

(2002) 05 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : LPA(SW) No. 177 of 2002

Hem Raj Sharma

APPELLANT

Vs

State of Jammu and Kashmir and anr.

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Citation : (2003) 3 SCT 12

Hon'ble Judges : Tejinder Singh Doabia, J and Sudesh Kumar Gupta, J

Bench : Division Bench

Advocate : HA Siddiqui, N. Bhasin, Advocates appearing for the Parties

Judgement

Sudesh Kumar Gupta, J.—A policy formulated by the State of Jammu and Kashmir to employ the Graduate and Diploma Engineers as

Stipendiaries continues to be there even after 13 years of its adoption. The majority of the cases stand settled whereas some still remain unsettled.

The present controversy is one of them. The appellant writ petitioner was serving in the Indian Navy. He passed Diploma in Mechanical

Engineering in the year 1983. He retired from the above assignment in the year 1989. By that time, the Government issued an order bearing No.

198PW of 1989 dt. 4th April, 1989 by which the State Government wanted to give appointment to unemployed engineers. Appellant writ

petitioner submits that he was unemployed on the date when the aforesaid order was issued and as such, was entitled to be appointed as a Junior

Engineer. According to him, the issue stands concluded in terms of the judgment given by a Division Bench of this Court in LPA 51/91 decided on

15th April 1991. This was an agreed order. For facility of reference, this short order passed by the Division Bench is being reproduced below :

Learned counsel for the petitioners submits that parties have come to terms and the appeal and the writ petition out of which appeal arises be

disposed of in accordance with the agreement by the parties. The following agreed order :

That the writ petitioners/respondents in case they are stipendary engineers and other stipendary engineers shall be considered by the committee

constituted by the State Government vide Government order No. 58PWD(GR) of 1991, dated 26.2.1991 for appointment to the post of Jr.

Engineers (Civil and Mechanical) which were lying vacant till March 15, 1991.

In view of the agreement of the parties we pass the aforementioned order and disposed of the appeal and the writ petition in the aforementioned

terms.

2. The further fact is that notwithstanding the fact that decision was given in the Letters Patent Appeal, referred to above, the appellant was denied

the benefit of the Government order referred to above.

3. The stand of respondents is that a cutoff date was fixed. The further stand taken is that those who were in the employment of the Indian Navy

were not entitled to the benefits of the Government order referred to above.

4. To the above stand of the respondentState the appellant took an objection. He stated that he acquired the qualification of Diploma in

Mechanical Engineer in the year 1983 and in April 89, he was unemployed, and therefore, he was entitled to the benefits of the Government order.

It was also submitted that some exservicemen were allowed to join and were given the benefit and therefore, the question of denying the same to

the appellant was not justified. Thus the case of the appellant was :

i) That he had acquired the qualification of Diploma in Mechanical Engineer in the year 1983;

ii) That no doubt, he was in the Indian Army, but he retired from that service in March 89 and was unemployed on the date when Government

order in question was issued in April 89.

iii) That the appellant could not be denied the benefit merely because he was an exserviceman;

iv) That even exservicemen were allowed the benefit and were given the employment;

v) That the benefit of Government order, referred to above, was required to be given to him when the State had agreed to give this benefit to others. For this, reliance as indicated above is being placed on decision of this Court in LPA 51/91.

5. A learned Single Judge of this Court was of the opinion that merely because the benefit was given to exservicemen, that would not ipso facto lead to grant of benefit to the appellant also. In any case, it was observed that the names which were furnished by the appellant in this regard did not give the full particulars.

6. After having heard learned counsel for the parties, we are of the opinion that if benefit of policy decision has been given to exservicemen, then

there was no justification to not to grant the same benefit to the appellant. As a matter of fact, on the relevant date i.e. on 4th April, 89, the

appellant was not employed. He possessed the requisite Diploma also. In this regard, it would be apt to refer to a decision of a Division Bench of

this Court in LPA(SW) No. 449/99 titled Surinder Singh v. State and others, decided on 1st May, 2000. In the above case, appellant Surinder

Singh was denied the benefit which was given to others. This was on the plea that he acquired the qualification after the cut off date. The case of

Surinder Singh was that such benefit has been given to other similarly situated persons, and therefore, there is no justification to not to grant this

benefit to him. This aspect of the matter was considered and the appeal filed by Surinder Singh was allowed with the following observations :

The case of the appellant is simple. He submits that if benefit has been given to similarly situated persons then the same benefit should be given to

him also. He submits that in pursuance of the communication noted above letters of appointments have been issued in favour of the candidates

whose names are contained in Government order No. 190GAD issued on 22.2.1994. It is stated that two candidates namely Lakhwant Singh and

Gurnam Singh whose names figured in the order dated 19.3.1991 had passed the same examination in the same course as was done by the appellant.

If above be the factual position then the case of the appellant is similar to those whose names are mentioned in the Government order dated

19.3.1991 and later order dated..... February 1994. As such the appellant

cannot be denied the benefits which have been given to others. The benefit to others have been given not by way of concession but by taking a policy/administrative decision. This decision has to be applied universally to all. Appellant cannot be denied benefit.

This appeal is accordingly allowed. The appellant is held entitled to all benefits except monetary as have been allowed to others namely Lakhwant

Singh and Gurnam Singh. Monetary benefit would be given to the appellant with effect from the date copy of this order is produced before the

concerned Chief Engineer.

7. The further fact is that a Special Leave Petition was preferred against the aforementioned judgment. This bears Civil Appeal No. 5266/01. This

was dismissed by the Supreme Court on 23rd March, 01.

8. We are of the opinion that the ratio of decision given in LPA 449/99 is fully attracted to the facts of this case also. If benefit has been given to

the persons belong to exservicemen category then the appellant who is also an exserviceman is equally entitled to that benefit and his case would

fall within the four corners of the ratio of decision given in Surinder Singh's case (supra). If the State was of the opinion that the particulars of ex

servicemen who have been given the benefit are deficient, then the appellant could have been asked to furnish full particulars in this regard. As a

matter of fact, it was not the case of the State that the benefit has not been given to exservicemen. What was required to be seen was that a

particular person was unemployed on the requisite date. This is one aspect of the matter.

9. The further fact is that Government Order No. 175PW of 1992 dt. 30th April 92 makes mention of 51 persons who were given the benefit of

appointment. The candidates figuring at serial Nos. 1, 2, 3, 5 and 24 have been shown as exservicemen. Thus, the argument that the appellant had

not given the full particulars is an argument which is devoid of merit. We are accordingly of the view that the appellant who is an exserviceman and

possessed the qualification of Diploma and also that he was unemployed in April 89, is entitled to the benefits of the Government order referred to

above. He would be given all the benefits as have been given to persons figuring at Sl. Nos. 1, 2, 3, 5 and 24 of the order dt. 30th April, 92,

referred to above, except the monetary benefits. As a matter of fact, such was

the relief given to Surinder Singh in LPA(SW) 449/99. The appellant would become entitled to monetary benefits w.e.f. the date, he produces a copy of this order to the concerned authorities.

10. This appeal is allowed in the manner indicated above. The order passed by the learned Single Judge is accordingly set aside.