

(2000) 06 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 992 of 1995

Ravinder Kour

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-06-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2001) 3 SCT 798 : (2001) 4 SCT 60

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : D.S. Chouhan, D.C. Raina, Jagjit Rai, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—Heard learned counsel.

2. Petition admitted.

3. Taken up for final disposal.

4. Respondent No. 2 is said to have advertised the post of Lecturer in Music instrumental in Higher Secondary Schools. Applications were invited.

Petitioner applied for the same. When the merit list was prepared, the name of one Kiran Jyoti was at serial No. 1. Petitioner was next in the merit.

She was placed in the panel at serial No. 1. It is the case of the petitioner that respondent No. 3 also applied for the said post. She was selected.

She thereafter resigned. In these circumstances, a post became available. Petitioner submits that as she was next in the merit list, she should have

been offered the job. Petitioner submits that she has been representing in this regard but no decision has been taken or conveyed in her favour. It is

the case of the petitioner that respondents No. 1 and 2 have been extending the panel when the post became available. Instances have been given

in paragraph 8 of the petition. Reference has been made to one Ms. Vishav Kirti. It is submitted that the panel was extended and respondent No.

4 was appointed on 12th July, 1994. It is further submitted that the panel was to remain in force for one year and it could be extended by another

six months. It is submitted that in the aforesaid case of respondent No. 4, the panel expired on 4th Jan., 1994. The post had become available on

30th June, 1994 due to the retirement of aforementioned Ms. Vishav Kirti. The respondent No. 4, as indicated above was appointed on 12th July,

1994. Petitioner submits that by extending the benefit to others and by not giving the similar treatment to her, the official respondents have acted

unfairly to her.

5. Respondents have filed objections.

6. The stand taken by the Public Service Commission is that in response to the advertisement, twelve candidates had applied for the post of

Lecturer in Music (Vocal), 8 candidates had applied for the post of Lecturer in Music (Instrumental). Nine candidates were found eligible for the

post of Music (Vocal) and five candidates were found eligible for the post of Lecturer in Music (Instrumental). It is not in dispute that the petitioner

applied for the post of Lecturer in Music (Instrumental). She was placed at serial No. 2 but in the waiting list, she was at serial No. 1. The further

stand taken by the Public Service Commission is that the availability of vacancy during the currency of panel is to be judged only by respondent

No. 1. The specific allegation that out of the same panel, some candidates were given appointment, is not being denied. In this regard, it may be

recited that the petitioner has taken a categorical stand in paras 7 and 8 of the petition that appointments were made from that very panel and these

came to be made in the month of July, 1994. The Public Service Commission has not denied this assertion. In view of the above position, the

petitioner is right in her submission that if the panel stood extended in case of others, then the same parameters should have been applied to her

case also.

7. In 1999(2) SCT 652 (SC) : 1999(3) SCC 696, Virender S. Hooda v. State of Haryana, the candidates did not find place in the merit list

prepared to the extent of advertised vacancies. They were hopeful of getting appointment on account of their position in the waiting list. Two

departmental circulars were issued. These were to the effect that the vacancies which may arise within six months of receipt of recommendation of the Commission could be filled up. The appellants wanted their case to be considered in terms of the administrative instructions. Their plea was rejected by the High Court. The Supreme Court reversing the judgment of the High Court directed the State Government to consider the case of the appellants in the above case for appointment. The position in this case is similar. The State Government has been making appointments from the panel on which reliance is being placed by the petitioner. Therefore, the ratio of decision given in the aforesaid case would apply to the facts of this case also. In the above case, the Supreme Court further observed that the appellants would be fitted in the appropriate posts and they would be accorded appropriate pay scales by giving them the benefit of increments. Back wages were not allowed. The petitioner in the present case is also held entitled to the same relief.

8. This petition is accordingly allowed in the manner indicated above. The respondents would pass the requisite order within a period of two months from the date, a copy of this order is made available to them by the petitioner.

9. Disposed of as such.