

**(1998) 12 J&K CK 0007**  
**In the Jammu And Kashmir High Court**  
**Case No : O.W.P No. 886/1998**

Rajinder Kumar and others

APPELLANT

Vs

State and others

RESPONDENT

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**Date of Decision :** 15-12-1998

**Acts Referred:**

**Citation :** (2000) KashLJ 6 : (1999) SriLJ 247 : (1999) 1 SriLJ 247

**Hon'ble Judges :** Arun Kumar Goel, J

**Bench :** Single Bench

**Advocate :** Z.A.Shah , Sunil Sethi, Raghu Mehta , H.L.Choudhary , Gagan Basotra, D.C.Raina, C.M.Koul , B.M.Gupta , Amrish Kapoor, Advocates appearing for the Parties

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## Judgement

Arun Kumar, Judge.

1 .Petitioners in all these writ petitions have questioned the selection of private respondents as candidates selected for Patwari Training for being appointed as Patwaries in Kathua District.

2. Grievance made by all the petitioners are that some of them were postgraduate, some graduates, some were under graduates; all of them having good knowledge of Urdu. Incase of some of the petitioners, they were even MA in Urdu, still they've not been selected by the concerned

respondent. Whereas, on the other hand, persons who were lesser qualified than some of die petitioners and some of those did not know Urdu

have been selected by the respondents. Further case of the petitioners is that persons who belonged to certain reserved categories have not been

considered against such categories, and in case of some of the selected candidates, on the date of submitting applications they did not belong to a

reserved category but still they have been selected against the post meant for it.

3. Another ground raised is that amongst the selected candidates, number of them are already in service who were required to apply through

proper channel but they have not done so. Petitioners claim that in view of latter notification of 1996 selection was to be made in each district

blockwise. Since this criteria had not been adhere to, therefore the selection of private respondents was liable to be set aside.

4. These were by and large the common grounds on which writ petitions were filed.

In OWP No. 886/98 additional ground urged was that Rajinder Kumarpetitioner No. 1 and Bharat Bhushanpetitioner No. 9 had applied against

Handicapped and RBA Categories respectively but they have not been considered against such categories.

In OWP No. 917/98 case of the petitioners was that selected candidates namely Shori Lal, Uttam Chand and Gul Mohammad were not eligible

for applying against a seat meant for RBA category but they have .been selected against such category.

In OWP No. 832/98 it was pointed out that Mst. Yasmeen Akhtar was not a scheduled tribe candidate on the date of her application, therefore

her selection is bad in law.

These are the few specific instances which are being referred to.

5. So far Rajinder Kumarpetitioner No. 1 and Bharat Bhushan petitioner No.9 in OWP No. 886/98 are concerned, they appear to have been

considered in open merit. Similarly so far respondents Shori Lal, uttam Chand and Gul Mohammad in OWP No. 917/98 are concerned, they have

been considered against RBA category. In this behalf when preference is made to the advertisement inviting applications, it is clearly stated therein

that candidates can produce the certificate at the time of interview. Relevant clause of the advertisement in question is to the following effect:

This notification supersedes the advertisement No. FC (NG) 11 of 1992 dated 3041992 issued by the Financial Commissioner, J and K

Government. However the candidates who had applied hi response to the above mentioned notification and have been issued Admission/Identity

Cards by the J and K Services selection board need not apply afresh as their previous applications continue to remain valid. Such of the

candidates as fall under a reserved category in terms of SRO 126 of 1994 dated 28.6.1994 shall have to produce certificates to that effect at the

time of written test/interview." From the copies of certificates filed by these three candidates it is clear that on the date of interview they had the

requisite certificates, as such they produced those at the time of interview in terms of aforesaid clause of advertisement. In this view of the matter

no fault can be found with their selection in the category against which they have been selected.

6. Yasmeen Akhtar according to learned counsel was not a member of Schedule Tribe therefore was not entitled to be appointed against a post

meant for such category. This is not the factual position. The certificate produced by her clearly indicates that she is shown to be a member of

Scheduled Tribe, copy of which has been filed, though learned counsel appearing for petitioner made an attempt by referring to another certificate

concerning her that she does not belong to scheduled tribe category. This however would not be correct as in the certificate attached with the file

she has been shown to be a person belonging to Scheduled Tribe Category.

7. Now coming to the ground of attack that number of candidates who have been selected were in service candidates and were required to apply

through proper channel. Reliance in this behalf was placed on clause of the advertisement in question which is to the following effect:

In service candidates should route their applications through proper channel. They shall, however, send a copy in advance alongwith all requisite

documents within the closing date for receipt of applications.

8. Since in service candidates had not applied through proper channel, therefore according to learned counsel for the petitioners their applications

were liable to be rejected. Here it may be worthwhile to notice that no doubt in service candidates were required to apply through proper channel

but, at the same time, they could file their applications directly also. The question that needs to be determined is as to what is the effect of not

having applied through proper channel.

9. The purpose of applying through proper channel is that the employer of such applicant knows that a situation may come when on being selected

the employee has to go. In addition to this, when an employee applies for another job while in service, if he applies through proper channel and his

application is forwarded then his employer may be in a position to relieve him in the event of selection of such an employee. Besides this, such an

employee also gets the benefit of his previous service for counting towards pensionary and other benefits with the new employer on joining. In case

of not applying through proper channel the employee is liable to forego of such benefits, but to say that he could not have applied at all and

thereafter having been selected on account of not routing his application through proper channel would disentitle him from getting the benefit of his

selection with his new employer is an argument without any lawful basis. Nothing has been brought to my notice during the course of hearing as to

whether any service rule, regulation or any other law has been violated by a person not routing his application through proper channel.

In this view of the matter no benefit can be derived by any of the petitioners against the selection of in service candidates and therefore this plea has

no merit.

10 So for the selection having not been made on blockwise basis as per notification dated 28.8.1998 attached with OWP No.;886/

1998(Annexure""s:) is concerned for the reasons recorded hereinafter no benefit can be derived by the petitioners on the basis thereof.

11. This is a notification which was made must after the interviews were conducted. Besides this .there is nothing to suggest in this notification that

it is retrospective in its applicability governing all cases where interviews followed by selection process had either been completed 01 was in the

pipeline. In addition to this there is nothing to suggest in the said notification that where the selection process is complete the exercise has to be

done afresh. On the other hand when applications were called by the Service Selection Board it is clearly mentioned there in that these are district

cadre posts (see notificationNo:SSB3 of 1995 dated 7.3.1995, Annexure ""A"" to OWP NO:879/98). It may also be worthwhile to notice that

what was held out to the candidates in terms of this notification is clearly made out that it is a District Cadre Post. As such no benefit can be

derived by the petitioners from the notification dated 28.8.1998.

12. S o for the plea that though persons with higher qualifications and in their own assessment know better Urdu having not been selected and

persons having not qualified exam with Urdu having been selected is concerned,

suffice it to say that the requirement of advertisement was knowledge of Urdu and it is not necessary that if a person has not studied Urdu as a subject during his school/college education, therefore he cannot obtain proficiency by learning the language. As such this argument cannot be accepted. Candidates who were called for interview and have been selected was purely in the domain of Selection Committee. 'This court does not have to sit in judgment over the decision of Selection Committee. Nothing could be brought to the notice of the court so as not to accept the selection made by the concerned respondents.

13. No other point is urged in support of these petitions. As a result of aforesaid discussion all writ petitions are dismissed with the exception that

respondents shall examine the case of petitioner Rajinder Kumar against Handicapped category and petitioner Bharat Bhushan against RBA

category in OWP NO 886/1998. Case of both these petitioners would have been dealt with by this court but for want of original applications etc.

this could not be determined as Shri C.M. Koul was not in a position to produce the record which was summoned through him as he stated that

the same is with the Deputy Commissioner, Kathua. In case these petitioners had applied in the aforesaid two reserved categories and they had

produced the requisite documents in support of their respective claim at the time of interview, then the concerned respondent would decide the

matter and grant the relief, if any to which they may be found entitled in the concerned category on merits. This exercise will be completed within a

period of four weeks from the date of receipt of copy of this judgment by the Board. Till the matter is finalized, one post each in Handicapped

category and RBA category shall be kept vacant by the concerned respondents. Photostat copies of the record of selected candidates as well as

of the petitioners produced by Shri Amresh Kapoor Additional Advocate General have been returned to him. Photostat copies of this judgment be

placed on the files of other connected cases.