
(2020) 02 J&K CK 0028

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1638 Of 2017, IA No. 01 Of 2017

Rahul Sharma

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Citation : (2020) 02 J&K CK 0028

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Sunil Kumar Maini, Raj Kamal Gupta, Vishal Bharti, Ajay Abrol

Final Decision : Dismissed

Judgement

1. Briefly put, the precise case of the petitioner is that the respondent No.3 vide Advertisement Notification No.Estab/NTW/C&R/ 15/149-200 dated

01.09.2015 notified five posts of Assistant Registrars to be filled up by the University of Jammu (respondent No.2). All the five posts were notified in

the general category whereas, as per the relevant statutory rules the respondent No.3 was under an obligation to reserve at least three posts for the

category of Resident of Backward Area (hereinafter referred to as "the RBA?"). The grievance of the petitioner is that he, being a resident of

backward area and possessing all the requisite qualification, was not considered under the RBA category. He was considered as general category

candidate, but, was not selected for having not made the grade. The petitioner, thus, feels aggrieved and seeks to challenge the Advertisement

Notification to the extent it notifies all the five available posts of Assistant Registrars in general category without giving due share to the category of

RBA. This in long-and-short is the grievance projected by the petitioner in this

writ petition.

2. The respondents 2 and 3 have opposed the writ petition vehemently. In the reply affidavit filed by the respondents 2 and 3, it is pleaded that as per

the University Statute, the reservation is provided only to the categories of the Schedule Caste and Scheduled Tribe for the post of Registrar and

equivalent. Reliance has been placed on Note-2 contained in the University Calendar 2010, which is reproduced by the respondents in the preliminary

Paragraph-C of the objections. The respondents have further sought to clarify that the reservation provided by the Government in terms of the J&K

Reservation Rules, 2005 issued vide SRO 294 is applicable only to the non-teaching position in the University and not to the post of Assistant

Registrars and equivalent. Respondents submit that the reservation for the post of Assistant Registrars and equivalent posts is governed by the

University Grants Commission norms and, thus, available only to two reserved categories, i.e., Scheduled Caste and Scheduled Tribe. It is in the

backdrop of the aforesaid stand taken in the reply affidavit, the respondents have sought dismissal of the writ petition.

3. During the course of arguments, Mr. Ajay Abrol, learned counsel appearing for the respondents also took plea that the writ petition was barred by

acquiescence as well as delay and laches.

4. Having heard learned counsel for the parties and perused the record, I am of the view that the objections of the respondents to the maintainability of

the writ petition on the ground of acquiescence as well as delay and laches must prevail. The Advertisement Notification whereby inter alia five posts

of Assistant Registrars were to be filled up in the Jammu University was issued on 01.09.2015. From bare reading of the Advertisement Notification,

it clearly transpires that no reservation in favour of the RBA category was provided. The petitioner responded to the Advertisement Notification, but,

did not challenge the same before participating in the selection process. He registered his grievance for the first time in terms of the representation

moved by him before the respondent No.3 on 13.06.2017, i.e., almost after two years of the issuance of the Notification. He appears to have made

some efforts to collect the information under RTI Act. Even the certificate of the RBA was not possessed by the petitioner at the time of issuance of

Advertisement Notification. As is apparent from the Annexure-B appended with

the writ petition, the RBA certificate in favour of the petitioner was issued by the competent authority only on 27.12.2016 and it is only after getting the RBA certificate, the petitioner picked up the holes in the selection process and started demanding reservation for the category of RBA. The conduct of the petitioner, therefore, disentitles him to invoke equitable writ jurisdiction of this Court. That apart, it may be noted that J&K Reservation Act and the Rules framed thereunder in terms of SRO 294 of 2005 are not ipso facto applicable to the University of Jammu, which is a body corporate, constituted under the J&K University Act. The J&K Reservation Act and the Rules framed thereunder provide for reservation in appointment in government service and admission in professional Institutions notified by the Government from time to time and shall initially include Govt. Medical Colleges, Govt. Dental Colleges, Govt. Polytechnics, Govt. Colleges of Education and Govt. College of Engineering and Technology, Jammu. It is pertinent to mention here that as far as back on 22.01.1971, the University Council in its 3rd meeting took inter alia decision that the Rules and Regulations prevailing in the State Government would be observed in the University in regard to the matters about which University had not framed any rule of its own. Admittedly in the year 1971, the reservation rules had not been framed by the Government and the decision aforesaid was in the shape of a residuary rule providing for meeting the situations and contingencies not contemplated by the University Statute. Another decision was taken by the University Council on 27.07.1996 on the issue of reservation for appointment in the Jammu University and it was resolved that the guidelines as framed by the University Grants Commission for providing reservation for Scheduled Caste/Scheduled Tribe candidates for appointment to the posts of Lecturers shall be followed subject to the condition that the reservation percentage shall remain the same as has been prescribed by the State Government and with regard to other non-teaching posts, it was resolved that the University Grants Commission norms for reservation of the Scheduled Cast and Scheduled Tribe candidates as determined for Lecturers shall also be followed for direct recruitment posts of Officers. These issues were deliberated by the University Council as Agenda item Nos. 3 and 4 and for expediency Agenda Item Nos.3 and 4 along with decision taken thereon is reproduced:-

Item No.3.

After having perused the judgment delivered by the Hon'ble High Court of Jammu and Kashmir dated 14.03.1996 on the writ petition about providing

of reservation for Scheduled Caste/Scheduled Tribe candidates for appointment to the teaching posts, the Council RESOLVED that the guidelines as

framed by the University Grants Commission for providing reservation for Scheduled Caste/Scheduled Tribe candidates for appointment to the posts

of Lecturers be followed subject to the condition that the reservation percentage shall remain the same as has been prescribed by the State Govt.

RESOLVED FURTHER that the All-India advertisement procedure as is being observed at present be continued to be followed in future also, and that

the Scheduled Caste/Scheduled Tribe candidates belonging to the rest of the country be also considered along with those belonging to this State.

Item No.4.

Considered as to whether the reservations as envisaged in SRO No. 126 of 1994 issued by the State Government are to be extended to the various

posts of officers or not.

RESOLVED that the University Grants Commission norms for reservations of Scheduled Caste/Scheduled Tribe candidates as determined for

Lecturers in the preceding item be also followed for 'Open Selection' posts of Officers.

5. From the perusal of the decision taken by the University Council on 27.07.1996, it was clearly provided that the University would follow the UGC

norms for reservation of Scheduled Caste and Scheduled Tribe categories for direct recruitment posts of Officers to be appointed in the University.

The University Calendar 2010 deals with the posts of Assistant Registrars and equivalent and proviso to Note-2 clearly lays down that the reservation

for direct recruitment to the post of Assistant Registrars and equivalent would be available to the categories of Scheduled Caste and Scheduled Tribe

in accordance with the guidelines of the UGC subject to the conditions that the percentage of reservation shall not exceed the percentage provided for

such categories by the J&K Government from time to time.

6. From conjoint reading of the decision of University Council taken on 27.07.1996 and the University Calendar 2010 dealing with the recruitment of

Assistant Registrars and equivalent posts, it becomes crystal clear that the

reservation in the direct recruitment posts of Assistant Registrars and equivalent is restricted to the reserved category of the Scheduled Caste and Scheduled Tribe. The University of Jammu has, thus, excluded other reserved categories by a policy decision. The decision of University Council taken on 27.07.1996 or University Calendar 2010 dealing with the recruitment of the Assistant Registrars and equivalent posts in the University, is not assailed by the petitioner in this writ petition.

7. In the premises, I find no merit in this writ petition. Accordingly, this writ petition is dismissed along with connected CM(s). Interim direction, if any, shall stand vacated.