

(2014) 05 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1613 of 2001

Nighat Ara Qaureshi

APPELLANT

Vs

State of JandK

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) LabIC 3207

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : Zahoor A. Shah, Advocate for the Appellant; J.A. Kawoosa, SAAG, Advocate for the Respondent

Judgement

Hasnain Massodi, J.—Petitioner on the strength of averments made in the petition seeks following relief:

A writ in the nature of mandamus be issued in favour of the petitioner and against the respondents commanding the respondents to appoint the

petitioner on the post of teacher in relaxation of rules and exercise the same power which has been exercised in favour of the beneficiaries of the

Government orders referred heretofore in the writ petition.

Petitioner's claim has its edifice on her temporary appointment as teacher against leave arrangements during the period 1989 to 1995 for different

spells.

Petitioner states that she has passed Secondary School Examination in the year 1986 and thereafter Dabir Qabil and Dabir Fazil, (Honours in

Urdu) from Urdu Board Aligarh and is therefore eligible for the post of teacher. It is pleaded that the representations submitted by her to the

respondents for her appointment as teacher in the respondents department in

relaxation of rules, has not been accorded consideration though a number of similarly circumstanced candidates have been appointed as teachers in the respondent department in relaxation of rules. Petitioner to re-inforce her claim relies on Govt. order No. 682-GAD of 1998 dated 5.6.1998 and Government order No. 694-GAD of 1998 dated 5.6.1998.

Whereby appointments, otherwise than on recommendations of J & K SSRB have been made. Support is also sought from various appointment orders stated to have been issued by the respondents during 1998 to 2001 whereby respondents have made appointment in relaxation of rules (annexed as Annexures M to T to the petition).

2. The respondents in their reply admit that petitioner was adjusted against leave arrangement after intervals during 1987-1992. Such appointments are stated to have been restricted to one month in each case. It is also admitted that petitioner submitted a representation for her appointment as teacher in relaxation of the rules. However, competent authority is said to have found no merit in the representation. The respondents relying on law laid down in *Suraj Prakash v. State of J & K & Ors.* SLJ 2000 163 have expressed their inability to appoint her as teacher in relaxation of rules. Respondents insist that appointment to Government services is to be made only after a candidate participates in the selection process initiated by the J & K Subordinate Services Selection Board and is recommended by the Board for appointment.

3. Petitioner in her rejoinder claims to stand on same pedestal as the candidates appointed vide Government orders (Annexure M to T) placed on the file and that the respondents are under a constitutional obligation to give same treatment to the petitioner as given to the said appointees. It is stated that the respondents have not been able to point to any difference between petitioner's case and that of the similarly circumstanced candidates favoured with appointment orders. The law laid down in *Suraj Prakash's* case according to the petitioner is not applicable to the present controversy in as much as dispute in the aforementioned case was between direct recruits and in services candidates.

4. Heard and considered.

5. Employment under Government is a public largesse and all eligible candidates for available Government post(s) are to be given an opportunity to

compete for the post(s). Article 16, Constitution of India guarantees equality of opportunities in matters of public employment. As a first step, to

realize the constitutional goal, is to advertise available post(s) so that all eligible candidates are made aware of their availability and intention to fill

these up in accordance with rules. It is only after the available post(s) is/are given due publicity that the eligible candidates would be in a position to

offer their candidature. The backdoor appointments or appointments without advertisement are repugnant to the constitutional mandate. Such a

course leaves room for pick and choose, favouritism, nepotism, bitterness, deprivation and last but not least to the arbitrariness. We are aware that

arbitrariness is not permissible under law as it is in gross conflict with rule of law and therefore mandate of equality clause of the Constitution.

6. In the present case petitioner claims that she has a right to be appointed as a teacher without advertising the post against which she, if her claim

is accepted, is to be appointed. She bases her claim for her appointment against leave arrangements a few times during 1989 to 1995 for a period

of one month, in each case. She next seeks to support her claim on the ground that a number of persons have been appointed without advertising

the posts against which they have been appointed and there is no reason that she should not be appointed like such other candidates, in relaxation

of rules.

7. There is no merit in either of the grounds pleaded by the petitioner to get relief sought in the petition. The mere fact that petitioner was adjusted

against leave arrangements more than once, does not give her a right to be appointed as teacher, without advertising such position. Petitioner has to

participate in selection process alongside other aspirants for the post, once the post(s) of teacher(s) is/are advertised. Her teaching experience may

earn her extra points in interview/viva voce but would not entitle her to be appointed as a teacher without participating in the selection process and

competing with other candidates.

8. Petitioner's case that as a number of persons have been appointed against different posts by the respondents in relaxation of rules, she deserves

to be given same treatment as given to such appointees, cannot be accepted. In case petitioner's claim on that count is allowed, all aspirants for

public employment would claim appointment on parity with the petitioner and

other such appointees. The respondents in such a situation shall have a free hand in making appointments without adhering to the mandate of Articles 14 and 16 Constitution of India. It is well settled that there can be no parity in illegality. Had a benefit been extended to a candidate in accordance with law, rules and regulations and such benefit denied to the petitioner though satisfying all the legal and statutory requirements and similarly placed as the beneficiaries, she could very well complain of discrimination and ask for the similar treatment as given to such beneficiaries. However, in the present case all those to whom a reference is made in the body of the petition, have been appointed illegally through backdoor without going through the selection process. Petitioner cannot claim parity with such beneficiaries or appointees and in effect pray that the illegality be perpetuated. Such a claim cannot be accepted for obvious reasons. It is for the Government to withdraw illegal and backdoor appointment orders.

9. Petitioner is aggrieved that her representation for regular appointment in relaxation of rules has not been dealt with at appropriate level and Chief

Secretary has not taken a decision on her representation, as required under the Government order issued in this regard. Averments made in the

reply in this behalf, are refuted by the petitioner in her rejoinder. The record made available by Ld. Counsel for the respondents belies petitioners

stand. The Chief Secretary at note para. 35, has considered and rejected her claim and advised the petitioner to apply through J & K Subordinate

Service Selection Board. For the reasons discussed, I do not find any merit in the petition. The petition is accordingly dismissed.