

(2016) 02 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : LPASW No. 56 of 2015 and MP No. 1 of 2015

Ateeq-ul-Rehman

APPELLANT

Vs

Sandeep Sharma

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 3 JKJ 440

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Tashi Rabstan, J.

Bench : Division Bench

Advocate : Mr. Gagan Basotra, Advocate, for the Petitioner; Mr. W.S. Nargal, AAG, for the Respondent

Final Decision : Disposed Off

Judgement

1. These appeals are filed against a common order made in SWP Nos. 875/2012, 092/2012, 925/2012, 985/2012, 1177/2012, 1578/2012, 1178/2012, 1180/2012, 1060/2012, 1063/2012, 980/2012, 75/2012, 456/2012 & 395/2013, dated 15.07.2014 wherein challenge was made to

the selection made to the posts of Constable in Photography Cadre in pay Band-1 Rs. 5200-20200+1800 Grade pay plus allowance, which was

advertised by notification dated 01.03.2011.

2. Even though in the advertisement there was no mention about selection to be made district-wise and no mention about number of vacancies for

each district for selection, the selecting authority selected candidates on district wise. Aggrieved thereby, the writ petitioners preferred the writ

petitions and the learned Single Judge allowed the writ petitions holding that the post is not a district cadre post and they are transferable to other

districts and the procedure adopted by the selecting authority is in violation of

Article 14 and 16 of the Constitution of India particularly in light of judgment of Hon'ble the Supreme Court in *Radhey Shyam Singh and others v. Union of India and others* [(1997) 1 SCC 60]. After quashing the selection list drawn on the basis of merit obtained on district-wise, directed to re-frame the Select List based on merits with reference to all the vacancies to be filled up and give appointment orders. Thereafter State level select list was prepared and appellants names were not found in the select list, hence appellants have preferred these appeals against the order of the writ court contending that the selection should be district-wise and order of the writ court is wrong.

3. Hon'ble the Supreme Court in decision reported in 2006 (7) SCC 161 (*Principal, Mehar Chand Polytechnic and Anr. v. Anu Lamba and Ors.*) by relying on a earlier Constitution Bench judgment reported in (2006) 4 SCC 1 (*Secy. State of Karnataka v. Uma Devi*) held that appointments made in derogation of the equality clause contained in Articles 14 and 16 of the Constitution would be void and of no effect. In paragraph No. 14 of the decision reported in AIR 2002 SC 2877 (*Kailash Chand Sharma etc. etc. v. State of Rajasthan and others*), it is held that residence within a District or rural areas of that District and preferring a local area person for public employment is in violation of Article 16 (2) & (3) of the Constitution of India and any legislative and executive action framed or issued cannot sustain before the Court of law.

4. In light of the above referred judgments of Hon'ble the Supreme Court and the principles laid down therein being followed by the learned Single Judge, we are unable to appreciate the point raised in the appeals as the appointment to the post of Constable in Photography Cadre is a public post in government which shall be in accordance with the rights conferred under Article 14 and 16 of the Constitution of India, as said Articles are equally applicable to the State of Jammu and Kashmir under Section 10 of the Constitution of Jammu and Kashmir, therefore we find no reason to interfere with the order of the writ court.

5. Learned counsel appearing for the appellants submits that number of vacancies available on the date of advertisement notice dated 01.03.2011 and the advertisement stated that applications are invited to fill up vacant posts without mentioning the number of vacancies. Therefore, all available

vacancies shall be filled and in case appellants are coming within the available vacancies as on 01.03.2011 as per the re-framed merit list, their claim may be considered.

6. Learned counsel for the official respondents submits that the official respondents will ascertain as to the actual number of vacancies available on the date of notification dated 01.03.2011 and in case any of the appellants is coming within the rank as per the vacancies available, their claim will

be considered. Thus, the grievance of the appellants is partially accepted. The said exercise is directed to be completed within a period of eight

weeks from the date a copy of this order is served on the official respondents.

7. All the appeals are disposed of.

8. The appeal filed by one Riyaz Ahmed Mir and five others against the same judgment along with an application to condone delay is also disposed

in above terms at the condone delay stage.