

(1996) 12 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : S.W.P. 32/89

G.N.Mullick & Anr.

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1997) KashLJ 105 : (1997) SriLJ 65

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

Bench : Single Bench

Advocate : J.S.Kotwal, A.Kapoor, Advocates appearing for the Parties

Judgement

Petitioners, Head Assistants in the Sheep Husbandry Department, feel aggrieved of the promotion of the private respondent Nos. to the post of

Section Officer. Their complaint is that they were ignored for promotion despite being senior and respondent No. 3 was promoted by order dated

290489 on the basis of his having undergone the Secretarial training a qualification prescribed in Schedule II appended to SRO

389/87(Recruitment Rules). They accordingly challenge the validity of this prescribed qualification and also pray for a direction to the official

respondants to promote them retrospectively from 29041989 when respondent No. 3 was promoted.

Petitioners question the validity of the prescribed qualification on the primary plea that, it was discriminatory in the nature and violative of their right

under Article 14 and 1 of the Constitution in as much as no such requirement was provided in the Recruitment Rules of any other Service for

promotion to the post of Section Officer. It is also contended that as it was not in their hands to be deputed for the requisite Secretarial Training,

for which private respondent No. 3 was so deputed by order dt. 31101984, therefore, this prescribed qualification was incapable of being acquired by them at the relevant time and they could not be deprived of promotion on this basis. Petitioners support their case by referring to the subsequent deletion of this qualification vide SRO 356/90 dt. 26121990. Their counsel Mr. Kotwal contended that the State respondent had deleted it after feeling convinced of its invalidity and that's why SRO 356/90 was passed as a curative measure. Proceeding on this premise, he argued that even though this SRO did not give the amendment any retrospective effect, this court should do so in the fact and circumstances of the case to render the petitioners eligible for promotion retrospectively. He cited 1971 JKIR 585 in support.

Respondents 1 and 2 have filed objections taking the expert stand that petitioners were ineligible for promotion as they had undergone the Secretarial training course as required under the Recruitment Rules at the relevant time. It is submitted that the prescribed qualification was inconsonance with the requirement of the post of Section Officer and was not discriminatory in any manner or violative of the petitioners' right under Article 14 & 16 of the Constitution. The seniority claim of the petitioner vis-à-vis private respondent No. 3, however, is not disputed.

In this backdrop, two issues fall for examination viz. (i) whether the prescribed qualification of Secretariat training was discriminatory in any manner and (ii) whether its subsequent deletion through SRO 356/90 could be given retrospective effect by the court.

It is no more res integra that it is the employer's domain to lay down and prescribe a qualification for appointment to a post. A candidate for the post would have to sink or swim with this qualification. It is a different matter if the prescribed qualification is unreasonable, irrational or incapable of being acquired. Even in such cases, it would be presumed to be valid till it is struck down.

It is again the employer's province to make recruitment rules for each service taking in regard the requirement of such service. Each set of rules of one service need not be the carbon copy of the other. Nor is an employer obliged to provide for identical provision or qualifications even though the designation of the post born on such service be similar. Therefore, even when the qualification of Secretariat Training for promotion to the post

of Section Officer is not existing in the recruitment rules of any other service, it can't be said to be discriminatory to the employees of the Sheep

Husbandry Department seeking promotion to the post of Section Officer.

It is different issue all together whether the petitioners had the occasion to undergo this Secretariat training at the relevant time when private

respondent No. 3 was deputed vide order dt. 31101984. Since they had failed to express any grievance against it at the relevant time, they cannot

take this plea now. If they had felt aggrieved of their nondeputation, they should have enforced their claim for undergoing such training at the

relevant time.

Petitioners second plea that this qualification had been deleted from the rules by SRO 356/90 on realisation of its alleged illegality and as a curative

measures, is grossly presumptive to say the least. There is nothing to show that the deletion was on such account. Even if it be assumed so, the

prescribed qualification would be still valid till its deletion and any promotion to the post of Section Officer had to be governed by this.

The question of giving retrospective effect to the amended provision contained in SRO 356/90 does not arise because it is for the Rules making

authority to give it specifically wherever intended. Wherever it is not given, the rules take effect prospectively. It does not fall within the province of

the court to give any retrospective effect to the rules as it would amount to legislating by the court which is a forbidden territory.

In this view of the matter, it is not possible to hold that the prescribed qualification was invalid on any court or that its deletion subsequently vide

SRO 356/90 could take retrospective effect. As the petitioner failed to satisfy the prescribed qualification when the respondent No. 3 was

promoted, their challenge to his promotion on the basis of their seniority is untenable. They acquire a right of consideration only after deletion of

qualification on 26121996. Therefore, if any promotion was made after that date, they would be entitled to consideration, In other words, if any

promotion to the post of Section Officer stands made after 26121990, they shall also be considered for such promotion. If no such promotion was

made till date, their right of consideration would always be prospective.

The writ petition is accordingly disposed off.