

(2001) 04 J&K CK 0026
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 978/96

Kulbushan Singh and others

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Jammu and Kashmir Reservation Rules, 1994 — Rule 11

Citation : (2001) KashLJ 522 : (2002) 3 SCT 921

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

Bench : Single Bench

Advocate : S.Sethi, D.S.Chauhan, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Respondent No. 2, in pursuance of the advise received from the State Government, issued an advertisement Notice No. 3

of 1994 dated 28th Dec'94. Appointments to the post of teachers were also to be made in pursuance to the aforementioned advertisement notice.

Petitioner No. 1 is a graduate and petitioners No. 2 and 3 are matriculates. They however, submit that they are to be treated as graduates because

of the certificate having been issued in their favour by the army authorities known as Indian Army Graduation Certificate. In addition to the above

educational qualification, the petitioners also submit that they are exservicemen and were entitled to be considered against this category.

2. Respondent Board has filed objections.

3. The stand taken by the Board is that the petitioner No. 1 no doubt, is a graduate but he did not come high up in the merit. Petitioners No. 2 and

3, it is stated were not possessing the qualification of 10 + 2 (TDC part 1st) i.e. the qualification which was required was missing and therefore,

were not considered. With regard to the graduation certificate issued by the Army authorities, it is stated that this is of no avail to them and these certificates cannot be looked into. It is stated that Government Order No. 66GAD of 1991 dated 22nd January 91, on which reliance has been placed by the petitioners would be of no help to these petitioners. It is submitted that this communication would apply only if a particular reservation is made for Exservicemen. If there is no reservation for this category, then the certificates on which reliance is being placed by the petitioners would be of no avail.

4. What is urged by the learned counsel for the board be summarized as under:

i. That the Indian Army Graduation Certificate cannot confer any right on the petitioners No. 2 and 3 as they are matriculates only. They can be

granted the benefit only if a particular post is reserved for exservicemen. If no reservation is made for this category, then the benefit of Indian Army

Graduation Certificate cannot be availed of by a person possessing matriculation qualification;

ii. That petitioner No. 1 though a graduate was not able to come high up in the merit and as such, was not selected;

iii. That the letter dated 22nd January 91 on which reliance is being placed by the petitioners does not confer extra eligibility. The benefit can be

given only if a person is otherwise educationally qualified;

iv. That unless and until there is reservation in terms R.10 of J and K Reservation Rules 1994, and unless there is a specific reservation made in this

regard, the petitioners cannot seek benefit of Indian Army Graduation Certificate. It is stated that the petitioner No. 1 even though, he is Graduate,

cannot seek the benefit of the category of exservicemen, because no reservation has been made in this regard;

v. That Rule 11 of rules mentioned above is merely a concession. It is submitted that if an exservicemen competes in open category and if he gets

marks equal to another candidate, then he is to be preferred. 'If a candidate in a reserved category gets marks equal to another candidate in a

reserved category, then this concession can be available of.

5. So far as the contention put across at serial NO. (iv) and (v) above is concerned, there have been interpreted in SWP No. 1817/97, decided by

this court on 5th Nov'98. What has been said in this regard is being reproduced

below:

..As per sub rule 1 of this rule, five percent out of the total number of the available vacancies both under the open merit and reserved categories have been reserved for exservicemen and children of defence personnel. SubRule 2 of the Rule prescribes the procedure for giving preferential treatment. This ought to be indicated in the advertisement notice after working out the vacancies for them under each category on the basis of percentage. Once the vacancies available for the exservicemen and children of defence personnel's are identified, there will be no difficulty to decide their inter se merit because they have to compete only with those eligible for concession or preference competition is always with the equals...

... The plea of the commission is also against the mandate of subrule 2 of Rule 11 of the Reservation Rules, which is an illustration, how such reservation i.e. concessions are to be worked out. So, while advertising the post, the commission is required to invite applications for filling up the number of vacancies available for those entitled to concession under rule 11 on the basis of percentage and decide their interest merit within the category to which he/she belongs. Preference and concession though not proper reservation, but they are entitled to it within the category to which they belong and therefore, an exservicemen will only compete with the exservicemen and children of the defence personnel only with each other...

6. I am of the opinion that the view expressed by this Court in writ petition 18177 97 referred to above is fully attracted to the facts of this case. It has been rightly concluded that subrule 1 is a substantive rule and subrule 2 is by way of illustrations. On the basis of the decision noticed above, it has, therefore, to be held that an exserviceman was entitled to the benefit of 5 percent quota in terms of rule 11 of the rules. Referred to above.

Any other interpretation would amount to making this rule redundant.

7. The argument that the certificate issued by the army authorities known as Indian Army Graduation Certificate is not to be treated as sufficient qualification confer eligibility, is again an argument which cannot be accepted. Reading of letter dated 22nd Jan'91, Annexure P.2, with the writ petition, shows that this deals not only with the question of reservation but also with the grant of concession. The word 'concession' used in the

letter above, is relatable and would be relatable to R.11 of the Rules. Even otherwise, the scope of this letter does not come in conflict with the

Rules of 1994. The repealing clause as contained in R.37 and 38 does not take away the efficacy of the instructions issued in the Government letter

mentioned above. The interpretation which the learned counsel for the board want to be placed would result in placing an interpretation which

would be in conflict with articles 14 and 16 of the Constitution. In a given set, a person would be entitled to the benefit and in a different situation,

as propounded by the counsel for the respondents, another person would not be entitled to the same benefit. The interpretation which divides the

provisions of article 16 in the manner suggested by the board is to be avoided.

8. Another argument which has been raised is that letter dated 22nd Jan'91, does not provide for any extra benefit. A person has first to be eligible

and only thereafter he can get benefit of this letter.

9. It be seen that if the above argument is to be effected and if a person is supposed to possess the basic qualification, then the question of getting

the benefit of this letter mentioned above does not arise at all. Such is not the intention of law. This argument, therefore, cannot be accepted. In

view of the above, this petition is allowed. The respondents are directed to appoint the petitioners against 5 percent quota of exservicemen. Let

this be done within a period of two months from the date, a copy of this order is made available to the respondents by the petitioners.

10. Disposed of accordingly.