

(1996) 10 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 347 of 1995, S.W.P. No. 401 of 1995, S.W.P. No. 306 of 1995, S.W.P. No. 202 of 1996, S.W.P. No. 1257 of 1996, S.W.P. No. 1370 of 1996

Ashok Kumar, Ramesh Singh Salathia and others

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 22-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 SCT 485

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : D.S. Chauhan, M.L. Gupta, C.M. Koul, D.K. Khajuria, P. Kohli,
Advocates appearing for the Parties

Judgement

B.A. Khan, J.—All these petitions are disposed of by a common judgment. The first three writ petitions, SWPs. No. 347/95, 306/95 and

401/95, challenge a circular dated 14.3.1995 which stands revoked by a subsequent Govt. Order No. 1603Edu of 1995 dated 3.8.1995 passed

by the State respondent. That has rendered all the three petitions aforesaid infructuous which shall stand dismissed as such.

2. However, in these three petitions, writ petitioners feel aggrieved of a counter action by the writ petitioners in SWPs. No 202/96, 1257/96 and

1370/96 in which in one of the petitions, petitioners have obtained stay order staying the operation of Govt. Order No. 1063Edu of 1995 dated

3.8.1995 and which had the consequence of reviving the Circular dated 14.3.1995 impugned in the first three petitions (SWPs No. 347, 106 and

401 of 1995)

3. All the writ petitions seem to be raising a controversy about nothing. Writ petitioners are teachers in the Education Department and are aspirants

for promotion to the posts of lecturer which is governed by Recruitment Rules (SRO83/92) and Jammu and Kashmir Civil Services (Classification,

Control and Appeal), Rules, 1956 (CCA Rules) and whereby seniority constitutes one of the essential factors. The mode of promotion prescribed

for the post is 50% by promotion to the post from amongst the feeding categories of Masters/Senior teachers/General line teachers alternatively.

The academic qualification prescribed is the Master's degree in the relevant subject.

4. It appears that in the face of this rule position, Staterespondent issued circular dated 14.3.1995 providing as under:

``It is hereby clarified for the information of all the concerned that the benefit of passing of post graduation by inservice masters/senior

teachers/teachers for purposes of inclusion in the list of postgraduate masters/Sr. teachers/teachers in the relevant subject would accrue to the

concerned from the date of eligibility for such inclusion viz. the date of passing of postgraduation."

The terms of the circular suggested that the seniority of the Masters/Sr. teachers/teachers would be determinable on the basis of their date of

passing of the postgraduation. This was questioned by the writ petitioners in the first three writ petitions on the plea that it contravened the mode of

determining the seniority as envisaged in the CCA Rules. It was, therefore, urged that the Staterespondent could not supersede statutory Rules by

an administrative circular.

5. It appears that this position was appreciated by the Staterespondent leading to the passing of Govt. Order No. 1063Edu of 1995 dated

3.8.1995 and revoking the earlier circular dated 14.3.1995 impugned in the first 3 petitions. The revocation proceeded on the reasoning and

opinion tendered by the Law Department, inter alia, establishing that the circular impugned was passed in contravention and breach of the statutory

rules viz. Rule 24 of the CCA Rules and Rule 10 of the Recruitment Rules (SRO83/92).

6. This should have ordinarily put an end to the controversy but that was not to be and some of the beneficiaries of circular dated 14.3.1995 which

postulated determination of seniority of Masters/Sr. Teachers/Teachers on the basis of the year of their passing of the postgraduation filed counter

petitions (SWPs 202/96, 1257/96 and 1370/96) seeking to assail the Govt. Order No. 1063Edu of 1995 dated 3.8.1995 whereby controversial

circular admittedly found to be violative of the statutory rules was rescinded. Out of these writ petitions, petitioners are represented in SWP

1370/96 by Mr. C.M. Koul who sought to defend the impugned circular dated 14.3.1995 envisaging determination of seniority of teachers on the

basis of the year of passing of postgraduation on his own hypothesis. According to him, the candidates entering the service of the Education

Department with postgraduate qualification would be more energetic and suitable for teaching as lecturers and should be regarded superior to

those who had entered the service and acquired postgraduation qualification later. The burden of his whole submission was that the seniority

amongst the feeding categories for promotion to the post of lecturer in the Education Department should be determinable on the basis of the year

of acquiring postgraduation qualification in disregard to their entry in service. In other words, he proposed the reframing of the rule for

determination of seniority of feeding categories for promotion to the post of lecturer. He did not, however, dispute that the mode prescribed in the

impugned circular dated 14.3.1995 ran in direct conflict with the mode provided for determination of seniority by the relevant rules.

7. The position that emerges in this backdrop is that the Staterespondent had already provided for the mode of determination of seniority of the

feeding categories to the post of lecturer viz. Rule 24 of CCA Rules read with Rule 10 of SRO83/92. So long as these rules are in force, seniority

is determinable in accordance with the mandate of these rules. No administrative instructions or circular providing to the contrary, can sustain and

stand in the force of the statutory rules. It is a different thing that the Staterespondent may decide to change or reframe these rules. Till then the

existing Rules would occupy the field and require implementation. That is why the Staterespondent seems to have corrected its own action by

Govt. Order No. 1063Edu of 1995 dated 3.8.1995. Therefore, it cannot be faulted. Nor can the writ petitioners in counter writ petitions (SWPs

No. 202/96, 1257/96 and 1370/96) seek enforcement of any kind of right admittedly from a bad circular.

8. In the result, I find no merit in the counter writ petitions No. SWP 1370/96 which is dismissed on merits. The other two writ petitions (SWPs Nos. 1257/96 and 202/96) are dismissed for nonprosecution. The interim stay order passed in one of these writ petitions shall also stand vacated.