
(1998) 03 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 559 of 1998

Aijaz Hussain Shah

APPELLANT

Vs

Director Health Services, Jammu

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Citation : (1998) 2 SCT 343

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.K. Anand, M.U. Salaria, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Counsels heard.

2. With the consent of the parties, the petition is taken up for final disposal.

3. The petitioner submits that posst of Health Educators were notified. These came to be notified vide annexure PB. In all there were 12 posts.

The qualifications for these was post graduation.

4. The petitioner submits that even though he was postgraduate, he was not given the appointment. Grievance is that the appointments have been made in favour of persons not possessing the requisite qualification.

5. This petition is pending in this court for almost ten years, objections have not been filed.

6. Under these circumstances following directions are given:

(i) That the writ petition would be treated as a representation.

(ii) The assertion of the petitioner that he was the only person possessing postgraduation qualification would be taken note of.

(iii) The further assertion made by the petitioner that persons who were not

qualified would also be taken note of. If this assertion is correct then there was no ground to deny appointment to the petitioner.

(iv) The respondent would, therefore, take note of the grievances in the writ petition and also facts pointed out above. It would not be necessary to disturb the appointments which have already been issued.

7. The question arises as to what relief should be granted to the petitioner. The respondents authorities have not followed the procedure which they

were required to follow. The stand taken by them is that on account of the situation prevailing in the State, these emergent steps were required to

be taken. The question arises as to whether this aspect of the matter can be taken note of and whether humanitarian approach can be adopted. I

am of the opinion that it is possible to grant relief to the petitioner without upsetting the action of the respondent State in favour of the private

respondent. Guidance can be had from the observations made by the Supreme Court of India in a decision reported as H.C. Puttaswamy and

others v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, 1991(1) SCT 116. There was failure to consult the Public

Service Commission. The appointments were not proper. Appointees were, however, directed to be treated as regularly appointed on

humanitarian grounds. What was stated in para 16 of the judgment is being produced below:

The precedents apart the circumstances of this case justify an humanitarian approach and indeed the appellants seem to deserve justice ruled by

mercy. We also take note of the fact that the writ petitioners also would be appointed in the High Court as stated by learned Advocate General of

the State.

8. State would take notice of the above observations and, therefore, grant the same relief to the petitioner, as was done in case of the private

respondents.

9. This petition is disposed of in the manner indicated above. The respondents would pass the appropriate order within a period of three months.

The Registry shall also send a copy of this order to the respondents. The period of three months would begin from the date a copy of the order

passed in this court along with a copy of the writ petition and annexures thereof are made available by the petitioner or by the Registry to the

respondents. In case for any practical reasons, it is not possible to pass an appropriate order within the abovesaid period the respondent authorities

would be at liberty to seek extension of time. In that eventuality they shall have to explain each and every day's delay. The official seeking extension

shall appear in person also.

10. Disposed of accordingly.