

**(1999) 02 J&K CK 0005**  
**In the Jammu And Kashmir High Court**  
**Case No : L.P.A. (SW) No. 151 of 1995**

|                                       |    |            |
|---------------------------------------|----|------------|
| Hardesh Kumar and Others              | Vs | APPELLANT  |
| State of Jammu and Kashmir and Others |    | RESPONDENT |

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**Date of Decision :** 19-02-1999

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2000) 2 LLJ 626

**Hon'ble Judges :** T.S. Doabia, J; M.Y. Kawoosa, J

**Bench :** Division Bench

**Advocate :** Surinder Kour, for the Appellant; D.S. Chouhan, for the Respondent

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## Judgement

1. Library Assistants twenty one in number were to be selected in pursuance of advertisement notice No. 1/1992 dated November 3, 1992. The educational qualifications prescribed were matric and above. The selection was made. Private respondents came to be selected. Their selection was challenged by preferring a writ petition in this Court. The writ petition was dismissed. It is in these circumstances, the present appeal has been preferred under Clause 12 of the Letters Patent. The case of the appellants before the learned single Judge to this Court was that they are trained in Library Science and possess experience in the line. It was also submitted that the selection was made without any criteria or norms. The fact that respondents No. 7 and 8 who were the members of the selection committee did not take part in the proceedings and that they had not put their signatures, was also projected. It was basically suggested that the appellants had higher merits and they have been wrongly ignored. In addition to the above, an argument was raised that the Selection Committee distributed total number of posts on zone wise basis. The whole district was

divided into 15 educational zones. The system so adopted as per the appellants led to breach of Articles 14 and 16 of the Constitution. The

argument raised was that] when the selection was to be made from the District, then the entire District should have been treated as one unit and

merit should have been determined accordingly. It is stated that had the merit been determined districtwise, then the appellants would have come

high-up in the merit. This argument was negated. It was observed that the Selection Committee had adopted the right procedure. The other

lacunae pointed out were also found to be without substance. Vis-a-vis creating zones, the view expressed was that this had led to justice being

done to the various selectees. This division of District into 15 educational zones was as such upheld.

2. There can be no dispute with the proposition that it is for the concerned authority to determine as to what criteria it has to adopt in the matter of

making the selection. As such, with regard to the argument other than the creation of educational zones nothing can be said in favour of the

appellants. So far as division of District into different educational zones is concerned something can be said in favour of the appellants. In *Naresh*

*Kumar Joshi v. State of Punjab* 1982 Lab IC 498 admission was made to Patwar schools on districtwise basis. The rules provided that the

Patwaris would have districtwise seniority, districtwise cadre and districtwise candidature. It was observed that all these considerations are post

selection considerations and provide no justification for the selection to be made on districtwise basis. Reliance was placed on the decisions of the

Supreme Court reported as *Minor P. Rajendran Vs. State of Madras and Others*, , and *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of*

*Tamil Nadu and Others*, . In *Minor P. Rajendran Vs. State of Madras and Others*, , following observations were made at page 1016:

It is true that Article 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification

and the object to be achieved, even assuming that territorial classification may be a reasonable classification. The fact however that the

classification by itself is reasonable is not-enough to support it unless there is nexus between the classification and the object to be achieved.

Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional

colleges, the allocation of seats districtwise has no reasonable relation with the object to be achieved. If anything, such allocation will result in many

cases in the object being destroyed and if that is so, the classification even if reasonable, would result in discrimination, inasmuch as better qualified

candidates from one district may be rejected while less qualified candidates from other district may be admitted from either of the two sources.

3. In the later decision of *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, a similar matter was examined. The

admission had been made to the various colleges of Tamil Nadu on unitwise basis. This method was found to be contrary to Article 14 of the

Constitution.

4. In *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, , the selection of the candidates for correcting regional

imbalances was found to be invalid by making following observations at page 1979:

..... There can be no doubt that the selections made were not and could not be on the basis of that report. It must therefore be held that the

classification made for rectification of regional imbalance without identifying the areas suffering from imbalance is vague and the selections made

under this head are accordingly invalid.

5. The matter was considered recently again by the Supreme Court of India in *Ram Vijay Kumar and Others Vs. State of Bihar and Others*, .

Vacancies were all over the State. Applications were classified districtwise. The High Court of Patna came to the conclusion that all eligible

candidates have a right of consideration for their appointment in any one of the District cadres but ultimately, the relief was not granted. Matter

came before the Supreme Court. The fact that 6000 vacancies were still available was taken note of. The appointment of the candidates who were

not selected was not upset but a direction was given to consider the claims of the appellants before the Supreme Court. Thus, the districtwise

selection was not approved by the Supreme Court. The position in this case is similar. Again in *Radhey Shyam Singh and others, etc. Vs. Union of*

*India and others*, , similar view has been expressed. The observations made are as under at page 976 of LLJ:

8. There exists no nexus between the process of zonewise selection and the

object to be achieved, that is, the selection of the best candidates.

Therefore, the process of selection envisaged in the advertisement in question would lead to discriminatory results because of adopting the said

process of zonewise selection would result in the devaluation of merit at the selection examination by selecting a candidate having lesser marks

over the meritorious candidate who has secured more marks and consequently the rule of equal chance for equal marks would be violated, Such a

process would not only be against the principles enunciated in Articles 14 and 16 of the Constitution but it would also result in heartburning and

frustration amongst the young men of the country. The rule of equality of opportunity for every individual in the country is an inalienable part of the

Constitutional guarantee and that being so a candidate who secures more marks than another is definitely entitled to get preference for the job as

the merit must be the test when selecting a candidate for recruitment for the posts which are advertised.

6. In a still earlier decision, *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, regionwise scheme adopted by the State Government

was held to be void and was struck down.

7. Thus, the creation of educational zones in the same District is a method which is wholly , contrary to the scheme of the Constitution which

scheme is based on equality clause. The selection is thus liable to be quashed.

8. The question arises as to what relief should be granted. In *H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High*

*Court, Bangalore and others*, the Supreme Court of India expressed an opinion that in these matters humanitarian approach can be adopted. In the

above case, appointment was held to be bad. The appointment was, however, not set aside. A direction was given to consider the claims of the

person who was left out. Similar approach is being adopted in this case. The division of District into educational zones is held to be bad. However,

the appointment of private respondents is upheld leaving the State to adjust the appellants in the vacancies which may now become available.

9. Disposed of accordingly.