

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

WP(C) No. 2631/2024

UT of J&K and others

.....Appellants

Through: Mrs. Monika Kohli, Sr. AAG for appellants
No. 1 to 3 & 6
Mr. Bhannu Jasrotia, GA for appellants No. 4
& 5.

Vs

Seema Koul and anr.

..... Respondent(s)

Through: Mr. Bimal Roy Jad, Sr. Advocate with
Mrs. Meenakshi Salathia Kaur, Assisting
counsel for R-2
Mrs. Veenue Gupta, Advocate for R-1

**Coram: HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT

11.11.2024

(Atul Sreedharan-J)

(Oral)

1. The present writ petition has been filed by the appellants/Union Territory of J&K being aggrieved by order dated 16.05.2024 delivered by learned Central Administrative Tribunal, Jammu Bench, Jammu (Tribunal, for short) in Transferred Application Nos. 61/3608/2020 and 61/3535/2020, vide which, learned Tribunal had allowed the aforesaid Transferred applications filed by the respondents herein and directed the UT of J&K/Government to release the appointment orders in favour of the respondents herein.

Brief facts of the case are as follows:

2. Respondents herein, who are Seema Koul and Vishalni Koul, had filed writ petitions before the Single Bench of this Court being SWP Nos. 2403/2018 and 1918/2018, which were transferred to learned CAT and re-numbered as hereinabove. As the crux of the case in both the matters was same, it came to be disposed of by the common impugned order. The grievance disclosed by the respondents herein is that their names having figured in the provisional select list of candidates issued by J&K Service Selection Board (JKSSRB) to the post of Legal Assistant in the Department of Disaster Management Relief, Rehabilitation and Re-construction under the PM Package for Kashmiri Migrants, pursuant to Advertisement Notice No. 04/2017/149 dated 01.12.2017, were removed from the final selection list on the ground that respondents have lost their migrants status having married non-migrant persons before applying for the post of Legal Assistant.

3. Undisputedly, respondents belong to Kashmiri Pandit community and they along with their families were compelled to migrate to Jammu from the Kashmir Valley during the onset of militancy after 1989. Respondents were issued migrant certificates on 22.12.2010 and 05.02.2010 by the Relief and Rehabilitation Commissioner (M), Jammu. Respondents further stated that the Government vide Notification No. SRO 412 of 2009 dated 30.12.2009 formulated the J&K Migrants (Special Drive) Recruitment Rules, 2009, vide which, the persons who were covered within the definition of "Migrants" were to be considered for appointment to the posts created in Kashmir Valley. It was also the case of the respondents before learned Tribunal that they fell under the definition of "Migrant" which entitled them to all benefits under the aforesaid Recruitment Rules, notwithstanding the fact that they had got

married to non-migrant persons before applying for the post in question, as their status as Migrants did not change under the rules.

4. Before the select list could be given effect to, private respondents, namely, Komal Pandita and Sumit Bhat before learned Tribunal, who were in the waiting list, represented that respondents herein do not fall in the category of Migrants having married non-migrants. It was thus disclosed in the representation that husbands of the respondents, being non-migrants, they lost their status of Migrant under SRO no. 412.

5. The case of the appellants herein, before learned Tribunal, was that as per the Advertisement/notice calling for application to the post in question, only a married woman eligible under SRO No. 412 of 2009 could apply for a job in the permanent district of residence of her husband in Kashmir. In other words, the case put up by the appellants herein before learned Tribunal was that a migrant woman was eligible to apply and be considered for the said post in case:

- a. she was unmarried;
- b. she was married to another migrant, in that case she would become eligible for securing a job in the district from which her husband was a migrant; and
- c. she married a non-migrant, she become ineligible to be considered as a migrant any longer which would enable her to seek a job in the District from where she or her ancestors possessed immovable property.

6. Before this Court, the appellants have taken a plea that there was concealment of the fact by the respondents herein that they were married which would result in their disqualification. Learned counsels for the respondents, on the other hand, have argued that status of the respondents, as

a migrant, does not get obliterated only on account of their marriage to non-migrants. It is further argued that taking such a view would be violative of Articles 14 and 16 of the Constitution as a migrant male would still continue to have his migrant status even if he married a non-migrant female.

7. Heard learned counsel for the parties and perused the impugned order passed by learned Tribunal.

8. In paragraph 18, learned Tribunal has referred to the meaning of a Migrant as defined in SRO 412 in clause 2(d)(i)(ii). As per the said provision, a migrant was a person who had migrated from Kashmir Valley after 01.11.1989 and was registered with the Relief Commissioner or where he/she was not registered on the ground of him/her being in the service of Government in any moving office or such person having left the valley or any other part of the State in pursuit of occupation or vocation or otherwise, and is possessed of immovable property at the place from where the person has migrated, but is unable to ordinary reside on account of the disturbed conditions there. An explanation also provides that for the purpose of the clause, migrant is an internally displaced person would mean someone who had to migrate within Valley from her/her original place of residence in Kashmir Valley for security reasons and is registered, as such, with Relief and Rehabilitation Commissioner, Migrants.

9. In Paragraphs 20 and 21, learned Tribunal has considered the scope of definition of “Migrant” and has concluded that the definition does not provide for any disqualification or reversal of the status of the migrant once granted. It has also referred to judgment of **Anuj Garg and others v. Hotel Association of India and others; (2008) 3 SCC 1** wherein Hon’ble Supreme Court while dealing with matters relating to employment recognised by Article 16 held

that the right of employment itself, though not a fundamental right, every person, who is similarly situated has a fundamental right to be considered in terms of Article 14 and 16 of the Constitution. It was further held that whenever discrimination is sought to be made on the purported ground of classification, such classification must be founded on rational criteria. It also relied upon a judgment of Hon'ble Supreme Court in case titled **Union of India and others v. Ex. Lt. Selina John [Civil Appeal No. 1990/2019 decided on 14.02.2024]** wherein Hon'ble Supreme Court, while dealing with the case of the Ex. Lt. Selina John, who was a Permanent Commissioned Officer in Military Nursing Service and was disengaged from service on the ground that she had got married, observed that such rule applicable to only women Nursing Officer was *ex facie* manifestly arbitrary and held the same to be a gender discrimination and iniquitous. Hon'ble Supreme Court further held that the acceptance of such patriarchy undermines human dignity and the right to non-discrimination and fair treatment.

10. This Court is of the opinion that order passed by learned Tribunal is just and proper. As per the definition of "Migrant" in SRO 412, it defines who a migrant is but thereafter has no provision for reversal of the status once granted. Thus, as per the said definition, a migrant was someone who was forced out of the Kashmir Valley after 1989. This factual aspect is not disputed by appellants herein. Thus, there is no cloud or doubt with regard to the migrant status that was granted to the respondents herein.

11. One question of public important that arises before this Court is whether a women who has been given a migrant status on account of the suffering endured by her and her family on account of which they were forced to leave their home and hearth in the Kashmir Valley on account of

disturbance that was rampant in the year 1989 onwards, could be discriminated and would stand to lose the said status only on account of fact that she had got married to a non-migrant? Holding thus would be going against the nature of human beings. Respondents herein, who are ladies and on account of no fault of theirs, had to leave their place of original residence in Kashmir Valley, cannot be expected to remain unmarried only to secure a job in the Kashmir Valley as a migrant. It is also reasonable to presume that because of the exodus, not every migrant woman would be in a position to find a match who himself was a migrant. In such a situation, to hold that the woman would lose her status as a migrant only because she, out of the natural urge of forming a family, had to marry a non-migrant on account of existing circumstances, would be grossly discriminatory and militates against the very concept of justice. This discrimination becomes even more brazen where a male migrant continues to remain a migrant notwithstanding the fact that he has married a non-migrant. Such a situation has arisen only on account of patriarchy that prevails in the human race. However, in matters relating to employment under the State/UT, such discrimination cannot be countenanced.

12. As regards, the contention put forth by learned counsel for the appellant that there was non-disclosure/concealment of the fact that the respondents were married, is of no consequence. Undisputedly, the Advertisement notice does not provide for cancellation of the candidature on account of non-disclosure or improper disclosure of facts/marital status. Further, the appellants have not been able to show how material injustice has been taken place to those who could not get selected otherwise on account of such non-disclosure. Therefore, this argument is also rejected.

13. In view of what has been argued and considered and held hereinabove by this court writ petition fails and is, accordingly, dismissed. The appointment orders shall be given by the authority concerned to the respondents herein within a period of four weeks from the date of uploading of this order on the website.

(Mohd. Yousuf Wani)
Judge

(Atul Sreedharan)
Judge

Jammu
11.11.2024
Paramjeet

