
(2015) 10 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : SWP No. 1743 of 2014 c/w SWP Nos. 1237 of 2014 and 2528 of 2013

Mehmooda

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103

Social Welfare (Non-Gazetted) Service Recruitment Rules, 1991 — Rule 9

Citation : (2016) 4 JKJ 416

Hon'ble Judges : Mr. Muzaffar Hussain Attar, J.

Bench : Single Bench

Advocate : Mr. Tariq M. Shah, Advocate, for the Appellant\Petitioner; Mr. Mehraj-ud-din Bhat, AAG and Mr. M.M. Dar, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. Muzaffar Hussain Attar, J. (Oral) - The issues involved in this writ petition being identical they are taken up for final disposal together.

2. The admitted fact position in this case is that Respondent No.6- Farida Akhter (writ petitioner in SWP No.1237/2014), at the time of her

engagement as Anganwadi Worker, was 8th class pass. She attained matriculation qualification in the year 1986. It is further admitted fact that

Mehmooda Akhter-writ petitioner in SWP No.1743/2014 was appointed as Anganwadi Worker when she was already a matriculate in the year

1984. Mehmooda Akhter was selected and appointed as Supervisor by treating her senior to Farida Akhter. That order was subsequently kept in

abeyance by the authorities.

3. The claim of the learned counsel for the petitioner in SWP No.1743/2014-Mehmooda Akhter is that the case of the petitioner is governed by

the judgment of the Court passed in batch of writ petitions with lead case SWP No.164/2014 decided on 06.08.2015. Learned counsel produced

copy of the judgment which is taken on record.

4. In this decision, the Court, while making reference to SRO 16 dated 28th January, 2004, mentioned that those Matriculate Anganwadi

Workers, who during their service attained qualification of graduation, will figure in the seniority of the Graduate Anganwadi Workers from the

date of obtaining of such degree. It is further stated in the said judgment that rule itself has created two classes of Anganwadi Workers, viz.

Graduate Anganwadi Workers and Matriculate Anganwadi Workers. It is further stated that seniority of Matriculate Anganwadi Workers, thus,

will not relate back to the date of their engagement as Matriculate Anganwadi Workers after obtaining the degree of graduation.

5. This judgment of the Court is based on law laid down by the Hon'ble Supreme Court in case titled Shailandra Dania and Ors v. S.P.

Dauybey and Ors decided on 17th April, 2007 in Appeal (Civil)2219-2222 of 2002.

6. Learned counsel for the respondents, while referring to rule 9 of Jammu & Kashmir Social Welfare (Non-Gazetted) Service Recruitment Rules,

1991, submitted that seniority of the members of the service has to be regulated under Jammu & Kashmir Civil Service (Control and Appeal)

Rules, 1956. Learned counsel submitted that Farida Akhter-respondent No.6, though, initially middle pass having been appointed prior in time as

Anganwadi Worker to that of petitioner-Mehmooda Akhter, has to figure senior to her in the seniority list of Matriculate Anganwadi Workers and

has prior right of consideration for appointment on the post of Supervisor. Learned counsel submitted that mere passing of matriculation

examination at the latter point of time will not change the seniority position of the Farida Akhter-respondent No.6. Learned counsel in this behalf

referred to and relied upon the judgment of the Court titled Nirmal Singh Bali and Ors v. Mohd Yousuf, reported in 2012(II) SLJ 343.

7. In terms of Schedule -VI attached to Rules of 1991, the post of Supervisor is to be filled up 50% by direct recruitment and 25% posts have

been reserved for selection to the post of Supervisor amongst the Anganwadi Workers who have rendered 5 years service as such and are

graduates and further 25% have been reserved for selection from amongst

Matriculate Anganwadi Workers who have rendered not less than 10 years service as such.

8. The Rules of 1991 in itself have created 3 classes for filling up the posts of Supervisors viz. 50% by direct recruitment from amongst the candidates who are graduate with training in Anganwadi Course, 25% of posts are to be filled up from amongst the Anganwadi Workers who are graduates and have rendered 5 years service as such. Further 25% posts, as already stated, are to be filled up from amongst Anganwadi Workers who are matriculate and have rendered not less than 10 years service as such. The rule itself has provided that it is the matriculate Anganwadi Worker who is eligible for being considered for promotion on the post of Supervisor and undermatric candidate is not entitled for any such consideration. The interse seniority amongst the Anganwadi Workers, who are matriculate, has to be reckoned from the date they obtain matriculation qualification. The service rendered by a candidate as Anganwadi Worker but being not a matriculate would be inconsequential in view of rule itself.

9. Admittedly, the petitioner-Mehmooda Akhter is a matriculate and has been appointed in the year 1984 as Matriculate Anganwadi Worker, whereas, respondent No.6-Farida Akhter, though appointed at earlier point of time as Anganwadi Worker attained the qualification of matric in the year 1986, thus, is having two years less service as Matriculate Anganwadi Worker than that of Mehmooda Akhter. Mehmooda Akhter in terms of aforesaid rule position is thus senior to Farida Akhter.

10. The judgment in Nirmal Singh's case has been decided on its own facts. In that case the basic eligibility qualification for entry into service was same for all the candidates viz. appellants and respondents. The persons would be eligible for being promoted to the next higher post only when they would qualify the examination as prescribed by the rules. The appellants though had same eligibility qualification for being appointed on the post but some juniors had qualified the departmental examination earlier than the senior employees. The seniority was to be determined in accordance with Rule 24 of Jammu and Kashmir Civil Service (Control and Appeal) Rules, 1956. The departmental examination would make them only eligible for being promoted to the next post and not make the senior.

11. The legal position in this case is totally different. It is only the Matriculate Anganwadi Worker who is eligible for being appointed on the post of

Supervisor, so service as Anganwadi Worker alone has to be counted for that purpose.

12. For the above stated reasons these petitions are disposed of. The petition filed by Mehmooda Akhter (SWP No.1743/2014) is allowed and

petitions filed by Farida Akhter (SWP No.2528/2013) and (SWP No.1237/2014) are dismissed.

13. The official respondents shall pass the orders in respect of fixation of seniority of petitioner in light of observations made in this order.