
(2011) 08 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1652 of 2010

Mohd. Khalil Ahanger

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Citation : (2011) 3 JKJ 305

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—Petitioner has prayed for issuance of a writ of mandamus commanding the respondents to consider his case and

make promotion against the post of Executive Engineer (Electric) under OBC Category from the date of issuance of Govt. Order No. 237-PDD

of 2010 dated 16.09.2010 (annexure ""F"") on the grounds taken in the writ petition.

2. Precisely the case of petitioner is that he belongs to OBC Category and is entitled to be promoted at Slot No. 10 in terms of reservation rules

read with SRO 144 dated 28.5.2008 (annexure ""CI""). Further it is contended that he is the only candidate who belongs to OBC Category.

3. It appears the petitioner had sought information while invoking the J&K Right to Information Act, which was provided to him (annexure ""E""). It

is apt to reproduce relevant portion of the information herein.

The Social Caste category has been included for appointment by promotion in the Reservation Rules, 2005 issued vide SRO 294 dated

21.10.2005 read with SRO 144 dated 28.05.2008. It was found that none amongst the AEEs belonging to Social Caste category was having the

requisite qualification as prescribed in the J&K Engineering (Gazetted) Service Recruitment Rules, 1992 read with SRO 297 dated 14.09.2006

for placement as Executive Engineer during the placement made after 21.10.2005. You submitted OBC category certificate on 24.02.2009 and

became eligible for the post of Ex. Engineer on 11.01.2010. The Department had made 28 placements of I/C AEEs as I/C Executive Engineers in

January, 2010. The roster for the vacancies ranged between 63-99. The roster point for placement of OBC is available at 10. As and when the

posts become available the eligible candidates including those of reserved categories will be considered and the roster will be operated from 100

onwards." Accordingly petitioner is the only person who is entitled to be considered for promotion against the post of Executive Engineer (Electric)

against OBC Category.

4. Respondents have filed reply and resisted the petition on the ground that there are two feeding cadres for making promotion to the post of

Executive Engineer (Electric). It is apt to reproduce relevant portion of the reply herein.

As per J&K Engineer (Gazetted) Service Recruitment Rules, 1992 read with SRO 29, 80% posts of Executive Engineers have to be filled up

amongst degree holder having 08 years gazette service and 4 years experience as AEE and 20% amongst diploma holder AEE having 10 years

gazetted service and 4 years experience as AEE. Therefore, the criteria for filling up of the posts of Ex. Engineers either on Incharge basis or for

the Regularisation of Executive Engineers and for the maintenance of their inter-seniority the posts are earmarked and are being utilized in the

following manner:

- a. Degree holder AEE
- b. Degree holder AEE
- c. Degree holder AEE against 80% posts
- d. Degree holder AEE
- e. Diploma holder AEE against 20% posts

5.. In terms of the reply and the rules applicable, 80% promotions are to be made from amongst the degree holder against the post of Executive

Engineer and 20% from diploma holder Assistant Executive Engineers. Thus

while making promotions 80% will go to degree holders and 20% to diploma holders. If this stand of the

respondents is taken as correct, then 10th post will always fall in the lap of diploma holder Assistant Executive Engineers and the degree holders

who belong to OBC Category Will never get a chance of promotion under the said category as per J&K Reservation Rules read with SRO 144

dated 25.5.2008 and on the face of it is contrary to reservation rules and would defeat the purpose of making reservation for OBC. Perhaps the

respondents have fallen in error. It appears that the respondents have to maintain separate rosters for both degree holders as well as diploma

holders and then make promotions from amongst the degree holders as well as diploma holder Assistant Executive Engineers in the ratio of 80%

and 20% respectively.

6. In the given circumstances I deem it proper to admit the writ petition. Ordered accordingly.

With the consensus of learned counsel for the parties, I dispose of the writ petition by directing the respondents to consider the case of petitioner

and make a decision as per the Jammu & Kashmir Engineering (Gazetted) Service Recruitment Rules read with SRO 294 dated 21.10.2005 and

SRO 144 dated 28.5.2008 while keeping in view the observations made hereinabove. Let consideration and decision be taken within a period of

three months from the date a copy of the order is made available by the petitioner to the respondents against proper receipt.

7. Disposed of along with all CMPs.