
(2001) 05 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1534 of 1999

Mohd.Shafi and anr.

APPELLANT

Vs

State of J&K and ors.

RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Citation : (2002) 3 SCT 934

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : M.S. Bhat, Ahsan Malik, Nitin Bhasin, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—Petitioner No. 2 has opted out of this litigation. This petition is being pursued by petitioners No. 1 and 3. They have appeared in person.

2. The petitioners submit that they are residents of backward area. They had applied for the post of Patwari. An advertisement notice was issued

firstly in the year, 1992 and thereafter again in 1995. The petitioners submit that on the basis of their qualifications and experience, they were fully

eligible to be appointed as Patwaries. The petitioners submit that they took part in the interview process conducted from 24.2.1999 to 28.2.1999.

In para ""11"" of the writ petition it submitted that a novel method was adopted by the respondents i.e. the marking was being done with pencils. The

petitioners were also called upon to write something with pencils. It is also submitted that the questions which were asked from them were not

concerned with the job which they were supposed to perform ultimately. The petitioners submit that even though they had fared well in the

interview, they were not selected.

3. The respondents have filed their reply. From the perusal of paragraph ""E"" of preliminary objections, it becomes apparent that the petitioners

were not selected, because there was failure on their part to produce No Objection Certificates from the concerned employer. In the absence of

these No Objections Certificates the inservice candidates could not be selected. The precise stand taken in paragraph ""E"" is as under :

That it is also stated here that since the advertisement were made in the year 1992 and 1995 and the selection of the candidates for undergoing

patwar Training took some time and in the meantime many candidates who were already appointed in the Education department as teacher and

other allied posts were required to produce ""No Objection"" certification from the Chief Education Officer, but no certificates were received by the

Committee, as such, in absence of No Objection Certificate from the Chief Education Officer Rajouri, the inservice candidates could not be

selected for undergoing Patwar Training Course.

4. The petitioners have filed a rejoinder also. It is submitted that they had made available all the material which was supposed to be provided. It is

further submitted that they being Government servants, it was for the State Government to furnish No Objection Certificates. For the lapse on the

part of Governmental machinery, the petitioner's cannot be penalized. As a matter of fact, it is submitted that there was no requirement to furnish

No Objection Certificate.

5. After having gone through the pleadings of the case, I am of the opinion, that there is merit in the submission made by the petitioners. The basic

reason which had led to the nonselection of the petitioners is that they were not in possession of No Objection Certificates. This cannot be made a

ground for their nonselection as Patwaries. This is because :

I/ The conditions regarding furnishing of No Objection Certificate was not mentioned in the notification;

II/ That this requirement was to be complied with by the State agencies and not by the petitioners. For the default of the State agencies, the

petitioners cannot be penalised.

6. The solitary ground on which the petitioners have been nonsuited is that they have failed to furnish No Objection Certificates. It is not the case

of the respondents that the petitioners' merit was lower. The above stand of the respondents cannot be sustained. This petition is allowed. The

respondents would now take appropriate steps with a view to send the petitioners for undergoing Patwar training Course, and their appointment

letters would be issued thereafter. They are also held entitled to all consequential benefits minus monetary benefits.

7. Disposed of as such.