

(1998) 05 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 132 of 1998

Rakesh Singh

APPELLANT

Vs

Hindustan Petroleum Corporation

RESPONDENT

Date of Decision : 15-05-1998

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1998) SriLJ 371

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : M.H.Lone , J.S.Kotwal, Advocates appearing for the Parties

Judgement

1. Petitioner is seeking appointment with respondents. The claim is based on a notification issued by the State Government on 3rd of June 1988.

This is SRO 181. In this notification it was provided that when land of an owner is acquired then one member of the family who 'is left with 50% or

less of their agricultural holding would be given Government job. Petitioner submits that the Government has acquired land of his father and

therefore, he is entitled to the benefit of above SRO 181. The fact that one Tilak Singh had been given appointment in pursuance of the above

SRO has been highlighted. Respondents have filed objections. Petition admitted. With the consent of parties it is taken up for final disposal. Stand

taken by the State is to the effect that SRO is no longer in force. Notification in question stands rescinded vide SRO No. 214 issued on 11th of

July 1991 saving clause protects rights of those employees who had been given appointment. In case of such person their appointments remain

intact. The stand taken by the State is that as SRO 181 is no longer in force and as it was rescinded on 11th of July 1991, therefore, it has no

obligation to offer any appointment to the petitioner.

2. So far as respondents No. 1 to 4 are concerned their stand is that notification issued by the State Government is not applicable to them. It is

stated that under SRO No. 181 a person can seek appointment with State. As respondents No. 1 to 4 are not covered by the notification

therefore, no writ of mandamus can be issued.

3. Petitioner submits that the respondents No. 1 to 4 are instrumentality of the State and therefore, they are equally bound by the notification issued

by the State Government. Observations made by the Bombay High Court in case reported as Nachane Ashiwni Shivram and others, AIR 1998

Bombay 1. (Full Bench) are being passed into Service It is stated that the instrumentality of the State is equally bound by rules and regulations

framed by the State Government.

2. So far as the relief against the respondents No. 1 to 4 is concerned, the assertion that they are not covered by SRO 181 and appointment if any

should be given by the State Government is concerned it is a stand to which no exception can be taken. The policy has been framed by the State.

It is rightly suggested that the petitioner is not entitled to claim a writ of mandamus against the respondents can be issued.

4. The stand taken by respondent No.5 be examined, the stand taken is that SRO 181 has since been rescinded and therefore, petitioner is not

entitled to any relief. It be seen that the land in question was acquired when SRO 181 was in operation. Petitioner submitted his application when

above policy decision was in force, Merely because State has taken its own time in disposing of the application cannot be made ground not to

grant relief to the petitioner. Rights which accrued in favour of the petitioner under the policy decision SRO 181 cannot be nullified by the later

decision contained in SRO 214.

5. The question as to whether the scheme of giving appointment on compassionate grounds can be altered with retrospective effect was considered

in the case reported as A.Ksherra Sagar V. A.P. Dairy Development Co. Fed. Ltd. 1997 (3) SCT 515. The dependent of the deceased

employees made an application seeking appointment on compassionate grounds. There was alteration in the scheme. This was with retrospective

effect. This provided for monetary package to the dependents of deceased in lieu

of compassionate appointment would be governed by the Rules

or Scheme as in existence on the date of making application and these could not be altered retrospectively.

6. In *Gurdip Singh Versus the Haryana State Electricity Board* 1997 (4) SCT 833 (P and H), concerned employee suffered permanent disability.

The instructions contemplated giving of compassionate appointment. Instructions were modified. The case of the petitioner was pending before the

change occurred in the policy. It was observed that the case for giving appointment should be considered under the instructions which were

applicable at the relevant time. Since the case had already been recommended under the earlier instructions, it was held that subsequent

instructions could not be made applicable.

7. Application for seeking appointment on compassionate ground was made as per the prevalent Government instructions in the month of May

1994. Later on in the month of May 1995 the instruction were issued afresh. These were to the effect that married dependants of the deceased

employee would not be entitled to compassionate appointment. It was observed that these instructions cannot be given retrospective effect. The

fact that a post was in existence before instruction came was taken into consideration. It was accordingly held that the case of the petitioner should

be dealt with as per then existing instructions. This view was expressed by the Division Bench of Punjab and Haryana High Court in the case of

Surinder Singh Versus State of Haryana and Others. 1996 (1) SCC 767.

8. Petitioner in this case submitted an application seeking appointment in terms of policy decision SRO 181. Delay on the part of the State in

disposing of application cannot be made a ground for denying relief to the petitioner. As such respondent No.5 would take steps with a view to

process the application submitted by the petitioner. It would take requisite steps in terms of SRO 181. Let this be done within a period of three

months. Period of three months would begin from the date a copy of order passed by this court along with writ petition and annexures thereof are

made available to the respondent authorities by the petitioner. If for any practical reasons it is not possible to take a decision, they would be at

liberty to seek extension of time. But in that eventually they would have to explain each and every day's delay.

9. Disposed of accordingly.