
(1994) 11 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : S.W. Petition No. 1236 of 1994

Chander Kiran

APPELLANT

Vs

State of jammu and Kashmir

RESPONDENT

Date of Decision : 07-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Section 103

Citation : (1995) 2 SCT 775

Hon'ble Judges : M.Ramakrishna, C.J

Bench : Single Bench

Advocate : D.S. Chauhan, Surinder Kaur, Advocates appearing for the Parties

Judgement

M. Ramakrishna, C.J.—This is a writ petition presented under Article 226 of the Constitution of India read with Section 103 of the

Constitution of J&K State, seeking for a writ of mandamus directing respondent No.2 to appoint the writ petitioner to the post of Library Assistant

on the basis of instructions, given by him on April 7, 1993 on the representation made by the writ petitioner seeking for a job, as is found at page

12 in Annexure P7 appended to the writ petition.

2. I have heard the learned counsel for the petitioner and perused the grounds taken as well as the documents/evidence produced in support of the

writ petition. The legal contention urged by the petitioner in support of her writ petition is that since she was able to persue respondent No.2

pointing out that there was a vacancy of the post of Library Assistant available in the Education Department, he (respondent No.2) issued

instructions to the concerbed authority, directing to appoint the writ petitioner against the available vacancy for a period of 89 days, as is found on

the representation made by the writ petitioner addressed to the Deputy Commissioner, Jammu (respondent No.2), as per Annexure P7 to the writ petition. That being so, as there was some delay on the part of the Authority concerned in processing the papers since, the writ petitioner as on today having been age barred, the writ petitioner submits that the court may take a lenient view and to allow the writ petition directing respondent No.2 to provide her a job.

3. The learned counsel for the respondent, however, submits that it was open to the petitioner on fully knowing well that according to the date of her birth being May 7, 1958 though as on the date the Deputy Commissioner, Jammu had issued instructions on April 7, 1993, the petitioner has failed to pursue the authority concerned to obtain an order of appointment from the competent authority, inasmuch as, according to the learned counsel for the respondents, the Deputy Commissioner, Jammu (respondent No.2) was not himself competent to issue an order of appointment in favour of the petitioner. Therefore, the learned counsel for the respondents submits that the writ petition deserves to be dismissed on account of delay and laches.

4. By a careful consideration of the writ petition as well as the documents/ evidence produced in its support, it is very unfortunate that though the writ petitioner was qualified for being appointed as a Library Assistant, indeed the Deputy Commissioner, Jammu (respondent No.2) having considered the request so, made by the petitioner, the concerned authority has failed to act upon the instructions given by the Deputy Commissioner, Jammu to appoint the petitioner against the available vacancy for a period of 89 days.

5. Had the authority concerned acted upon the instructions given by the Deputy Commissioner, Jammu on April 7, 1993, perhaps the writ petitioner would have been able to obtain a job. But as on today, the petitioner having been over aged, having attained the upper age limit, prescribed for appointment in Government service, it is not possible to accede to the contention of the petitioner that this court may consider her case after taking a lenient view in the age bar and to issue a writ of mandamus, as prayed for by her in her writ petition.

6. At the very outset, it is made clear that the Deputy Commissioner, Jammu, not

being a competent authority under the relevant regulations or the rules, has appointed the writ petitioner to the post of Library Assistant on ad hoc basis that too for a period of 89 days. It is only when the competent authority under the rules having passed an order appointing the writ petitioner to the post of Library Assistant, her right would accrue in her favour in which event it was proper for her to approach this court under Article 226 of the Constitution of India. In the present case, unfortunately, no such order has been passed by the authority concerned in favour of the writ petitioner. That being so, it is not possible for this court to come to the aid of the writ petitioner. However, it is open to the competent authority to provide any job to the writ petitioner regard being had to her qualification where the upper age limit would not come in her way.

7. With the above observations, this writ petition stands dismissed.

8. Petition dismissed.