

(2001) 05 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1661 of 1998

Sanjay Kumar Koul

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

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

Citation : (2002) 3 SCT 855

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Hari Hartar Singh, P.N. Bhat, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, J.—Petitioners have filed this writ petition with a prayer to allow the following reliefs :

A. Writ of ceritorari quashing the selection and subsequent appointment orders, if any, of respondents No. 3 and 4.

B. Writ of mandamus commanding on respondents to include the names of petitioners in he final select list in place of respondents No. 3 and 4 in

the General category and issue appointment orders accordingly.

C. Any other appropriate writ, direction or order which this Hon'ble Court may deem first and proper in the circumstances of the case may also be

passed in favour of the petitioners and against the respondents.

D. Writ of mandamus commanding on respondents to produce entire selection record and declare before the Hon'ble Court the merit position of

selected candidates as well as petitioner.

2. Writ petition was admitted on 11.09.1998 and selection of respondents 3 and 4 was made subject to result of the writ petition. Objections have

been filed on behalf of respondents 1 and 2.

3. Position as it emerges from the pleadings of the parties is that applications were invited for as many as 25 posts of Junior Accounts

AssistantcumTypist by respondent No. 2. Breakup of these posts is as under :

1. General : 13

2. Scheduled caste : 04

3. Scheduled tribe : 02

4. O.B.C. : 06

4. Admittedly both the petitioners applied in the general category. They have not been selected. On the other hand respondents 3 and 4 have been

selected. This could not have been done according to petitioners, because both these respondents belonged to reserved category had applied as

such (belonging to scheduled caste), but have been selected in open category.

5. With a view to examine the case of the petitioners, that is precisely stated by them in the writ petition in this behalf needs to be extracted, which

is as under :

It is further submitted that the selection of respondent No. 3 and 4 in the general category has been made by the official respondents for the

malafide consideration only to deprive petitioners from being selected and appointed as Jr. Accounts AssttcumTypist in the general category.

petitioners approached to respondent No. 2 after final result was declared and requested him that why respondents 3 and 4 have been selected in

general category when admittedly they are SC candidates and applied under the said category but respondents 1 and 2 did not pay any heed

towards the requests of the petitioners thus aggrieved by the action of the respondents 1 and 2 and challenges and calls into question the validity of

the final select list contained in the AnnexureE, on the following grounds which are enumerated hereinbelow taken alternatively without prejudice to

each other.

6. On the basis of this pleading, once these two selected respondents are shifted to reserved category petitioners were bound to be selected.

7. In addition to this, petitioners alleged that since they had fared well, therefore, they were liable to be selected in place of said respondents 3 and

4. Plea of malafide has also been raised. With a view to properly appreciate the

plea of malafide and as also selection being discriminatory again

pleadings in the writ petition need to be extracted which are as under :

ii/ That the action of the respondents while making the final selection of candidates is violative of Articles 14 and 16 of the Constitution, as

petitioners were discriminated only on the basis of that they belong to Kashmiri Pandit community otherwise only 13 candidates were called for

interview and 13 vacancies were advertised. The action of the respondents is patently discriminatory in nature violative of Articles 14 and 16 which

merits to be corrected by issuance of appropriate writ as prayed above.

iii/ That by making the selection and ignoring petitioners for illegal and malafide considerations, respondents have shown step motherly treatment

towards petitioners. It is settled law that no employer can be allowed to discriminate similarly situated candidates in dissimilar ways as in the instant

case it is admitted case of parties that 13 vacancies were put to advertisement for general category and after conducting written test, type test, only

13 candidates were called for the interview but petitioners have been denied selection and appointment by respondent No. 2 only on the basis of

religion being from Kashmir Minority Hindu community otherwise there was no reason for respondents to include respondent No. 3 and 4 in place

of petitioners. The action merits to be corrected by issuance of the appropriate writ as prayed above.

iv/ That even the selection of other candidates in General category has been made by respondent No. 2 with malafide intentions and for ulterior

motives. It is not out of place to mention here that 90% candidates have been selected from the home State of respondent No. 2. It is further

submitted that respondent No. 2 converted merit into demerit by giving more marks in interview to the candidates who he wants the selection but

respondents can not deny the selection to petitioner in view of the fact that only 13 candidates were called for interview for 13 posts. This fact can

be ascertained if respondents are directed to produce entire selection record, so that genuine grievance of petitioners is redressed and the selection

of respondent No. 3 and 4 is set aside.

8. In this behalf it may not be out of place to observe that in case petitioners are able to make out a case of discrimination or of malafide, there is

no escape but for allowing this writ petition.

9. On the other hand stand of respondents is pure and simple, that respondents 3 & 4 have been rightly selected in open merit category in

accordance with law as well as in the light of Govt. of India, Ministry of Railway (Railway Board) communication No. 89E(SCT) 1/25/4 dated

2.6.1989 on the subject. Measures to increase SC/ST representation in the service under the Government through Direct Recruitment,

communication No. 36012/13/88Est (SCT) dt : 22.5.1989 Govt. of India, Ministry of Personnel, Public Grievances & Pensions. Department of

Personnel and training on the subject : Measures to increase SC/ST representation in the services under the Government through direct recruitment

as also communication No. 98E(SCT)1/25/8 dated 18.12.1998 of Govt. of India, Ministry of Railways (Railway Board) on the subject:Measures

to increase the SCs/STs/OBCs representation in services under the Railways through direct recruitment. Communication dated 18.12.1998 was

with reference to first two communications. Operative portion of this communication is as under :

It has been decided that those SCs/STs/OBCs candidates who secured the position on merit without availing relaxation such as age limit,

experience, qualification, permitted number of chances in written examination, extending the zone of consideration larger than what is provided for

general category candidates and secured equal or more marks with general candidates will not be treated as reserved candidates and they will be

adjusted at nonreserved points.

10. Plea of malafide, discrimination as well as most of the candidates having been selected from home State of respondent No. 2 has been denied.

This plea of selection from home State of respondent No. 2 is being taken up first of all.

11. Respondent No. 2 is sued in his official capacity and there is nothing to suggest that now and in what manner he was instrumental in selecting

candidates from his home state. This commission is intentional. Further it cannot be looked into unless Chairman was made as party by name, since

plea of malafide etc. raised is against him personally. This is one reason to turn down this plea.

12. Another reason to turn down this plea is the affidavit sworn in support of the writ petition which is in the following terms :

In the Hon'ble High Court of J&K at Jammu.

Sanjay Kumar Koul and anr v. Union of India and others.

(Petitioners), (Respondents)

I, Sanjay Kumar Koul s/o Shri J.N. Koul, R/o Qtr.No. 68, Block 'E' behind wireless building Police Lines, Gandhi Nagar, Jammu age 27 years

do hereby declare as under :

1. That the contents of the accompanying writ petition has been drafted by my counsel and I admit them to be true and correct. Annexures

annexed are true copies of original.

2. That the paras from writ petition from 1 to (emphasis supplied) are based on my personal knowledge and parato (emphasis supplied) are based

on legal advice, to be correct.

Sd/DeponentVerification :

Verified at Jammu on 5.9.1998 that the contents mentioned above are true and nothing has concealed therein.

Sd/DeponentVerification :

Verified at Jammu on 5.9.1998 that the contents mentioned above are true and nothing has concealed therein.

Sd/

Deponent

The contents of this affidavit clearly suggest that it is neither as per writ rules of the court nor is modelled on the lines of Order 19 of the CPC,

which was the least that could be done by petitioners. In such a situation allegations of malafide can not be looked into. SeeBhim Singh v. D.D.

Thakur, 1982 KLJ 369, what is relevant for this case is extracted hereinbelow :

57. In the petition filed by Shri Bhim Singh, the allegations of malafide have not been supported by any properly verified affidavit. The affidavit

filed in support of the petition does not disclose in the verification the nature and the source of his knowledge. The verification of the affidavits in all

the three petitions suffers from the same defect as were noticed by the Supreme Court in Barium Chemicals case (supra) and therefore the charges

of malafide must fail on that ground also.

13. So far plea of petitioners that respondents 3 and 4 though having applied in

scheduled caste category but have selected in open category is

concerned, it should not detain the disposal of this writ petition, in view of the decision of Supreme Court of India in Indra Sawhney etc. etc. v.

Union of India and others, etc. etc., AIR 1993 SC 477 : 1993(1) SCT 448 (SC). What was held by the constitution bench and aptly applies to

this case is extracted herein below :

In this connection, it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen

that some members belonging to say, scheduled castes get selected in the open competition field on the basis of their one merit; they will not be

counted against the quota reserved for scheduled castes; they will be treated as open competition candidates.

This negatives the plea urged on behalf of the petitioners.

14. Petitioners having fared well is a matter of self praise and nothing else. It is for the selecting authority to judge the merit of the candidates like

petitioners, therefore, such plea is without any basis and cannot be accepted. In the context of discrimination incidently it may be noted that again it

has no basis either in facts or in law, in the circumstances of this case.

15. There is no other ground made out for interference in this writ petition.

16. In view of the aforesaid discussion, there is no merit in this writ petition which is accordingly dismissed.