

(2002) 08 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : LPA(SW) No. 211 of 2001, LPA(SW) No. 184 of 2001 and LPA(SW) No. 540 of 1998

J & K Service Selection Board

APPELLANT

Vs

Kulbhushan Singh and others

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4)
Constitution of Jammu and Kashmir, 1956 — Section 124
Jammu and Kashmir Reservation Rules, 1994 — Rule 11

Citation : (2003) 2 SCT 832

Hon'ble Judges : V.K.Jhanji, J and S.K.Gupta, J

Bench : Division Bench

Advocate : D.C. Raina, Gagan Basotra, M.K. Bhardwaj, Sunil Sethi, Advocates appearing for the Parties

Judgement

V.K. Jhanji, J.—LPA(SW) No. 211/2001, LPA(SW) No. 184/2002 and LPA(SW) No. 540/1998 are being disposed of by a common

order as the common question of law involved in all these appeals.

2. Vide notification dated 28th June, 1994, the State Government in exercise of the powers conferred by Section 124 and other relevant

provisions of the Constitution of Jammu and Kashmir read with Articles 15(4) and 16(4) and other relevant provisions of the Constitution of India

as applicable to the State, framed rules known as "Jammu and Kashmir Reservation Rules 1994".

3. The question involved in these appeals is in regard to the interpretation of the Reservation Rules 1994. The case of the writ petitioner is that Rule

11 provides for reservation to the post for handicapped persons to the extent of 2% and exservicemen and children of Defence Personnel to the

extent of 5% to each service, class, category and grade. Whereas the case of the respondents in the writ petitions namely appellants herein, is that

Rule 11 only provides for giving preference to the handicapped persons and ex servicemen and children of Defence Personnel and do not provide

for reservation. According to them, reservation for appointment by direct recruitment is provided under Rule 10 and therein no reservation has

been provided for the handicapped persons and exservicemen and children of defence personnel.

4. Learned Single Judge relying upon the judgment in SWP No. 1817/1997, which is also under appeal in LPA(SW) No. 540/1998 has held that

the ""Concession"" provided in Rule 11 should be read as ""Reserved"".

Hence the Appeals.

5. Before dealing with the matter in issue, it would be expedient to notice the facts pleaded by the writ petitioners in their respective writ petitions.

In SWP No. 978/1996, writ petitioners pleaded that the Jammu and Kashmir Service Selection Board vide advertisement Notice No. 3 of 1994

dated 28th December, 1994, invited application for the post of teachers. The writ petitioners applied for the post. Writ petitioner No. 1, being a

graduate whereas writ petitioners 2 and 3 being matriculate but having Indian Army Graduation certificates submitted that they are to be treated as

graduates and are entitled to be appointed against the posts reserved for exservicemen. On the other hand, the case of the respondents was that

writ petitioner No. 1 though is a graduate and was considered but did not come in the merit and thus was not selected. As regards the writ

petitioners No. 2 and 3, the respondents submitted that the graduation certificate issued by the Indian Army Authorities was of no avail as this can

be taken into consideration only when the posts are reserved for exservicemen. Precise submission was that as per Rule 11, preference is to be

given to the exservicemen only when he gets equal to one who has competed with him in the process of selection. In SWP No. 1817/1997, Raj

Singh v. State, : 2000(2) S.C.T. 888 , vide Notification No. 5 of 1996 dated 25.1.1996, Jammu and Kashmir Public Service Commission invited

applications for 54 posts of Agriculture Extension Officers/Agriculture Assistants. The minimum qualification prescribed was B.Sc. Agriculture

from the recognised Institute. Petitioner Raj Singh, being Agriculture graduate

applied for the post and appeared in the screening test but was not invited in the vivavoce test. He made representation to the Commission stating that Rule 11 of Reservation Rules 1994 provides for reservation and he has to be considered for appointment in that context. His representation was not decided so he filed writ petition seeking directions to respondents to implement Rule 11 of Reservation Rules 1994. On the orders of the court, he was allowed to be interviewed but that order was subject to the decision of the writ petition. The stand of the respondents in Raj Singh's case (LPA(SW) No. 540/1998) is also the same as was in LPA(SW) No. 211/2001.

6. In SWP No. 2039/2000, Petitioner, Barinder Singh Pawar applied for the post of Prosecuting Officer. He submitted that he fall in the category of Children of Defence personnel/exservicemen and under Rule 11, posts are reserved for the children of Defence Personnel/Exservicemen, so he be considered as a reserve candidate in that category for appointment.

7. Learned Single Judge in all the three writ petitions held that the Concession provided in Rule 11 should be read as Reserved. Accordingly, SWP Nos. 2039/2000 and 978/1996 were allowed and respondents were directed to consider the case of the writ petitioners for their appointments to the post they had applied for. However, writ petition filed by Raj Singh was dismissed on a different ground i.e. he was not found in the category of Children of Defence Personnel/Exservicemen.

8. Learned counsel for the appellants contended that the rationale of Rule 11 is to give preference to the handicapped persons, exservicemen and children of defence personnel in each service, class, category and grade to the extent of 2% and 5% respectively and the interpretation given by learned Single Judge that ""Concession"" is to be read as ""Reserved"" is erroneous. On the other hand, learned counsel for the respondents contended that the interpretation of Rule 11 given by the learned Single Judge is correct and it should not be interfered with.

9. Learned counsel appearing on behalf of Raj Singh, petitioner, contended that the finding of learned Single Judge that Raj Singh does not fall in the category of children of defence personnel is factually incorrect.

10. In order to appreciate the respective contentions of the learned counsel for the parties, it is expedient to notice Rule 10 and Rule 11 of

Reservation Rules 1994. Rule 10 and rule 11 deal with the appointments for direct recruitment. Rule 10 and Rule 11 read as under :

10. Except as otherwise provided in these rules, available vacancies shall be reserved for the direct recruitment in each service, class, category

and grade in favour of permanent residents of the State belonging to any of the below mentioned categories which shall, as nearly as possible,

constitute the percentage of available vacancies shown against each :

(a) Scheduled Castes8%

(b) Scheduled Tribes10%

(c) Socially and educationally backward classes (Other than scheduled castes and scheduled tribes)

(i) Weak and under privileged classes (Social castes)2%

(ii) Residents of areas adjoining Line of Actual Control.3%

(iii) Residents of backward areas.20%

11. Concessions. (1) Notwithstanding anything contained in rule 10 and subject to the provisions of subrule (2) of this rule, out of the total number

of available vacancies (reserved as well as unreserved), handicapped persons to the extent of 2% and exservicemen and children of Defence

Personnel to the extent of 5% shall get preferential treatment for selection in each service class, category and grade.

(2) If a candidate belongs to reserved category, he will be placed in that quota by making necessary adjustment and if he belongs to open category

he will be placed in that category by making necessary adjustment. This shall not affect the percentage of reservations provided under rule 10.

From the plain reading of Rule 10, it is clear that it provides for filling up of the vacancies in each service, class, category and grade in favour of

permanent residents of the State belonging to any of the mentioned categories in accordance with percentage prescribed in the rule. The classes for

which the reservations are to be made in the available vacancies are Scheduled Castes, Scheduled tribes, Socially and Educationally backward

classes, weak and underprivileged classes, Residents of areas adjoining Line of Actual Control and residents of backward areas. Rule 11,

however, does not provide for reservation but gives concession to the handicapped persons to the extent of 2% and exservicemen and children of

defence personnel to the extent of 5% out of total number of available vacancies Reserved as well as UnReserved in each service, class, category

and grade. Subrule (2) gives an illustration that if a candidate belongs to reserved category, he will be placed in the quota by making necessary

adjustment and if he belongs to open category he will be placed in that category by making necessary adjustment but such adjustments would not

affect the reservation provided in Rule 10. For example, if a handicapped person or exserviceman or Child of defence personnel belongs to a

reserved category mentioned in Rule 10, the preference would be given to the handicapped person/exservicemen/child of defence personnel, as

the case may be visavis the candidate belonging to the reserved category. Likewise, if a handicapped person or exserviceman or child of defence

personnel belongs to the open category and in all respects are equal to the candidate who compete in the open category, then the preferential

treatment to the extent provided in the rule would be given to him.

Although the general principle is that the qualifications should be applicable to all candidates, however, rules or norms of recruitment sometimes

provide that amongst the qualified candidates preference would be given to the candidates possessing some special characteristics. Such

characteristic might cover many qualities like special training, physical handicapped, ex employees, children of employees etc. However, in

considering the question of preference, it should be borne in mind that preference is to be given amongst the candidates who are qualified.

11. Rule 11 came up for consideration before the Division Bench of this Court in Vipin Kumar v. State of J&K and others (LPA(SW) No.

134/2000), decided on 23.5.2002. The LPA bench, on plain reading of Rule 11 opined as under :

We are of the view that above Rule 11 of the said rules deals with the question of granting of preference. Last two lines of Rule 11(1) are to the

effect that children of Defence Personnel shall get preferential treatment to the extent of 5% in each service, class, category and grade. This Rule

make it apparent that no separate reservation has been provided for the children of Defence Personnel. The marginal note reads as ""Concession"".

This concession is available both in the open and reserved categories. A child of Defence Personnel is thus entitled to preference. Preference

would mean selecting one over the other. This implies giving of precedence. In case of reservation a slot is provided for a category but where

preference is to be given there may be several persons eligible but only a candidate who is equal in merit would get preference.

The Division Bench also approved the following observations of the learned Single Judge in SWP No. 2101/1998 :

Another reason to take this view is that on a plain reading of Rule 11(1) (supra) it is only preference that needs to be given to the Children of

defence personnel to the extent of 5% of the posts as contained in Rule. The question of preference as it is understood in common parlance will

arise when other things being equal, children of defence personnel have to be preferred visavis their counter parts in the respective category to the

extent of 5% and nothing else.

The view taken by the Division Bench in Vipin Kumar's case (LPA(SW) No. 134/2000) (Supra) is on correct reading of Rule 11 of Reservation

rules 1994 and it needs no reconsideration, as submitted by the learned counsel for the writ petitioners. In our considered view, the Division Bench

has correctly interpreted Rule 11 by saying that it provides preference and not Reservation.

12. As regards the contention of the learned counsel for the writ petitioner Raj Singh that the finding of learned Single Judge that Raj Singh, writ

petitioner does not fall in the category of children of defence personnel is factually incorrect, we are of the view that it is not necessary to answer

this question for the simple reason that the writ petition filed by him deserves to be dismissed on the ground that Rule 11 does not provide

Reservation.

13. In view of the above, we allow LPA(SW) No. 211/2001 and LPA(SW) 184/2001 and set aside the Judgment of learned Single Judge and

consequently the writ petitions stand dismissed. LPA(SW) No. 540/1998 is however stand dismissed.

No costs.