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Government of Jammu and Kashmir
Department of Law, Justice and Parliamentary Affairs
Civil Secretariat, Srinagar/Jammu.

Subject:- OA NO. 061/566/2020, titled Rajni Bala V/s. Shri Achal Sethi, Secretary to Government, Department of Law Justice and Parliamentary Affairs.

GOVERNMENT ORDER NO: - 3081- LD(Lit)2021/15/Law-CAT

DATED: 06- 04 - 2021.

Whereas, the petitioner has filed OA No 566/2020 titled *Rajni Bala Vs Shri Achal Sethi, Secretary to Government , Department of Law Justice and P.A* before the Central Administrative Tribunal, at Jammu . The Hon'ble Tribunal vide its order dated 27.08.2020 has disposed of the said OA No 061/566/2020 with the following direction.

“Respondents are directed to decide representation dated 07.07.2020 filed by the applicant by passing a reasoned and speaking order within one month from the date of receipt of this order.”;

Whereas, the petitioner by virtue of representation dated 07.07.2020 is seeking notional seniority at par with other candidates who have been appointed in terms of Jammu and Kashmir Service Selection Board (JKSSB) advertisement notification No 01 of 2011 dated 31.01.2011 with all consequential benefits and further allow due consideration to her for promotion as per seniority and merit.;

Whereas, the petitioner along with other candidates applied against one (01) post of Legal Assistant under SC category advertised by JKSSB vide advertisement notification No 01 of 2011. Against the said post of Legal Assistant, the Jammu and Kashmir Service Selection Board vide communication no. SSB/Sel/Secy/011/325-28 dated 06.02.2012 recommended the name of Shri Shashi Kant Bhagat for his appointment as Legal Assistant under SC category;

Whereas, the petitioner, who was next in the merit under SC category challenged the selection and appointment of Shri Shashi Kant Bhagat in SWP No 201/2012 before the Hon'ble High Court at Jammu which came to be disposed of vide Order dated 27.04.2017, the operative part of which reads as under:-

“ This court by an Ad Interim Order dated 15th or March, 2013 directed the respondent No. 3 to apprise this Court that if the marks awarded to respondent No. 4 for LLM Degree which was obtained by him from the Foreign University are deducted, what would be the merit position. Thereupon, respondent No. 3 filed a supplementary affidavit along with the merit position, in which the petitioner was placed at serial No. 1 in the merit list and the merit list of respondent No. 4 was shown to have secured 39.74 marks, it is evident that he was ineligible to be called for interview.

In view of the submissions made by the learned counsel for the parties and in the facts of the case this writ petition is disposed off with a direction that in case the petitioner is more meritorious candidate under the SC category for the aforesaid post after excluding respondent

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No. 4 or any other candidate her case shall be recommended by the respondent No. 3 to respondent No. 2 within a period of one month from today.”;

Whereas, the matter was examined in this Department in compliance to the Hon'ble High Court order dated 27.04.2017 passed in SWP No 201/2012 titled Rajni Bala Vs State and Ors read with recommendation of Service Selection Board dated 18.09.2017 and it was found that Shri. Shashi Kant Bhagat has already resigned from the post of Legal Assistant and that said post was then unfilled and against that post the candidature of Smt. Rajni Bala could be considered after treating the selection and consequent appointment of Mr. Shashi Kant Bhagat as void ab-intio. Accordingly, vide Government Order No. 02-LD(Estt) of 2018 dated 01.01.2018 Smt. Rajni Bala was appointed as Legal Assistant under SC category against the post previously held by Sh. Shashi Kant Bhagat ;

Whereas, the petitioner seeks his/her placement in seniority list with effect from the date the other candidates came to be appointed in terms of advertisement notification No 01 of 2011, dated 31.01.2011 with all consequential benefits in terms of rule 24 of the Jammu and Kashmir Classification, Control, Appeal rules as well as on the analogy of other employee namely Narjees Nawab;

Whereas, the case of petitioner cannot be equated with case of Ms Narjees Nawab, as the facts and circumstances of the two cases are distinguishable. In case of Ms Narjees Nawab, one post of Assistant Legal Remembrancer/Public Law Officer (ALR/PLO), was kept reserved in terms of High Court order dated 08.10.2013, passed by Division Bench in LPA No 177/2013 titled Ms Narjees Nawab Vs State and Others. The incumbent Narjees Nawab was appointed against the post so reserved in terms of the court order and hence, the appointment was also given notional effect from that date and her seniority is yet to be determined and notified. However in case of the petitioner one candidate namely Shashi Kant Bhagat has already worked against the said post and the same was not vacant from the inception;

Whereas, Rule 24 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, deals with the fixation of seniority and provides as under;

“24. Seniority.- (1) The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.”

Whereas, rule 24 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, expressly provides that the seniority shall be determined from the date of first appointment. The petitioner in the instant case has been appointed on 01.01.2018, as such her seniority would be reckoned from that date only. Her appointment cannot be antedated or given retrospective effect from a date when she was not even born in service. More so the petitioner's claim for appointment fructified only when Service Selection Board vide its letter dated 18.09.2017 recommended her name for appointment. The appointment of the petitioner has followed the recommendations of the SSB and the same were prospective, as such the petitioner has no right or claim, to seek ante-dating of her appointment. The petitioner has accepted the appointment order and its contents which clearly provide that the same was prospective; as such the petitioner is now stopped to challenge the same.

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Whereas, the similar issue i.e whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter came before the Apex Court in *Suraj Parkash Gupta vs. State of J&K*, AIR 2000 SC 2386, the Apex Court in Para 4 of the judgment held that a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from the date when he was not born in the service.

Now, therefore, in view of aforesaid factual and legal position, the claim of the petitioner Smt. Rajni Bala has been considered in deference to directions passed by Hon'ble Tribunal vide order dated 27.08.2020 in OA NO. 061/566/2020, titled Rajni Bala Vs. Shri Achal Sethi, Secretary to Government, Department of Law Justice and parliamentary Affairs and has been found that the same is devoid of merit and not covered under relevant rules and orders passed from time to time in this regard

Sd/-
(Achal Sethi)

Secretary to Government
Department of Law, Justice and Parliamentary Affairs

No: LD(Lit) 2021/15-Law/CAT

Dated: 06 - 04-2021

Copy to the:

1. Learned Advocate General, J&K Jammu.
2. Principal Secretary to the Hon'ble Lieutenant Governor.
3. Commissioner/Secretary to Government, General Administration Department.
4. Registrar General, J&K High Court, Jammu.
5. Registrar General, Central Administrative Tribunal, Jammu.
6. Director Information, J&K, Jammu.
7. Director Litigation, Jammu.
8. Private Secretary to Chief Secretary for information of the Chief Secretary.
9. Private Secretary to Secretary, Law, Justice and Parliamentary Affairs for information of the Secretary.
10. Smt. Rajni Bala, Legal Assistant for information
11. Mohd Yasir Akhoun, Advocate , High Court jammu & Kashmir, Jammu.
- ✓ 12. Incharge Website, Department of Law, Justice and Parliamentary Affairs.
13. Government Order file.
14. Concerned file.

Deputy Secretary
06.04.21

Assistant Legal Remembrancer
Department of Law, Justice and Parliamentary Affairs

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