

(2005) 01 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. 198 of 2005 (Arising out of SLP (C) No. 4360 of 2003)

J. and K. Public Service Commission

APPELLANT

Vs

Israr Ahmad and Others

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Citation : (2005) 12 SCC 498

Hon'ble Judges : Tarun Chatterjee, J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : G.M. Kawoosa and N. Ganpathy, for the Appellant; Dinesh Kumar Garg, B.S. Bilowria, Rohit Pandey, D.K. Gupta, S.K. Bandopadhyay, Anis Suhrawardy, Shamama Anis, S. Mehdi Imam and Sameer Ranjan for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted.
2. Heard counsel for the Appellant and also counsel for the contesting Respondent No. 1.
3. The first Respondent submitted an application for appearing in the Combined Competitive service Examination for filling up the various posts in the State of Jammu & Kashmir.
4. The examination consisted of three stages, namely, the preliminary examination, the main examination followed by an interview. The last date for submitting the application for preliminary examination was 16th March, 1999. The first Respondent submitted his application in time and in the application he did not indicate that he was entitled to the benefit of SRO 126 of 1994 dated 28th June, 1994 issued by the State of Jammu & Kashmir whereby the reservation was granted to the residents of the backward area and the line of actual control. The preliminary examination result was published on 15.5.2000 and the first Respondent qualified himself in the examination. Applications were

called for the main examination and the last date for submitting the applications was 23rd August, 2000 and the first Respondent submitted his application wherein he indicated that he was entitled to the benefit of SRO 126 of 1994 dated 28th June, 1994. The Appellant Public Service Commission considered the application of the first Respondent and took a decision that he was not entitled to claim benefit of the reservation by virtue of SRO 126 of 1994 as he had not claimed the same in the preliminary examination and the Respondent was not included as a successful candidate in the category of reserved persons who were entitled to the benefit of SRO 126 of 1994.

5. The first Respondent thereafter challenged the selection by filing a writ petition and the learned Single Judge of the High Court of Jammu & Kashmir held that the first Respondent was not entitled to the benefit of reservation based on SRO 126 of 1994 as he had not indicated in his application for the preliminary examination that he was entitled to such benefit. The writ petition filed by the first Respondent was dismissed and he challenged the same by way of an L.P.A. (SW) No. D-29/2002 and the Division Bench of the High Court of Jammu & Kashmir held that the first Respondent herein in fact possess the eligibility for being considered in the reserved category even before the date of advertisement and he submitted his proof only later and that by itself did not disentitle him from claiming the reservation. Accordingly, the LPA was allowed and the direction to treat him under the reserved category was issued. This is challenged before us by the Public Service Commission.

6. Learned Counsel for the Commission submits that as the last date for submitting the application was 16th March, 1999 and the Respondent did not produce the certificate claiming reservation nor did he indicate in the application that he belongs to that category. It was submitted that several other applications of similar nature were rejected by the Commission and the Respondent's application also was treated alike and the Division Bench erred in coming to the conclusion that he was entitled to get reservation. Counsel for the Respondent on the other hand pointed out that though the first Respondent did not avail the benefit of reservation when he submitted the application for the preliminary examination he had submitted the application for the main examination in which he had clearly shown that he was entitled to get reservation as per SRO 126 of 1994 dated 20th June, 1994 and he had also produced the certificate along with the application for the main examination. It is submitted that he had claimed the reservation for the main examination and he should have been treated as a reserved candidate in the main examination.

7. We have considered the rival contentions advanced by both the parties. The contention of the first Respondent cannot be accepted as he has not applied for the selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general

candidate and at the subsequent stage of the main examination he cannot avail the reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.

ORDER

8. Leave granted.

9. Appeal allowed in terms of the signed order.