

(2014) 03 J&K CK 0050

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 373 Of 2009, CMA Nos. 491 Of 2009, 1846/2011, CMA No. 282 Of 2009 in Service Writ Petition (SWP) No. 236 Of 2009, CMA Nos. 548 Of 2009, 1848/2011, CMA No. 484 Of 2009 in Service Writ Petition (SWP) No. 367 Of 2009, Servi

Bhavneet Singh and Others APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 4 JKJ 123

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : Sunil Sehti, Sr. Advocate, Ravi Abrol, Sumit Nayyar, Abhinav Sharma, S.K. Shukla, Aruna Thakur, Ashok Parihar and R.S. Parihar, Advocates for the Appellant; Gagan Basotra, Sr. A.A.G., Vipin Gandotra and M.P. Sharma, Advocates for the Respondent

Judgement

Mohammad Yaqoob Mir, J.—Issue for determination in the batch of above numbered writ petitions is identical, therefore, are clubbed

together for disposal. For appreciating the matter in its right perspective, factual matrix has to be noticed precisely:

i. In the year 2003, an advertisement notice was issued inviting applications for the posts of Sub Inspectors in J & K Police but the process of

selection could not commence up to year 2007. In the year 2007 fresh advertisement notice was issued, in which from amongst the conditions,

condition No. 3 reads as under:-

The candidates who had applied earlier for the post of Sub Inspector in J & K Police in response to PHQ Advertisement issued under endst. No.

Estt/Computer-03/2003-25736-76 dated 19.05.2003 need not to apply again. In

case any of these candidates has crossed upper age limit, his age will be reckoned from the date he has applied earlier as per the said advertisement notice.

ii. Again the process of selection could not commence. In the year 2009, four advertisement notices have been issued for filling up the posts of Sub

Inspectors in (1) Executive Wing, (2) Armed Wing, (3) Auxiliary Wing and (4) Telecommunication Wing of J & K Police.

iii. Writ petitioners had crossed the age limit as prescribed, their applications could not be received, therefore, have filed these writ petitions

alleging therein that it is the inaction of the respondents that the process of selection initiated pursuant to advertisement notice issued in the year

2003 followed by one issued in the year 2007 has not been finalized, as such, they cannot be denied the right to participate in the process as

initiated in the year 2009 on the count of not being within the prescribed age limit.

iv. In almost all the writ petitions interim direction has been granted, in pursuance whereof, application forms of all the writ petitioners were

entertained and were admitted to selection process. During pendency of the writ petitions, the result of all writ petitioners has been produced,

some have made the grade and some have failed. Vis-a-vis writ petitioners who could not make the grade, writ petitions stand dismissed.

v. It is during the pendency of writ petitions, respondents have produced two notices, dated 10.07.2008 and 01.07.2008, in terms whereof,

advertisement dated 19.05.2003 and 17.02.2007 have been withdrawn. Faced with such situation, the writ petitioners, after grant of leave, have

filed the amended writ petitions questioning the validity of the said notices.

vi. In the year 1999, process of selection for the posts of Sub Inspectors (Executive) In J & K Police was initiated. Same culminated into selection

of 259 candidates, the merit list was drawn at Divisional level, same was challenged by medium of various writ petitions on the ground that the Sub

Inspector is a "'State cadre post', therefore, merit list should have been drawn at State level. The writ petitions were allowed, LPAs filed were

dismissed and finally SLPs filed before the Hon'ble Apex Court were dismissed vide judgment dated 10.02.2004. State had been given three

months time to implement the judgment. In compliance whereof, merit list at

""State level"" was re-drawn, in the process, 54 candidates got included to the exclusion of 47 candidates. The said 47 candidates challenged their exclusion and side by side other 22 candidates claimed benefit at par with 54 candidates as were included.

vii. Finally, the matter was settled in the Hon'ble Apex Court as in the case of Tanvir Hussain Wani & others v. S.D. Singh & others (Civil Appeal

No. 4758 of 2006), then learned Advocate General had made a submission that all 47 candidates who are likely to go out of job and 22

respondents as impleaded will be accommodated. He had further submitted that all the above 47 candidates who were selected and appointed and

are presently working will be allowed to continue. It is on the terms of said statement, the appeal was disposed of.

viii. In compliance thereto, the position of 47 candidates was not disturbed. In addition thereto, other aforesaid 22 candidates were also appointed

vide order No. 685 of 2005 dated 23.02.2008.

2. Learned Sr. AAG, Mr. Gagan Basotra, would submit that as against the posts advertised in the year 2003 and 2007, in compliance to the order

of the Hon'ble Supreme Court, 47+22 candidates in excess of what were advertised in the year 1999 were adjusted, as a result thereof no

vacancy remained available for selection. It is in the same background said two advertisement notices were withdrawn vide two notices dated

10.07.2008 and 01.07.2008, therefore, writ petitioners have no right on the basis of said two advertisement notices.

3. During the course of hearing, learned Sr. AAG was pointedly asked as to what was the number of posts advertised in the year 2003 and 2007

because in the advertisement notices number of vacancies was not given. In case only 69 vacancies were available, then no vacancy could remain

available in view of adjustment of $47+22=69$ candidates in compliance to the orders of the Hon'ble Apex Court. In case some posts were

available in excess thereto, against those posts petitioners had a right to compete and while issuing notice in the year 2009, the condition as

incorporated in the advertisement notice of the year 2007, as quoted above, should have been incorporated so as to protect the interests of the

writ petitioners. In the same background, learned AAG was directed to produce the record, which has been produced.

4. The perusal of the said record would reveal that while noticing the position of advertisement notice of the year 2003 and the vacancy position in

the year 2006, the exact number of vacancies of Sub Inspectors for direct recruitment in Armed as well as Executive Police has been worked out

as:

1. Executive Police = 113

2. Armed Police = 17

Decision was taken to issue fresh advertisement notice for the said posts with a condition that the candidates who had applied in response to

advertisement notice of 2003 need not to apply afresh. It is in the same background, advertisement notice was issued in the year 2007 wherein

specific condition No. 3 as quoted above was incorporated protecting the position of the candidates who had applied in pursuance to

advertisement notice of 2003. Their age was to reckon from the date they had applied earlier. (Xerox copy of the pages containing Note Nos.

258,259 available on record to be made part of the file).

5. Again the process remained as it is. In the meantime while making reference to vacancy position, again in a note it is recorded that an

advertisement notice has been issued in the year 2003 for filling up 14 posts. Then in the month of December, 2006, vacancy position is shown to

have been reviewed and 37 clear vacancies were available and a decision was taken to advertise the said vacancies but then with the adjustment of

22 candidates in compliance to order of the Hon'ble Supreme Court, it had been decided that in view of non-availability of vacancies, two

advertisement notices of the year 2003 and 2007 shall be withdrawn and were withdrawn accordingly. (Xerox copy of the pages containing Note

Nos. 374, 375, 376 and 377 to be placed on the file).

6. Here again an important situation has emerged that in the records when decision was taken to re-advertise the posts in the year 2006, in the

note 130 vacancies (113 in Executive Police and 17 in Armed Police) were shown available. Then again in the year 2006 itself, it is recorded 'only

37 vacancies are available as against which aforesaid 22 candidates have to be adjusted.' Even if this situation is taken correct that in the year

2006 only 37 clear vacancies were available whereas 22 candidates were adjusted as against those vacancies in pursuance to the order of the

Hon'ble Apex Court, still 15 vacancies were available, as against those writ petitioners had ever right to compete. In the advertisement notice

issued in the year 2009 a condition should have been incorporated so as to provide protection to the candidates, i.e., their age would reckon with

effect from the date of earlier advertisement notice of the year 2007. Instead, earlier two advertisement notices were withdrawn.

7. The vacancy position initially in the year 2006, as emerge from the records, was worked out as 130 posts. Then in order to create some

confusion on adjustment of 22 candidates, respondents again in the year 2006 itself have recorded that only 37 vacancies were available. As

against those 37, 22 candidates were adjusted. In both the cases, if the position, as worked out in the beginning of the year 2006, more vacancies

than 69 were available. Even if the position of later part of the year 2006 is taken to be true, still out of clear 37 vacancies after adjusting 22

candidates in pursuance to the orders of the Hon'ble Apex Court, 15 vacancies were available. Therefore, it is clear that the advertisement notice

of 2007 would survive as against 15 vacancies so should not have been withdrawn.

8. Now the question for consideration is as to what is the relief to be granted to the writ petitioners. Since the writ petitioners under the orders of

the Court have been permitted to participate in the selection process, after participation some have failed and some on making the grade have been

selected. The only relief which is now open to be granted legally is that the writ petitioners, who after participation in pursuance to advertisement

notice of the year 2009 have made the grade and are shown selected, shall have to be considered for appointment by reckoning their age for the

purposes of being eligible, as it was in the year 2007 i.e., the date of earlier advertisement notice or in alternative they deserve relaxation of age for

appointment. In both cases, in the stated facts and circumstances, interests of justice demand for their appointment. Respondents-State, as such, is

directed to consider appointment of selected writ petitioners, mentioned below, after satisfaction of requisite norms, within a period of six weeks

from the date copy of this order is served upon respondents:

a. Avtar Krishan S/o. Rattan Lal R/O Bhatyari Bishnah A/P H/No. 270 Sec-F Sainik Colony, Jammu (SWP No. 373/2009)

b. Lalit Kumar Sharma S/o. Daya Ram R/O Mast Garh Jammu (SWP No. 322/2009)

c. Rakesh Bandral S/o. Vash Dev Singh Bandral R/O Jandrore Ram Nagar Udhampur (SWP No. 322/2009)

d. Ayub Khan S/o. Mohammad Shafi Khan R/O Pali H. No. 318 Bharat Nagar Rehari Colony Jammu (SWP No. 367/2009)

e. Ranjit Singh S/o. Mohan Singh R/O Channu Chak A/P Lower Shiv Nagar Jammu (SWP No. 236/2009)

f. Vishal Kumar S/o. Rajinder Parshad R/O Panjtirthi Jammu (SWP No. 236/2009)

g. Paramjit Singh S/o. Tara Singh R/O Gobind Nagar Udhampur (SWP No. 904/2009)

9. In CMA No. 1848/2011 arising out of writ petition No. 236/2009, the candidates who were figuring in the wait list stand impleaded as

party/respondents. Learned counsel appearing on their behalf, Mr. Vipin Gandotra, had projected that the respondents of their own have reserved

certain posts in view of pendency of these writ petitions, therefore, they were not considered for appointment. It is made clear that only 7 (seven)

writ petitioners named above are required to be considered for appointment. Along side them, the candidates who, in order of merit were to be

selected and appointed, shall also be considered as against other remaining out of reserved vacancies.

10. All the writ petitions shall accordingly stand disposed of along with connected CMAs. Record as produced be returned to the learned Sr.

AAG after retaining the Xerox copies of the pages containing Note Nos. 258, 259, 374, 375, 376 and 377, which shall form part of the writ

records.