

(1969) 01 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 99 and 120 of 1968

Kushma Joshi and Another

APPELLANT

Vs

Pre Vice-Chancellor Jammu and Kashmir University and
Others

RESPONDENT

Date of Decision : 03-01-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3), 15(4)

Citation : (1969) 01 J&K CK 0002

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : R.N. Bhargotra and Joginder Singh, for the Appellant; D.D. Thakur and R.P. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

Jaswant Singh, J.—These two petitions Nos. 99 and 120 u/s 103 of the Constitution of Jammu and Kashmir are by Kushma Joshi and

Vedh Prakash respectively who sought but have been denied admission to the M.Sc. Chemistry class of the Jammu and Kashmir University. The

Petitioners pray that by issue of a writ of Certiorari the order of Respondent No. 1 (Pro Vice-Chancellor of the Jammu and Kashmir University)

whereby Baldev Chand Katoch, a Respondent in both the petitions, has been admitted to the said class be quashed and by a writ of Mandamus or

other appropriate writ the Respondent No. 1 be directed to admit the Petitioners to the said class in the current session.

2. As these petitions seek the cancellation of admission of one and the same Respondent namely Baldev Chand Katoch to the M.Sc. Chemistry

class of the Jammu and Kashmir University and raise identical points, it would be

convenient to dispose them together by this judgment.

3. In Petition No. 99 of 1968 the Petitioner's case is that she passed the B. Sc. examination of the Punjab University securing 249 out of 500

marks, that she is a daughter of ex-serviceman who had after retirement been re-employed in the Military and stationed in the State, that she

applied for admission to the M.Sc. Chemistry class of Jammu and Kashmir University on the basis of her being the daughter of an ex-serviceman,

that Respondent No. 2 i.e., Baldev Chand Katoch who is not a son of an ex-serviceman and who passed the B. Sc. examination of the Punjab

University in the 3rd division and had obtained 43 percent marks in Chemistry as against the Petitioner who had secured 2nd division and obtained

50 percent marks in the subject has secured admission to the said class by cheating the University and by keeping the authorities in dark by not

mentioning his parentage and by representing himself to be the ward of an ex-serviceman, that interview for the purpose of selecting candidates for

admission to the said class was held and after the interview a merit list was prepared wherein she was shown at serial No. 64 and Respondent No.

2 at Serial No. 82, that in view of her merit position she was recommended by the Head of the department for admission to the said class but

Respondent No. 2 was unduly favoured, that a copy of merit list prepared for admission to the said class and of the admission form of Baldev

Chand for the said class as also of his B. Sc. certificate were denied to her in spite of a written request made by her in that behalf, that selection of

the Respondent No. 2 as against her is discriminatory and infringes Article 16 of the Constitution of India as applied to the State of Jammu and

Kashmir, and that the order of Respondent No. 1 granting admission to the Respondent No. 2 is also bad as a seat reserved for children of ex-

serviceman has been given to Respondent No. 2 who does not belong to that category.

4. This petition has been resisted by Respondent No. 1 inter alia on the grounds that the father of the Petitioner being still in service of the Army, he

cannot be treated as an ex-serviceman for the purpose of the Government order, that a seat was reserved for the wards of ex-service man in the

M.Sc. Chemistry class of the Jammu and Kashmir University, that both the Petitioner and Respondent No. 2 were the wards of ex-servicemen but

as the Petitioner was not a State subject, her case was not considered for admission to the said class, that the father of Respondent No. 2 is dead

and his brother also died while fighting on the front, that there being no major difference in the comparative merits of the Petitioner and the

Respondent No. 2 admission was granted to the latter against the seat reserved for a ward of an ex-serviceman, that Respondent No. 2 is the son

of an ex-serviceman whose guardian also died while fighting on the front, and that while the Petitioner had secured 50% marks in Chemistry

Respondent No. 2 had secured 54% marks in the said subject. It is not, however, denied that the Petitioner had passed the B. Sc. examination in

2nd division and Respondent No. 2 in the third division. It has also not been denied that in the merit list prepared in connection with the selection of

candidates for admission the Petitioner's name appeared at Serial No. 64 and Respondent's name appeared at Serial No. 82. By way of postscript

it has been submitted that the Deputy Secretary to Government General Department had, vide his No. TRB-Res/67 dated 28-7-1967,

communicated to the Registrar of the University that the Government had, vide Government order No. 381 of 1967 dated 6-7-1967, made

reservations for the sons (children) of fix-servicemen and servicemen belonging to J and K State.

5. It may be stated that no affidavit in support of his assertions has been filed in this case on behalf of Respondent No. 1, nor has it been anywhere

averred on his behalf that Baldev Chand Respondent or his father belonged to the State. On the other hand, it appears from the merit list produced

before me by the learned Counsel for the Respondent No. 1 that Respondent No. 2 is a non-State subject.

6. In the course of the objections filed by Respondent No. 2 he has also stated that he is son of an ex-serviceman, that his whole family has

dedicated itself to the service of the country, that he is a son of late Subedar Sant Singh Katoch who served in the 8/14 Punjab Regiment and the

real brother of the late Naib Subedar Amin Chand Katoch, and that after the death of his father and his real brother he has been living under the

guardianship of his uncle Subedar Milap Chand. The Respondent has also averred that he had secured 54% marks in Chemistry in the B. Sc.

examination.

7. In petition No. 120 of 1968 the Petitioner has stated that he passed the B.Sc. examination in high second division securing 382 marks, that he along with other candidates applied for admission to the M.Sc. Chemistry class of the Jammu and Kashmir University, that he was also interviewed, that he secured 25th position in the order of merit and was entitled to be admitted against one of the 30 seats available for admission to the said class, that under the policy and circular of the Department of Education Government of Jammu and Kashmir as also of the Ministry of Education, Government of India, six seats were reserved on the basis of merit for sportsmen that among the six sportsmen who were candidates to the said class the Petitioner was selected as No. 1 and recommended by the Physical Director who was authorised to make the selection of sportsmen, that under rules candidates were to be selected and admitted to the said class strictly according to merit and position obtained on the basis of marks obtained in the university examination and at the interview, that Baldev Chand Respondent No. 4 who had obtained only 326 marks and a number of other candidates who had obtained much lesser marks than him have been admitted to the said class in violation of the rules, that he approached the Pro-Vice-Chancellor requesting him to direct the Head of the Faculty to admit him to the said class, that in spite of the telephonic order of Respondent No. 1 he was not admitted, that the admission of Respondent No. 4 has been made against the provisions of Sections 26, 28 and 29 of the University Act and that by not admitting him the Statutes and Regulations made under the University Act have been violated. This petition has , also been resisted by Respondent No. 1 Who in the course of his objections has stated that there were only 30 seats available for the M. Sc. Chemistry class, that position of the Petitioner is 41st in the merit list, that recommendation, if any, of the Physical Director has no meaning, that Baldev Chand Respondent is the only exception to the general rule of merit, that he has been given admission on the ground of his being a ward of an ex-serviceman, that there was nothing like policy or circular of the Ministry of Education, Government of India, or the State Government reserving seats for sportsmen, that Section 26 of the University Act provides only for matters in respect of which the Statutes can be framed, that the said section does not relate to admission and has no bearing on the matter, and that there has been no violation of any

Statute, Regulation or Act.

8. Shri R.N. Bhargotra appearing in support of the petition No. 99 of 1968 has submitted that his client has been illegally discriminated against, that

she being admittedly the daughter of an ex-serviceman and being higher in order of merit in that category was entitled to be admitted against a seat

reserved for the children of ex-servicemen.

9. Sardar Joginder Singh appearing in support of petition No. 120 has submitted that his client having secured 25th position in order of merit as a

result of the interview was entitled to be admitted against one of the 30 seats available for the purpose, and that in any case he should have been

admitted against one of the seats reserved for sportsmen. Lastly he has contended that reservation made for the wards of children of ex-

servicemen is unconstitutional and invalid. He has in support of his contentions drawn my attention to the decision of the Kerala High Court

reported in R. Jacob Mathew and Others Vs. The State of Kerala and Others, .

10. Mr. D.D. Thakur appearing for the Respondent No. 1 has, however, contended that reservation of seats for children of ex-servicemen does

not violate the provisions of law or of the Constitution.

11. I have given my very anxious consideration to the submissions made by the learned Counsel for the parties and have also carefully studied the

law including some decided cases bearing on the matter.

12. For a proper appreciation of the rival contentions of the learned Counsel for the parties, it will be convenient at this stage to refer to Articles

14, 15, 16 and 29 of the Constitution of India as applied to the State of Jammu and Kashmir which run as under:

Article 14 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15(1) The State shall not discriminate against any citizen on grounds only of religion race, caste, sex, place of birth or any of them.

x x x

x x x

(4) Nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any

socially and educationally backward classes of citizens or for the scheduled

castes.

Article 16. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

x x x

x x x

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward

class of citizens which in the opinion of the State is not adequately represented in the services under the State

x x x

Article 29(1). Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own

shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only

of religion, race, caste, language or any of them.

13. The scope of Article 14 as also the other Articles of the Constitution reproduced above has been explained in a number of rulings of the

Supreme Court and of other courts in the country and it is unnecessary to refer to them here. Suffice to say that although the Constitution of India

forbids discrimination, it does not prohibit reasonable classification based on intelligent differentia for the purpose of special treatment. Reference in

this connection may be made to Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . According to this judgment the test of

reasonableness is (1) whether the classification is rational and based on intelligible differentia which distinguishes the persons or things that are

grouped together from others that are left out from the group and (2) whether the basis of differentiation has any rational nexus or relation with the

policy or objects of the law. It would thus be clear that besides the reservations which are specifically provided for in Articles 15(3) and (4) and

16 (4) of the Constitution of India reservations on the basis of reasonable classification under Article 14 of the Constitution can be made. I am

fortified in this view by a direct authority of the Mysore High Court reported in AIR 1966 Mys 40 where a division bench of the court upheld the

reservations of seats in the Medical Colleges under the management of the Government for the children or wards of the men in armed services, and

ex-servicemen including those who were in the armed services, during the Second World War. This judgment appears to have been noticed in

(1966) 1 Andh WR 294 and AIR 1968 Andh-Pra 165, but the aforesaid reservation has not been held to infringe any constitutional inhibition.

The decision of Kerala High Court reported in R. Jacob Mathew and Others Vs. The State of Kerala and Others, on which reliance has been

placed by Shri Joginder Singh is clearly distinguishable. In that case challenge to the reservation of two seats for children of Registered Medical

Practitioners and one seat for a sportsman student was upheld on the ground that there was no legal basis for such reservation in professional

Colleges. The reservation made, however, on the basis of classification of the kind as in the present case is rational and reasonable. It is well

known that the armed forces have rendered meritorious service ever since India became free and the reservation of seats for children of ex-

servicemen and of the men in armed forces cannot but be deemed to be in national interest. Even in the judgment reported in Umesh Chandra

Sinha Vs. V.N. Singh and Others, where the Ordinance reserving seats in Medical Colleges for children of university employees on ground of their

extreme pecuniary difficulties and for rendering meritorious services to the university was struck down as discriminatory and it was held that there

was no reasonable nexus between the object intended to be achieved by the Ordinance on the one hand and the principle on which the children of

the employees of the University were selected for preferential treatment on the other, the decision reported in AIR 1966 Mys 40 though noticed

was not disapproved. I am, therefore, clearly of the view that the reservation made for the children of ex-servicemen and servicemen proceeds on

a reasonable basis and is not hit by the provision of the Constitution. On the contrary, such a classification is permissible under Article 14 of the

Constitution. For the foregoing reasons, I find myself unable to accede to the contention of Sardar Joginder Singh that no reservations could be

made for the children of ex-servicemen and servicemen.

14. The other contentions of Shri Joginder Singh are also without any substance. According to the merit list produced before me on behalf of the

University, the position of Shri Ved Prakash Petitioner is 41st in the order of merit and not 25th as contended by him. He had, therefore, no claim

to be admitted on the basis of his merit. His contention that he ought to have been accommodated against one of the seats reserved for sportsmen

is also without any foundation as according to the affidavit of Shri M.A. Chisti, Joint-Registrar of the University, filed in reply to his petition, not

such reservation had been made. The petition of Shri Ved Prakash, therefore, fails and is hereby dismissed.

15. Let me now examine as to whether Kushma Joshi Petitioner has been illegally discriminated against or not. From the statement at page 27 of

the file, produced before me by Shri D.D. Thakur, it appears that there were only three applicants who sought admission to M.Sc. Chemistry class

on the basis of their being children of ex-servicemen. Out of the three applicants namely Baldev Chand Respondent, Kushma Joshi Petitioner, and

Rajinder Singh Sambria, the last one does not appear to have presented himself for interview. As such Baldev Chand and Kushma Joshi were the

only two contestants for the reserved seat. It is well settled that even in case of a reserved seat the best available candidate has to be selected. It is

not denied before me that both Baldev Chand and Kushma Joshi belonged to the category for which the reservation had been made. It has also

not been denied that Kushma Joshi Petitioner's position in the category of the children of ex-servicemen and servicemen as regards merit is higher

than that of Baldev Chand Respondent. Her preferential claim for admission to M. Sc. Chemistry class could not, therefore, have been ignored by

the University authorities. The averment in the objections filed on behalf of Respondent No. 1 in petition No. 99 of 1968. that the case of Kushma

Joshi was not considered as she was not a State subject also does not appeal to me in view of the fact that in the merit list produced for my perusal

on behalf of Respondent No. 1 even Baldev Chand Respondent has been shown as a non-State subject It is, I think, because of all these reasons

that Shri D.D. Thakur has not made any serious attempt to justify the selection of Shri Baldev Chand Respondent. Thus Kushma Joshi being

decidedly higher in order of merit was entitled to be preferred to Baldev Chand and has been unjustly discriminated against in the matter of

admission to M. Sc. Chemistry class of Jammu and Kashmir University for the session 1968-69. Her claim cannot, therefore, be ignored. The

contention of Shri Devi Das that Kushma Joshi even if admitted at this stage will not be able to make up her attendance cannot be countenanced.

A similar contention was advanced in the case reported in Umesh Chandra Sinha Vs. V.N. Singh and Others, but was repelled.

16. Now remains the question of the relief to be granted to the Petitioner, Kushma Joshi. As Baldev Chand Respondent is stated to have been

studying in the M.Sc. class for a considerable length of time i.e. for nearly five months it might cause hardship to him if his admission is disturbed at

this stage. I' would, therefore, direct the Respondent No. 1 to take steps to admit the petitioned Kushma Joshi to the M. Sc. Chemistry class for

the session 1968-69 by providing an additional seat for her. In case the creation of an additional seat be not possible for any reason, Baldev

Chand Respondent shall have to make way for Kushma Joshi who would in that event be admitted in his place. As the matter has already been

delayed due to circumstances beyond the control of the Petitioner, I cannot give more than week's time to the Respondent to implement this order.

17. In the result the petition No. 99 succeeds and the petition No. 120 of 1968 filed by Ved Prakash fails and is hereby dismissed. In the

circumstances of the case, there will be no order as to costs.