judgment dated 28.01.2022 passed by the Hon'ble Division Bench.
6. The petitioners have filed the response in rebuttal to the supplementary affidavit filed by the respondents stating that the action of the respondents is in utter disregard of the order dated 03.04.2023 and also contrary to it, as it was stated by the respondents that the petitioners would be placed

immediately below the 29 selected candidates and as such, the petitioners were required to be placed at serial No. 64-A onwards.

7. Mr. Sunil Sethi, learned senior counsel appearing for the petitioners has reiterated the submissions made in rebuttal to the supplementary affidavit and has placed much reliance on the order of this Court dated 03.04.2023.
8. On the contrary, Ms. Monika Kohli, learned Sr. AAG representing the respondents has argued that the petitioners cannot be placed over and above 20 candidates in **Inamul Haq Hajjam's case** and other connected matters as the date of their substantive appointments is 30.06.2016, whereas the date of substantive appointments of the petitioners is 16.03.2023. She has laid much stress that no direction was issued at any point of time to place the petitioners immediately below the 29 selected candidates and further that those 29 candidates do not figure as respondents in the present petition.
9. Heard and perused the record.
10. The main contention of the petitioners is in respect of their placement in the seniority list. The petitioners contend that they are required to be placed immediately below the candidates figuring at Sr. No. 64 onwards and they cannot be placed at Serial Nos. 85-A, 85-B, 85-C and 85-D in the select list as vide order dated 03.04.2023, the learned counsel for the respondents had stated that fresh seniority list shall be issued within a period of three months showing the petitioners below the 29 selected candidates. The contention though appears to be attractive but deserves rejection as the Hon'ble Division Bench vide judgment dated 28.01.2022, though has upheld the directions of the learned writ court to the extent of quashing of the

Government Order dated 09.11.2016 and has directed the respondents to consider the appointment of the petitioners herein against the post of Naib Tehsildars including grant of relaxation in upper age limit and to grant them similar benefits as in **Inamul Haq Hajjam's** case, but the directions issued by the writ court to the extent of placing the writ petitioners over and above 29 selected candidates in the seniority list as well as the directions regarding quashing of their appointments etc. were set aside and no directions were issued by the Hon'ble Division Bench to place the petitioners immediately below 29 selected candidates.

11. A perusal of the writ court judgment reveals that the respondents were directed to grant service benefits including seniority from the date other similar candidates were selected and appointed as Naib Tehsildars, however they were not held entitled to monetary benefits.
12. Vide Government Order dated 16.03.2023, the petitioners were appointed with effect from 20.11.2009 notionally. The claim of the petitioners for placing them immediately below the 29 selected candidates in terms of order dated 03.04.2023 cannot be accepted as this Court vide order dated 03.04.2023 after taking note of the submissions made by learned counsel for the respondents closed the contempt proceedings that the fresh seniority list shall be issued within a period of three months showing the petitioners at their appropriate place below the 29 selected candidates. There was no direction to place the petitioners immediately below the 29 selected candidates. Further 29 candidates who have been shown above the petitioners are not parties in the present petition. In fact, the petitioners

want this Court to amplify the judgment passed by the writ court as modified by the Division Bench to determine the *inter se* seniority of the selected candidates, which is impermissible as this Court while exercising contempt jurisdiction cannot go beyond the judgment, the non-compliance of which has been reported to the Court. In '**Senthur v. T.N.Public Service Commission**', (2022) 17 SCC 568, the Hon'ble Apex Court has held as under:

15. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order.

(emphasis added)

13. Viewed thus, this Court is of the considered view that there is no deliberate non-compliance of the judgment on the part of the respondents. Accordingly, the contempt proceedings are closed, leaving it open to the petitioners to avail appropriate remedy as available under law, if so advised.

(RAJNESH OSWAL)
JUDGE

Jammu:
26.11.2024
Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No