
(2008) 03 J&K CK 0014
In the Jammu And Kashmir High Court

Repujeet Bakshi and Others	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:

Citation : (2008) 2 JKJ 700

Hon'ble Judges : Yash Paul Nargotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—The J&K Public Service Commission, Jammu vide its Notification No.09 PSC of 2006 dated 28.12.2006, invited

applications from the permanent residents of J&K State for the post of Soil Conservation Assistant (Engg) Bio-gas Engineer and Technical

Assistants against 23 posts available in the following break-up:

OM RBA SC ST ALC SLC PHC Total

09 05 04 04 01 - - 23

The eligibility qualification prescribed for the post was B.Sc. Agriculture Engineering from a recognized institute or University.

2. The Government by its order No. 18-Agri. of 1998 dated 12.01.1998, provided as follows:

Whereas the Govt. of India under Soil Conservation Scheme prescribed that half of the strength of the staff in the Soil Conservation Scheme

should comprise of Agriculture or Civil Engineers and the other half from Agriculture Graduates; and

Whereas a provision was made to this effect in the J&K Agriculture (Gazetted) Service Recruitment Rules, 1988 by incorporating Soil

Conservation Assistant (Engg.) in class -VII of the schedule attached to above rules.

Whereas the posts of Soil Conservation Assistants available in the soil Conservation Scheme of Agriculture Department are required to be shared

equally by Agriculture Engg. Graduates and non-Engineering graduates in accordance with the norms of the scheme.

Now, therefore, it is hereby ordered that the posts of Soil Conservation Assistants will be filled up in the department on 50:50 basis from among

the B.Sc. Agriculture Engineer Graduates and B.Sc. Agriculture graduates as per guidelines contained in the Soil Conservation Scheme.

3. The scheme referred in the above said order was formulated on 24th August 1972. Para 9 of the said scheme reads as follows:

About half of the strength of the staff in the Soil Conservation Organization should comprise Agricultural or Civil engineers and the other half

Agriculture graduates. All the staff should be sent in phased manner for training to the training centers of the Indian Council of Agricultural

Research and of Punjab, Haryana and Uttar Pradesh. It is further suggested that Divisional officers for irrigated areas should be both engineers and

their staff should consists of engineers at the Assistant Soil Conservation Officer level. Fifty percent of the staff at the level of Soil Conservation

Assistant and field Asstts. Should also comprise engineering skills. The bulk of the work involved in the sub-division will be of engineering nature

and hence the technical discipline of the personal just suit the job requirement,

The petitioners who are occupying the posts of Soil Conservation Assistant and one of them Assistant Agriculture Extension Officer in Agriculture

Department came to be appointed in terms of J&K Agriculture (Gazetted) Service Recruitment Rules, 1978 which was in force then. The posts

occupied by the petitioners are in Clause VI posts of schedule-I appended to the Rules. For becoming eligible to the posts mentioned in Clause-V,

it was necessary to have seven years service on Clause VI cadre post. The petitioners who were holding the post of Agriculture Extension Officer

and equivalent posts were sent for training in Soil Conservation by the State Government in various institutes of India Council of Agricultural

Research. On completion of the training, they had been transferred and posted as Soil Conservation Assistants.

4. The J&K Agriculture (Gazetted) Service Recruitment Rules were repealed by framing J&K Agriculture (Gazette) Service Rules of 1988,

through the medium of SRO179 of 1988. Schedule-I to the J&K Agriculture (Gazetted) Service Recruitment Rules 1988, reflects the cadre

strength of various posts in the Agriculture Department.

5. At serial No. 78, against the cadre strength of Soil Conservation Assistant, 60 permanent posts have been shown, at serial 79, 12 posts

Assistant Engineer Bio-Gas have been shown and at serial No. 80 four posts in the cadre of Technical Assistant have been shown. However,

schedule-II in Clause VII has two classes of posts. First part comprises of the posts mentioned in items (a) to (w) which correspond clause VI

mentioned in item (a) to (q) in J&K Agriculture (Gazetted) Service Recruitment Rules, 1978, and the second class of posts comprising of ""Soil

Conservation Asstt. (Engg.)/Technical Asstt. Agriculture Engineering."" The grade of both the posts is the same i.e. 1700-2900. The method of

recruitment is 50% by direct recruitment preferably M.Sc. Agriculture and 50% by promotion from VEWs possessing B.Sc. Agriculture Degree

having minimum of 4 years experience in that class. The essential qualification prescribed for the said posts is B.Sc. Agriculture from a recognized

Institute/University. While for the other class's method of recruitment is 100% by direct recruitment and essential qualification is B.Sc. Agriculture

Engineering from a recognized Institute or University.

6. The Public Service Commission through its Notification dated 4th December 1997 invited applications for 44 posts of Soil Conservation

Assistants (Engineering) in the Agriculture Department. For questioning the legality of the issuance of the said notification, the similarly placed Soil

Conservation Assistants like the petitioners in the instant writ petition filed SWP No. 93/1998, (some of the present writ petitioners were even also

writ petitioners in the said writ petition).

7. The grievance in that writ petition of the writ petitioners was that if the selection is allowed to be made, the petitioners may have to face

reversion which is likely to affect their service career because having been posted on the post under a scheme they are entitled to continue till the scheme lasts. The stand of the Government in that writ petition was that there were as many as 91 posts of Soil Conservation Assistants and since 50% of them have to be manned by the Agricultural Engineering Graduates as per Government Order No. 18-Agri. of 1998 dated 12.1.1998.44 posts were referred to the Public Service Commission so that Agricultural Engineering Graduates are recruited to make up the deficiency of Agricultural Engineering Graduates in the Department.

8. The said writ petition came to be disposed of by order dated 9.9.1998, with the following observations:

The petition is a pre-emptive action on the part of the petitioners, who have no cause to challenge the notification inviting applications for the post

of Soil Conservation Assistants, as they are not to be ousted from service with the appointments of the selected candidates. Since many of them

have been adjusted by transfer and not appointed to the post, they have no right to the post advertised. Even those who have been substantively

appointed will have cause only, if they are effected by the fresh appointments. Since there are 91 posts and the petitioners are only 49, only few

are likely to be effected because Agricultural Engineering Graduates are to occupy only 44 posts which are less than half of 91 sanctioned posts.

But this exercise has still to be made by the department. How many of the petitioners are likely to be retained and who will be retained to maintain

the 50:50 ratio has yet to be worked. So, the apprehension is based on the mere ipsi-dixist of the petitioners, which has no foundation because a

reference to the order dated 11.1.90 issued by the Director Agriculture reveals that Soil Conservation Assistants were transferred or posted as

Agriculture Extension Officers and vice-versa. If that be so as it really is, all those not appointed as Soil Conservation Assistants in accordance

with the Recruitment Rules will have no claim to the post and will have to be reverted. It is settled law that appointment to the post can be made

only in accordance with the Recruitment Rules. The selected candidates are being appointed strictly in accordance with Jammu and Kashmir

Agriculture (Gazetted) Service Recruitment Rules, 1988 after the Agriculture Department had identified the vacancies and referred 44 posts to the

Public Service Commission for recruitment vide their letter dated 19.11.1997. Petitioners have no right much less legal right to prevent the selected

candidates from being appointed to the posts for which they have been selected. As a matter of fact, out of 91 posts, the share of direct recruits

will be 45 while only 44 are being appointed. So, there is absolutely no merit in this petition as stale claim has been made to hold on to the post on

which many of them were never appointed. It is accordingly dismissed. As the petition has been dismissed, the application for impleading the

selected candidates is not maintainable. It is also dismissed.

Against the above judgment writ petitioners preferred a LPA (SW) No. 322 of 1998. A learned Division Bench of this Court by order dated 22nd

February 1999, dismissed the same.

9. Consequent, upon the rejection of the claim of the writ petitioners, Public Service Commission proceeded with the selection process and made

the selections for appointments. Some of the candidates were selected and appointed.

10. The writ petitioners once again have raised identical controversy by filing the instant writ petition.

11. The stand of the Public Service Commission is that in the year 1997, 44 posts of Soil Conservation Assistants were referred by the Agriculture

Production Department to the public Service Commission for being filled up through direct recruitment from and amongst the Agriculture

Engineering Graduates. These posts were accordingly, advertised by the Commission vide Advertisement No. 25-PSC of 1997 dated 4.12.1997

with the following break up:

Open 26

RBA 09

S.C 04

ST 04

ALC 01

It has been submitted that on culmination of the selection process, 16 candidates (15-open and 1-RBA) were selected by the Commission and no

candidate was found eligible in SC/ST and ALC category and rest of the 24 posts remained vacant. It has further been stated that thereafter vide

communication No. Agri/E/564/88- Genl. Dated 15.2.2000, it was informed by the Agriculture Production Department to the Commission that

one candidate figuring at Serial No. 8, in the selection list amongst open category did not join the service, consequently the remaining 29 (28 +1)

posts of Soil Conservation Assistant (Engineering) were referred by the Agriculture Production Department to the Commission for being filled up,

as per the following break up.

Open 12

SC 04

ST 04

RBA 08

ALC 01

Total 29

After having received the said communication from the Agriculture Production Department, Public Service Commission advertised the said posts

vide advertisement notification No. 6-PSCof 2000 dated 6.3.2000, and made the selection process. After conclusion of the selection process the

Commission recommended only 4 candidates who were found eligible in the open merit category. However, out of the said four candidates

recommended for appointment one candidate namely Hilal Ahmed recommended for appointment was cancelled because his certificate was found

fake. Thereafter, the Commission requested the concerned department for making fresh requisitions in respect of 23 left out posts, out of the total

number of 44 posts of Soil Conservation Assistants (Engineering) and accordingly, vide letter No. Agri/E/564/88/gen-II dated 7.11.2006, 23

posts of Soil Conservation Assistant in the pay scale of 6700-10900 were referred to the Commission for being filled up with the following break

up:

Open 09

RBA 05

SC 04

ST 04

ALC 01

Accordingly, the above said posts were advertised by the Commission, vide its notification No 9-PSC -2006 dated 28.12.2006, which has been impugned in this writ petition.

12. The principal contention of learned Counsel for the petitioner is that in terms of the Schedule-I attached to the Rules of 1988, there are only 60

posts of Soil Conservation Assistants Assistant, 12 posts in the category Assistant Eng. Bio-Gas, and 4 posts in the cadre of Technical Assistants.

There being no post available in the Soil Conservation Assistant (Engineering), the Public service Commission cannot under law initiate the

selection process for filling up the said posts. He submits that if selection is permitted to be made for the said posts it would result in the adjustment

of the selected candidates over the posts of Soil Conservation Assistants, which are held by the petitioners and subsequently into their ouster.

13. The contention of learned Counsel for the petitioners is mis-conceived. It is true that Schedule-I appended to J&K Agriculture (Gazetted)

Service Recruitment Rules, 1988 speaks of only 60 posts of Soil Conservation Assistants and does not make any reference to the post of Soil

Conservation Assistant (Engineering), yet the fact remains that Schedule II in clause-VII attached to the Rules of 1988, refers to both the classes

of posts i.e. one Soil Conservation Assistant (Non-Engg) and Soil Conservation Assistant (Engg) and Technical Assistant, Agri. Engineer. Merely

because, Schedule-I, does not speak of the post of Soil Conservation Assistant, it does not mean that there cannot be any post of Soil

Conservation Assistant (Engg.) in the Agriculture Department. The post of Soil Conservation Assistant mentioned in schedule-I would cover both

the posts i.e. Soil Conservation Assistant (Non-Engg) and Soil conservation Assistant (Engg.) The method of recruitment and qualification to the

post of Soil Conservation Assistant (Non-Engg.) and to the post of Soil Conservation Assistant (Engg.) is quite different from each other. But it is

a fact that recruitment rules do not prescribe any ratio in which appointments can be made to the post of Soil Conservation Assistant (Non-Engg)

and Soil Conservation Assistant (Engg), and there is thus a gap.

14. It is settled principal of law that the government can in exercise its plenary power by an executive order to fill up the gap, which has been filled

by Government order impugned.

15. Therefore, there is no illegality in the order impugned in prescribing the ratio of 50:50 for the posts of Soil Conservation Assistants (Non-

Engg.) and Soil Conservation Assistants (Engg.). As the present vacancies advertised vide impugned advertisement are left out vacancies. The

Commission is entitled to advertise the same and make the selection for the said posts. The petitioners cannot legally urge that their right to hold the

posts, which they are holding, would be adversely affected. If at all after the appointments are made any of their right is disturbed, they can agitate

for the same, but they cannot under law stall the selection process on their apprehension of being adversely affected.

Therefore, there is no merit in this writ petition, it is as such dismissed. Connected CMP shall also stand dismissed. Interim direction, if any, shall

stand vacated.