

(1956) 10 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 78 of 1955

Mohd. Aslam Bach

APPELLANT

Vs

V.L. Vishin and others

RESPONDENT

Date of Decision : 29-10-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 32(2A)

Citation : AIR 1957 J&K 8

Hon'ble Judges : Janki Nath Wazir, C.J.; M.A. Shahmiri, J.; Jia Lal Kilam, J

Bench : Full Bench

Advocate : Lok Nath Sharma, for the Appellant; Jaswant Singh and Janki Nath Bhat, for the Respondent

Final Decision : Dismissed

Judgement

Wazir, C.J.—This is an application under Art. 32(2-A) of the Constitution of India as applied to the State of Jammu and Kashmir for a

direction, order or an appropriate writ quashing the Government Order No. 442/A/55 dated 24-10-1955 according sanction in anticipation of

Cabinet Order to the appointment of the lecturers respondents Nos. 1, 2 and 3 which was subsequently confirmed by the Cabinet Order No.

795/C of 1956 dated 14-4-56. The petitioner's case is as follows:

2. That he is a first class hereditary State subject; that he passed his M. Sc. Examination in Chemistry from the Aligarh Muslim University obtaining

second Division in 1954; that the petitioner was appointed as Demonstrator in Chemistry in the scale of 150-10-250 in Amarsing College on

probation for two years on the post being vacated by one Mr. Abdur Razak Shah who was promoted as a Lecturer; that the Director of

Education advertised in the Jammu & Kashmir Government Gazette inter alia the

posts of lectureships in Chemistry in the grade of, 200-15-

350/25-500 on the 23rd June 1955 and the 7th July 1955; that he possessed the necessary qualifications for the post and was better suited for the

post of lectureship on the basis of merit and ability as compared to respondent No. 1, Mr. V.L. Vishin, that Mr. V.L. Vishin who had passed M.

Sc. in the third division was selected for the post in preference to the petitioner which was contrary to the provisions of the Kashmir Civil Service

Rules.

Lastly the petitioner averred that he had been deprived of the post of Lecturer by disregarding the Kashmir Civil Service Rules whereby the

guarantee of equal protection of law envisaged in Art. 14 of the Constitution of India was denied to the petitioner. It was therefore prayed that an

appropriate writ, direction or order be issued to quash the Government Order No. 442/A-55 dated 24-10-55 according sanction in anticipation of

the Cabinet order to the appointment of respondents Nos. 1, 2 and 3 as Lecturers in Chemistry and prohibiting the Cabinet from confirming the

said anticipatory order and restraining respondents Nos. 1, 2 and 3 from assuming the posts of Lecturers in Chemistry and ordering the

appointment of the petitioner as Lecturer in preference to Mr. V.L. Vishin respondent.

3. Objection to the petition have been filed by the Government and by Mr. V.L. Vishin, Mr. Vishin in his reply has submitted that the Government

Order No. 442-A/55 dated 24-10-1955 had been confirmed by the Cabinet vide its Order No. 795/C of 1956 dated the 14th April 1956 and

the respondent had assumed the charge of his post and therefore the petition had become infructuous and could not proceed. It was further stated

that the Minister-in-charge, Education Department, directed the appointment of the respondent and others to the posts of Lecturers in Chemistry

on the basis of merit, ability and seniority.

The respondent possessed superior merit and ability and had a teaching experience extending over a period of eight years whereas the petitioner

had only a few months' experience in this line and was not even a permanent Demonstrator. Lastly it was averred that every candidate who applied

for the post of Lecturer was given a fair deal. He was interviewed by the Recruitment Board and keeping in view merit and experience in the

teaching line the respondent was selected for the post and therefore the petitioner should have no grievance.

4. The counsel for the petitioner has not seriously impugned the appointment of respondents Nos. 2 and 3. His main attack is directed against the

appointment of respondent No. 1, Mr. V.L. Vishin. His contention is that Mr. Vishin was a third class M. Sc. and he should not have been

promoted in view of R. 25 of the K. C. S. Rules which have the force of law.

5. Rule 25 runs as follows:

(a) (1) Promotions to a service or class or to a selection category or grade in such service or class shall be made on grounds of merit and ability

and shall be subject to the passing of any tests that Government may prescribe in this behalf, seniority being considered only where the merit and

ability are approximately equal.

The terms ""service"", ""class"" and ""selection category"" are defined in Cls. (x), (iv) and (iii) or R. 1 of the K.C.S. Rules. The question for

consideration is whether R. 25 of the K. C. S. Rules has been violated or not. A careful scrutiny of the Rule will show that promotion is essentially

a subjective matter. It is true that promotion has to be made on the basis of merit and ability but the question for consideration is as to who has to

judge the merit and ability of a candidate. The answer to this is clear and simple.

It is the appointing authority who has occasion to see the work of the public servant that can form a correct estimate as to his merit and ability and

it is he alone who can say whether the public servant is fit for promotion or not. The assessment of merit and ability made by the appointing

authority is, in our opinion, conclusive and cannot be questioned by the Court except where the person promoted does not fulfil the minimum

qualifications prescribed for the post. It follows, therefore, that merit and ability being matters relating to the subjective satisfaction, the Court

cannot act as an appellate authority and substitute its opinion for that of the appointing authority unless the appointing authority has selected a

candidate who does not possess the minimum qualifications prescribed in the Rules for a post.

6. It is argued on behalf of the petitioner that the appointment orders are invalid as they do not show on their face that the selection was based on

merit and ability. This contention is untenable. It appears from the record that

the applications of the candidates were referred to the Public Service Recruitment Board for selection. The Director of Education and the Secretary to the Government, Ministry of Education, were also present at the time when the candidates were interviewed.

The Board, it appears, taking into consideration the qualifications and the teaching experience selected Mr. V.L. Vishin for the post of Lecturer in preference to the petitioner, Mr. Vishin has been in service for the last eight years which fact is not denied by the petitioner. Keeping in view the qualifications, teaching experience and seniority, Mr. Vishin was promoted to the post of Lecturer. In the order it is not mentioned that the promotion was made on the basis of merit and ability but it cannot be said that the order is invalid if the appointing authority can show that the promotion was in fact made on the basis of merit and ability.

There is nothing in R. 25 which requires that the order must be framed in a particular form or manner or it should show on the face of it that the promotion is made on the basis of merit and ability. It is desirable that the appointing authority should mention in the order that merit and ability have been taken into consideration in ordering the promotion of an officer but an omission to do so will not render the order invalid. In support of this view reliance may be made on a ruling of the Supreme Court reported as *The State of Bombay Vs. Bhanji Munji and Another*, wherein it has been held

it is not necessary to set out the purpose of the requisition in the order under Ss. 5(1) and 6(4). The desirability of such a course is obvious because when it is not done proof of the purpose must be given in other ways. But in itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the Court in some other way.

In this case, as pointed out above, the Director of Education who is the head of the Department and the Secretary to the Government, Ministry of

Education, were present at the time the Board interviewed the candidates for the posts of Lecturers. They made selection of certain candidates for

the posts. The candidates who were selected had the minimum qualifications required for the post. From the affidavit furnished by the Secretary to

Government, Ministry of Education, it appears that merit and ability were taken

into consideration in selecting the candidates for promotion. In

these circumstances it cannot be said that the provisions of R. 25 of the Kashmir Civil Service Rules have, in any way, been violated.

7. This petition has no force and is dismissed. The petitioner shall pay Rs. 50/- as costs in this petition.

Shahmiri, J.

8. I agree.

Kilam, J.

9. I agree.