
(1998) 11 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1817 Of 1997

Raj Singh

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Citation : (2000) KashLJ 86 : (2002) 2 SCT 888

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : Surinder Kour, Gagan Basotra, D.C.Raina, Advocates appearing for the Parties

Judgement

1. The Jammu and Kashmir Public Service Commission (hereafter the Commission) vide Notification No. 5 of 1996 dated 25.1.96, invited

applications for 54 posts of Agriculture Extension Officers/Agriculture Assistants etc. The minimum qualification prescribed was B.Sc. Agriculture

from the recognised institute. The petitioner being an Agriculture Graduate had applied for the post and appeared in the screening test also but he

was not invited for vivavoce test. He approached the Commission with the representation that he being son of an exserviceman is entitled to be

considered under Rule 11 of the Reservation Rules, 1994. Since the representation has not been decided, he has moved this petition for a direction

to the respondents to implement Rule 11 of SRO 126 of 1994 considering him under the category of exserviceman. Rule 11 of the Reservation

Rules, 1994 notified vide SR0126 of 1994 dated 28.6.94 read as under :

11. Concessions (1) Notwithstanding anything in rule 10 and subject to the provisions of subrule (2) of this rule, out of the total number of

available vacancies (reserved as well as unreserved), handicapped persons to the extent of 2% and exservicemen and children of Defence

personnel to the extent of 5% shall get preferential treatment for selection in each service class, category and grade.

(2) If a candidate belongs to reserved category, he will be placed in that quota by making necessary adjustment and if he belongs to open category

he will be placed in that category by making necessary adjustment. This shall not affect the percentage of reservations provided under rule 10.

As per subrule 1 of this rule, five percent out of the total number of the available vacancies both under the open merit and reserved categories

have been reserved for exservicemen and children of defence personnel. SubRule 2 of the Rule prescribes the procedure for giving preferential

treatment. This ought to be indicated in the advertisement notice after working out the vacancies for them under each category on the basis of

percentage. Once the vacancies available for the exservicemen and children of defence personnels are identified, there will be no difficulty to

decide their inter se merit because they have to compete only with those eligible for concession or preference because competition is always with

the equals. So, the contention of Mr. Raina that petitioner could be preferred only if he had obtained 79 marks which was the cut off point for

open merit candidate, is not tenable and against the principle of preferential reservation as against proper reservations. The plea of the Commission

is also against the mandate of subrule 2 of Rule 11 of the Reservation Rules, which is an illustration, how such reservations i.e. concessions are to

be worked out. So, while advertising the post, the Commission is required to invite applications for filling up the number of vacancies available for

those entitled to concession under Rule 11 on the basis of percentage and decide their inter se merit within the category to which he/she belongs.

Preference and concession, though not proper reservation, but they are entitled to it within the category to which they belong and, therefore, an

exserviceman will only compete with the exservicemen and children of the Defence personnel only with each other.

The next question is, whether the petitioner who is a child of an exserviceman is also covered under Rule 11 of the Reservations Rules. Subrule (i)

of Rule 11 provides reservation to the extent of 5% in favour of ex servicemen and children of Defence Personnel only. So the concession or

preference is available to the exservice man and not to his child. The object appears to be to rehabilitate the exserviceman as they retire at a very

young age. But exserviceman does not include his child. Children of Defence Personnal is a separate class because they are children of Defence

Personnels who are in service. So while a Defence Personnel is in service, his child can claim concession. But after he retires he alone is entitled to

it as Exserviceman. So on the plain reading of the said rule, the petitioner who is a child of an exserviceman, as admitted by him, is not entitled to

the concession claimed by him. He was rightly not considered, though the ground of his rejection is erroneous.

In view of the above, there is no merit in this petition, which is dismissed accordingly. No order as to costs.