
(2010) 04 J&K CK 0026
In the Jammu And Kashmir High Court
Case No : SWP No's. 1564/08 and 949/09

Mohd. Iqbal Bhat and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 2 JKJ 699

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Muzaffar Hussain Attar, J.—Posts of Medical Assistants (now called the Pharmacists) were referred to the Service Selection Board in the

year 1991 for making selection from amongst the eligible candidates. The Service Selection Board vide advertisement Notification No. 5 of 1991

dated 08.07.1991 advertised the posts. The Service Selection Board made recommendations for appointment of the candidates selected by the

said authority to the Director Health Services, Kashmir. Appointment orders were issued by the Director in March, 1993 and the Medical

Assistants were ordered to be appointed on regular temporary basis in the pay scale of 950-1500+ usual allowances as admissible under rules.

Posts of Medical Assistants (Pharmacists) were placed in the grade of 900-1830 in the year 1991 and further pay revision was ordered in terms of

SRO 75 dated 30-03-1992. The pay scale was revised to Rs. 1200-2040. In terms of SRO 75 dated 30-03-1992 it was ordered that fresh

appointment to the post of Medical Assistant will initially be made in the pay scale of 950-1500 and they will be placed in the pay scale of 1200-

2040 after putting eight years service in the scale of 950-1500. Finding themselves discriminated four persons filed SWP No. 3579/97 titled

Mufti-Manzoor Ahmad and Ors v. State and Ors. before this Court. The Court disposed of the writ petition on 11th of July, 2008. The matter

was considered by the Respondents at various levels and the law department gave an opinion to the Government which provided that the

Petitioners in that writ petition can claim pre-revised grade only if they have been selected and appointed against the notified vacancies. It was also

mentioned in the said opinion that they will not be entitled to higher pay scales in case their appointment has been made against future vacancies

and accordingly directed the department to ascertain as to whether Petitioners have been so appointed against the notified vacancies or not. It was

also opined that in the former case in SWP No. 3579/1997 the Petitioners would be accorded higher pay scale. Finding the Petitioners in SWP

No. 3579/97 entitled to higher pay scale Government Order No. 01 of 2008 dated 20.6.2008 has been issued. Learned Counsel for the

Petitioners has produced a copy of the said order which is taken on record.

2. Reply affidavit has not been filed. In both these writ petitions claim of the Petitioners is that they were selected as Medical Assistants

(Pharmacists) when they sought consideration for being selected and appointed on the said posts in pursuance of the Service Selection Board

Advertisement Notification No. 5 of 1991 dated 8.7.1991. It is pleaded in the writ petition that the Petitioners are similarly circumstanced with the

Petitioners in SWP No. 3579/97.

3. Heard learned Counsel for the parties and considered the matter.

4. The pleadings of the writ petitions read in conjunction with Government Order No. 01 of 2008 dated 20.06.2008 do show that the Petitioners

also applied in response to the Advertisement Notification No. 5 of 1991 dated 8.7.1991 and sought consideration for being selected and

appointed as Medical Assistant (Pharmacist). The Petitioners are, thus, similarly circumstanced with the Petitioners in the above referred writ

petition and cannot be discriminated by the Respondents. The State is a model employer and it has to discharge its functions in accordance with

constitutional mandates and rules made by them. The State Government cannot discriminate between the employees who constitute one class.

State is duty bound in terms of Article 14 of the Constitution to give uniform treatment to all the employees who are similarly, circumstanced and

who constitute one single class. In this case only fact which is to be ascertained is as to whether the Petitioners were selected and appointed

against the existing vacancies or future vacancies. This aspect of the matter is to be ascertained by the Respondents and in case it is found that the

Petitioners were selected against the existing vacancies then they have to be extended benefit which has been extended to the Petitioners in SWP

No. 3579/97 in terms of Government Order No. 01 of 2008 dated 20.06.2008.

5. For the above stated reasons these petitions are disposed of in following terms:

Respondents are directed to consider the claim of the Petitioners for grant of pay scale in the same manner it has been given to the Petitioners in

SWP No. 3579/97 titled Mufti Manzoor Ahmad and Ors v. State and Ors. and by following the Government Order No. 01 of 2008 dated

20.06.2008, provided they satisfy the terms and conditions which are laid in the said Government order and also satisfy the observations made in

this judgment.

Disposed of.