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**(1998) 05 J&K CK 0036**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 1285 of 1996

Harjit Singh

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 18-05-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (1998) 4 SCT 13

**Hon'ble Judges :** T.S.Doabia, J

**Bench :** Single Bench

**Advocate :** N.A. Choudhary, Anil Sethi, Advocates appearing for the Parties

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## **Judgement**

T.S. Doabia, J.

This petition has come to be filed under following circumstances.

The petitioners submit that they possessed degree in engineering from the recognised Universities. As per them, they joined the Military Engineering

Service in the year 1988. They joined as Sureyor Assistant GradeI. According to the petitioners, as per the Rules in force, they were entitled to

promotion to post of Assistant Surveyor Works. It is submitted that to this post they would have become entitled to promotion after having

completed a period of five years of service as Surveyor Assistant. Grade I. The grievance of the petitioners is that in the year 1994, rules were

amended. One intermediary post was created. This post is of Junior Surveyor of Works. According to the petitioners by making the

amendments, their right to promotion to the post which was there at the time of joining of service has been blocked. According to them, the

vacancies existed in the hierarchy of service to which they could seek promotion

under the unamended rules. The requisite averments in this regard are contained in para 10 of the petition. For facility of reference, this para is reproduced as under:

That as after 1993 the posts of Assistant Surveyor Works were available with the respondent and as the petitioners were eligible for promotion to the said posts so the respondents were under an obligation to consider their cases.

The further grievance of the petitioners is that even though the vacancies existed, steps were not taken with a view to fill the vacancies. They also submit that by making amendment in the rules the right which vested with petitioners were taken away.

The argument raised is that if the vacancies exist then those vacancies are to be filled as per the rules in existence. The amendment made in the rules as per the petitioners cannot be given effect to for filling the vacancies which existed before the coming into force of the rules. Reference in this regard is made to a decision of the Supreme Court of India reported as AIR 1983 SC 852 (Y.P Rangaiah and ors. v. J. Srenivasa Rao and ors.) The relevant observations made in para 9 are as under:

We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

The above authority does support the proposition put across by the learned counsel appearing for the petitioners. Reliance is also being placed on another decision of the Supreme Court of India reported as P. Mahendran and ors. v. State of Karnataka and ors., AIR 1990 SC 405.

Particular reference is made to para 5 and 7. The relevant observations are as under:

The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualification prescribed by the Rules before its amendment; moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983

which had to be completed in accordance with law as it stood at the

commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. Strangely the Tribunal did not follow the latest authority of this Court as laid down in Calton's

case (AIR 1983 SC 1143) on the ground that the view taken in that case was contrary to the Constitution Bench decision of this Court in State of

Andhra Pradesh v. T. Ramakrishna Rao, 1972(4) SCC 830. We have carefully considered the decision but we do not find anything therein

contrary to the view taken in Calton's case.

The aforementioned decision of the Supreme Court again supports the proposition put across by the petitioners.

The learned counsel for the respondents submits that vacancies as alleged did not exist and therefore the ratio of the above decision would not

apply to the facts of this case.

This petition is disposed of with the directions that the respondent authorities would determine the number of vacancies which existed before the

amendment of the Rules and would fill them in accordance with unamended Rule in line with the observations made by the Supreme Court of India.

Let this be done within a period of three months. The period of three months to begin from the date copy of order passed by this Court is made

available to the respondents by the petitioners.

Disposed of accordingly.