

(1971) 11 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 74 of 1969

Raja Ram and Others

APPELLANT

Vs

State of Jammu and Kashmir and six others

RESPONDENT

Date of Decision : 01-11-1971

Acts Referred:

Constitution of India, 1950 — Article 16, 32(2A)
Constitution of Jammu and Kashmir, 1956 — Section 103

Citation : AIR 1971 J&K 113 : (1971) KashLJ 101

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : Ishwar Singh, D.D.Thakur, Amar Chand , Advocates appearing for the Parties

Judgement

(1) This is a petition under Article 32(2A) of the Constitution of India as applied to the State of Jammu and Kashmir read with section 103 of the

Constitution of the State for issue of an appropriate writ, direction or order quashing Government Order No. 446Md/G of 1967 dated October,

17, 1967, promoting respondents No. 2 to 5 as Assistant District Medical Officers and respondents Nos. 6 and 7 as Medical Officer (Leprosy) in

the scale of 250500 as also for a writ of Mandamus directing the State to declare the petitioners senior to respondents Nos. 2 to 7 and place them

in the position in which they were in the seniority list prepared before 1961.

(2) The case of the petitioners, the first two of whom are Matriculates and the last two of whom have obtained High Proficiency in Sanskrit, is that

the first three of them joined the Ayurvedic Section of the Medical Department of the State on Phagan 30th, 2003, March 12, 1947, that petitioner

No. 4 joined the said service on Sawan 13th, 2004, May 25th, 1947, that initially

the petitioners were placed in the same scale of pay i. e. 706130 as respondents No. 2 to 7 who are holders of five years Diploma course, that a combined seniority list of the petitioners and respondents Nos. 2 to 7 and of other Vaidas and Hakims serving in the Department was maintained, that in 1961 the State Government vide its order No. 519MD/G of 1961 dated August 3rd, 1961 ordered that the Vaidas and Hakims who are degree holders from the recognized universities be allowed the scale of 15010250 that the petitioners were sought to be excluded from the benefit of this pay scale (of Rs. 15010250) whereupon they represented to the Government that the nature of their duties and responsibilities were the same as those of respondents Nos. 2 to 7 and they had been subjected to great hardship in consequence of the discrimination flowing from the Government order dated August 3rd, 1961, that in the year 1964 the Government issued order No. 119MD/G of 1964 dated April 8th, 1964, amplifying the earlier order No. 519MD/G of 1961 dated August 3rd, 1961 and directing that the holders of the Diploma of four years course from the institutions in Punjab prior to the year 1947 as mentioned in the Punjab Medical Manual and possessing a Matriculation certificate or a certificate of having passed proficiency Examination in Sanskrit be given the benefit of the grade of 200400, that the petitioners who fulfilled the conditions laid down in Government order No. 119 MG of 1964 and were held entitled to the grade of 200400 claimed that they were entitled to the grade of 15010250 which was subsequently revised to 200400 with effect from August, 3rd, 1961 that after exchange of some correspondence between the Accountant General and the Government the latter vide its letter No. 135MD/G dated February 16th, 1968 addressed to the former admitted the claim of the petitioners and held them entitled to the higher grade namely 15010250 with effect from August 3rd, 1961 that the petitioners and respondents Nos. 2 to 7 having been simultaneously given the benefit of the grade of 15010250 with effect from August, 3rd, 1961. the seniority which the petitioners enjoyed in the lower grade of 706130 had to be maintained in the higher grade as well according to rule 24 of the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956, hereinafter referred to as the rules, that the Government prepared and maintained a separate seniority list of the Vaidas and Hakims

holding the grade of 200400 on the assumption that they held a higher grade than the one held by the petitioners that the petitioners are senior to

respondents Nos. 2 to 7 as it could not be said that the latter were promoted or given the benefit of the higher grade before the petitioners, that

whereas in the seniority list as it stood in 1961 petitioner Nos. 1 to 3 were shown at Serial Nos. 3, 4 and 5 respectively, petitioner No. 4 at serial

No. 12. respondent No. 6 at Serial No. 18 respondent No. 3 at serial No. 39, respondent No. 7 at serial No. 44, respondent Nos. 2 and 5 did

not figure in the said list and respondent No. 4 appeared in the seniority list of Kashmir that as the petitioners were senior to respondents Nos. 2 to

7 they were entitled to claim the maintenance of the same position, that by the impugned order respondents Nos. 2 to 7 were promoted by the

Government to the grade of 250500 in complete disregard of their seniority, that petitioner No. 1 filed a review petition before the Government

against the order dated November 15th, 1967 but the same was dismissed by Government Order No. 527MD/G of 1968 dated October 31st,

1968 that the remaining petitioners also made representations challenging the correctness of the order but no action was taken on their

representations, that after the dismissal of the review petition filed by petitioner No. 1, he met the Chief Secretary who asked him to put in a fresh

representation but despite the fact that the same was made, no action was taken thereon, that regardless of the fact that the Department prepared

a seniority list showing therein the inter se position of the petitioners and respondents Nos. 2 to 7 the petitioners are by force of rules 24 and 25 (2)

senior to respondents Nos. 3 to 7 that the petitioners are by force of petitioners have a valuable right in regard to their seniority and any arbitrary

fixation thereof which affects their right is hit by Article 16 of the Constitution and that the order of promotion of respondents Nos. 2 to 7 in

supersession of the petitioner's seniority not being a speaking one is not maintainable.

(3) The petition has been contested by the respondents inter alia on the grounds that respondents Nos. 4 and 6 joined the Medical Department of

the State in 2003 and 2010 (Bikrami) respectively, that respondent No. 5 joined the said Department in 1957 (A. D.) and respondent Nos. 2 and

3 joined the Department in the year 1961 (A. D.) that at the time of joining the service respondents Nos. 2, 3, 5 and 7 were Degree holders and

respondents No. 4 and 6 were Diploma holders in Ayurvedic System of Medicine, that whereas before April 1st, 1962, respondents Nos. 2 to 7 also obtained Degrees in the above system of Medicine from the institutions recognized by respondent No. 1, the petitioner continued to remain only Diploma holders in the aforesaid system of medicine, that respondent No. 2 was first appointed as a Lady Vaid in the grade of 15010250, that Government order No. 519MD/G of 1961 dated August 3, 1961 is not relevant, that by SRO 160 dated August 6th 1962 that only petitioner No. 1 made a representation and got the pay scalp of 200400 vide Government Order No. H9.MD/G of 14964 with effect from April 8th, 1964. the respondents Nos. 2 to 7 (who fulfilled all the conditions laid down in SRO 160 dated August 6th, 1962) having got the grade of 200400 long before the issue of Government Order No. H9MD/G of 1964 dated April, 8 1964, had become senior to the petitioners, that Government order No. 119MD/G of 1964 took effect from April 8th 1964 and was not retrospective in operation, that letter No 13561 dated Feb. 16th, 1968, contained only the opinion of the Under Secretary which was not binding on the Government, that the petitioners did not get the benefit of the higher grade simultaneously with respondent Nos. 2 to 7 as alleged but on the other hand respondents got the higher grade of 200400 by virtue of SRO16C with effect from April 1st, 1962, and became senior to the petitioners from that date, that the petitioners were rightly excluded from the seniority list pertaining to grade 200400, that respondents Nos. 2 to 7 are senior to the petitioners from April 1st 1962 and this position has all along been accepted by the latter, that the seniority list as it stood on August 3rd, 1961, stands superseded as a result of SRO 160 with effect from April, 1st, 1962 and respondents Nos. 2 to 7 having been placed in the higher grade of 200400 became senior to the petitioners from that date, that the petitioners not being senior to respondents Nos.. 2 to 7 the question of disregard of their seniority does not arise, that the minimum qualification prescribed by respondent No. 1 for the post of an Assistant District Medical Officer is a degree in Avurvedic System of Medicine and for the post of Medical Officer, Leprosy, the minimum qualification so prescribed is a degree in Ayurvedic system of Medicine and training in the treatment of Leprosy, that whereas the petitioners not being Degree holders are not eligible to be appointed to any of the posts mentioned in the

impugned order, respondents Nos. 2 to 7 are Degree holders in Ayurvedic System of Medicine and two of them viz respondents Nos. 6 and 7

have also undergone training in the treatment of leprosy, that respondents Nos. 2 to 7 were appointed to the impugned posts as they were senior

to the petitioners and possessed higher qualification than the petitioners, that the petitioners being merely Diploma Holders are not eligible for the

posts mentioned in the impugned order and cannot maintain the petition, that the appointments made by the impugned order are only adhoc and

subject to the approval of the Public Service Commission, to whom a reference has already been made, that as already stated it was only

petitioner No 1 who filed the review petition which was dismissed and the rest of the petitioners did not move against the impugned order, that

none of the petitioners held a Diploma of four years course granted by any institution in Punjab prior to the year 1947 as mentioned in the Punjab

Manual and that the petitioner not having undergone a condensed course of three years duration organized by the Principal of Ayurvedic and Unani

College as prescribed by Government Order No. 119MD/G of 1964 were not eligible to the higher grade and that the higher grade too was given

to the petitioners only as a matter of concession.

(4) I have heard the learned counsel who have reiterated the stands taken by their clients in their respective pleadings.

(5) It is now well settled that classification of employees for purpose of appointments or promotions can be made and unless the classification is

prima facie unjust, the onus lies on the party attacking the classification to show that it is unreasonable and violative of Article 16. It would be

advantageous in this connection to refer to the following observations of their Lordships of the Supreme Court in Govind Dattatray Kelkar and

others V. Chief Controller of Imports and Exports and others, AIR 1967 SC 89 :

"The relevant law on the subject is well settled and does not require further elucidation. Under Article 16 of the Constitution, there shall be equality

of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a

higher office thereunder Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Art. 14 thereof. It

gives effect to the doctrine of equality in the matter of appointment and

promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification.

(6) The observations made in the State of Punjab V. Joginder Singh, AIR 1963 Supreme Court 913 are also worth quoting :

It now remains to consider a point which was raised that the State cannot constitute two services consisting of employees doing the same work

but different scales of pay or subject to different conditions of service and that the constitution of such services would be violative of Art. 14.

Underlying this submission are two postulates (1) equal work must receive equal pay and (2) if there be equality in pay & work there have to be

equal conditions of service. So far as the first proposition is concerned it has been definitely ruled out by this court in Kisbori Mohanlal V. Union of

India AIR 1962 SC 1139, Das Gupta J. speaking for the court said :

The only other contention raised is that there is discrimination between Class I and Class II officers in as much as though they do the same kind of

work their pay scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no

incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to

do with Art. 14 The contention that Art. 14 of the Constitution has been violated, therefore, also fails."

The second also, is, in our opinion unsound. If, for instance, an existing service is recruited on the basis of a certain qualification, the creation of

another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be unconstitutional

and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference,

we are not basing this answer on any theory that if a Government servant enters into any contract regulating the conditions of his service he cannot

call in aid the constitutional guarantees because he is bound by his contract. But this conclusion rests on different and wider public grounds, viz.,

that the Government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the

administration and that the limitations imposed by the constitution are not such as to preclude the creation of such services.

(7) Again in *Unikat Sankunni Menon V. The State of Rajasthan*, AIR 1961 Supreme Court 81 it was held :

Everyone, appointed to the same post, is not entitled to claim that he must be paid identical emoluments as any other person appointed to the

same post, disregarding the method of recruitment or the source from which the officer is drawn for appointment to that post. No such equality is

required either by Art. 14 or Article 16 of the Constitution."

(8) I am also tempted to quote the following observations in *K. Rama Reddy and others Vs. Mysore Public Service Commission* 1969 Service

Law Reporter 102.

The prescribing of the minimum educational and other qualifications for a post is a perfectly constitutional classification of persons based upon

reasonable criteria directly related to the object of the rules of recruitment. The criterion for selection, namely, qualifications necessary for due

discharge of the post, is clearly intelligible. It is related to the object of recruitment because, qualifications are necessary to enable a person to

discharge the duties of the post properly and efficiently.

(9) In the present case there has been no violation of any rule or law. Respondents Nos. 2 to 7 being Degree Holders from recognized institutions

as such possessed of the requisite qualification and academic merit and having entered the grade of 200400 by virtue of the rules framed vide SRO

160 dated August 6th 1962, which came into force on April 1st 1962, became senior to the petitioners. This position is perfectly in keeping with

rules 24 (1) and 25 (2) of the rules.

(10) The fact that petitioner No. 1 also got the grade of 200400 with effect from April 8th 1964, as a matter of indulgence did not entitle him or

the other petitioners, who are not Degree holders and as such did not possess the requisite qualification to take advantage of Order No. 519

MD/G of 1961 dated August 8th, 1961 or SRO 160 dated August 6th, 1962 or

Government Order No. 119MD/G of 1964 dated April 8th

1964 or of Government Order No. 447MD/G of 1967 dated October 17th 1967. The contention that as the petitioners were shown as senior to

respondents Nos. 2 to 7 in the seniority list as it stood in 1961 they are to be treated as senior to the said respondent, is also misconceived A

reference to Rule 24 of the Rules would show that seniority has reference to the service, class, category or grade with reference to which the

question arises and that such seniority has to be determined by the date of first appointment to such service, class, category, or grade as the case

may be. As already stated the respondents having entered the grade of 15010250 vide Government Order No. 519MD/G of 1961 dated August

3rd 1961, which was later on revised to 200400 by virtue of SRO 160 dated April 8th, 1962 were entitled to be treated as senior to the

petitioners. However it is also well established by a catena of authorities that no writ lies in respect of seniority. (See AIR 1966 SC 1197, AIR

1962 SC 1704 and AIR 19 8 SC 36).

(11) The claims of the petitioners for the posts of Assistant District Medical officers and Medical officers (Leprosy) cannot also be countenanced

as they are neither Degree holders like respondents Nos. 2 to 7 nor have undergone a special course of training for the purpose.

(12) For the foregoing reasons, I do not find any merit in this petition which is dismissed. In the circumstances of the case I make no order as to

costs.