

(1998) 12 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 334 Of 1997

Shah Pasandeeda

APPELLANT

Vs

Bashir Ahmed & Ors.

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1999) KashLJ 76 : (1999) 3 SCT 334

Hon'ble Judges : G.L.Raina, J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : R.A.Jan, M.Aijaz, B.A.Bashir, Advocates appearing for the Parties

Judgement

1. The learned single Judge, disposed of service writ petition No. 3130 of 1994, Bashir Ahmad Mir Vs. State and others, vide judgement dated

august 08,1997 in terms holding Bashir Ahmad Mir appointed as draftsman in Rural Development De partment of the State and Shah Pasandeeda

as Draftsman in Public Works Department of the state from their original date of appointment with consequential benefits.

2. Pursuant to Advertisement Notice 7 of 1993 dated 22.12.1993, both appellant (Shah Pasandeeda) and Respondent No. 1 (Bashir Ahmad Mir)

applied for selection to the post of Draftsman (Civil). In all 21 posts (20 in PWD and 1 in ROD) in terms of advertisement notice were required to

be filled on direct recruitment. Both were selected and figured in the selection list for the posts of Draftsman (Civil) (Annexure P2). The recruitment

and selection was made by the Jammu and Kashmir Service Selection Board. The Board recommended thecase of appellant for appointment as

draftsman in Rural Development Department against the one post available at Anantnag and respondent Bashir Ahmad fir was recommended for

appointment in Public Works Department against one of the available posts. The Government accepted the selection and recommendations issued

orders of appointment appointing Shah Pasandeeda as Draftsman in Rural Development Department and Respondent No. 1 Bashir Ahmad Mir as

Draftsman (Civil) in Public Works Department. Bashir Ahmad Mir aggrieved of his posting in Public Works Department and not in Rural

Development Department, filed writ petition No. 3130/94 in the High Court at Srinagar. A learned Single Bench of this Court on 26.10.1995

disposed of the petition directing the government to allot Bashir Ahmad Mir to Public Works Department, inter alia on the ground that Shah

Pasandeeda Respondent No. 7 to the writ petition had no objection in case she is allotted to and appointed in Public Works Department as

Draftsman. As follow up of this judgement and orders in the contempt petition, the allocation of Shah Pasandeeda was changed to Public Works

Department and that of Bashir Ahmad Mir to Rural Development Department vide Government Order dated 361996 (Annexure P6).

3. Appellant Shah Pasandeeda challenged the judgement of the learned Single Bench in LPA No. 95/96. Speaking for the Division Bench his

Lordship M. Rama Krishna, the Chief Justice observed :

The written statement of objections reveals that the same has not been signed by respondent No. 7, though it is said to have been signed by Mr.

K.A. Qureshi learned counsel for respondent No. 7. It is pertinent to note that as the appellant (the respondent in the writ court) had not been

served with the notice, she has no occasion to engage the services of an advocate at all. It is a misnomer for the writ court to proceed on the

premise that there were two Advocates appearing on behalf of respondent No. 7. It is strange that the learned Single Judge, without applying his

mind to the actual facts as disclosed by the records, proceeded to hold that respondent No. 7 had no objection to do so. At the outset the poor

lady was kept in darkness as she had not been served with the notice. Since she had been enjoying the post of Draftsman from 1987, we wonder

how she could come forward to say that she had no objection to send the writ petition to the post held by her. Sufficient to say, at this stage, that it

is a fit case to allow the appeal on the above premise"".

4. The LPA was allowed and the judgement and the order of October, 26,1995 of

the learned Single Bench was set aside with request to the writ court to decide the matter afresh after hearing the parties.

5. The matter on remand was heard and decided by another Hon'ble Single Bench, resulting in disposal of the writ petition in terms of judgement and order under appeal directing the government to treat Sh. Bashir Ahmad Mir as selected for appointment in Rural Development Department and Shah Pasandeeda as selected for appointment in Public Works Department against the two posts of draftsman.

6. The counsel for the appellant submits that the Government as employer has the ultimate choice of allocation of the selected staff to hold posts in different department of the government. Once the appellant and respondent No. 1 were selected as Draftsman (Civil), it was for the competent

authority to decide who amongst the selected candidates has to be appointed to a post in a particular department. After selection, if Shah

Pasandeeda has been found suitable for the appointment in Rural Development Department, any other selected candidate in the same process of

selection has no right to claim that he alone has to be posted in Rural Development Department. After all, a selected candidate cannot have

selection on his terms and conditions. The government as employer is within its rights to allocate these selected candidates to different departments.

This is all the more so, because, the advertisement in this case has been for 21 posts of Draftsman Civil with specification that 20 posts were to be

filled in PWD and one post in ROD. There is nothing in the advertisement notice or the applicable rules to show that a (selected) candidate had to

give preference for a particular post or for the post of draftsman in a particular department. Once the selection was made in accordance with rules

by the Jammu and Kashmir Service Selection Board and recommendation of the selected candidates for appointment was made by the

Government having accepted the recommendations and allocated the departments and issued appointment orders to selected candidates as

Draftsmen with department the Respondent cannot claim that he alone has a right to be allocated and appointed in the Rural Development

Department.

7. The counsel for the respondents submits, that as Sh, Bahsir Ahmad Mir has applied for the post of draftsman in Rural Development Department

he cannot be allotted to Public Works Department. Con textually, the respondent was working in the Rural Development Department on daily

wage basis for sometime earlier to his appointment and selection as drafts man, therefore he has a preferential claim to hold the post on

appointment as Drafts man in Rural Development Department. The counsel also submits that during his engagement on daily wage basis as Drafts

man in Rural Development Department, his case was recommended for appointment in the Department but the competent authority did not accede

to his request and informed the concerned that he should apply for the post in terms of Rules, once the post stands advertised. In this back ground,

the petitioner has a preferential claim to be considered for the post of draftsman in Rural Development Depart ment.

8. in all 21 posts of Draftsman, were advertised for selection by the Jammu and Kashmir Service Selection Board. 20 posts in PWD and one in

ROD. The candidates applying for the posts were not required to show the preference for the departmental post or to indicate the choice of the

depart ment, where he or they would prefer or choose to serve as Draftsman, In fact, all 21 posts are shown as common category draftsmen

(Civil) posts. The selection was indicated for all the 21 posts without any hint or whimper to show which candidate among selectees on completion

of process ""of selection, shall be allocated to PWD or ROD of the State Government. The selection process for all the 21 posts has been one

integrated whole. One and the same test was held for all the posts. No option or choice for the post of Draftsmen in either of the department was

required to be indicated or given by any of the candidate applying for the post(s) of said advertised Draftsmen.

9. Merely because the respondent No. 7 worked on daily wage basis on an interim or adhoc arrangement with Rural Development Department

prior to selection by the competent authority under applicable rules, does not confer any right on Respondent No. 1 that he alone has to be

allocated and appointed in Rural Develop ment Department. The communication from the competent authority that Respon dent No. 1 should

apply for the post through the mode and medium of selection pre scribed for the post of draftsman in terms of rules also does not confer any right

on respondent No. 1 that he alone is to be al located and appointed in Rural Develop ment Department.

10. It is an established principal of law that an eligible candidate has a right to be considered, but no person has a right to a particular post. Equality

of opportunity in matters of consideration for appointment cannot be overstretched, so as to stifle the right of appointing authority to make a

choice of the selected candidates to a post in a particular department. The petitioner had a right to be considered for appointment as Draftsman.

He has been selected and appointed as Draftsman but he cannot be heard to say that his selection and appointment has to be only on his terms

and conditions. He cannot be heard to say that he alone has a right to be allocated and appointed to Rural Development Department as Draftsman.

It is not a case of unequal treatment of the equals or equal treatment of the equals. The respondent No. 1 petitioner before the writ court, has not

disclosed how his fundamental right of equality of opportunity has been infringed.

11. Article 16 speaks of equality of opportunity and not of any right. Once statutory body of service selection board selected the candidates and

recommended the selectees for appointment in PWD and ROD, which recommendation culminated in appointment of appellant in ROD and

Respondent No. 1 in PWD, the respondent No. 1 has to case to assert that the selection body has erred in not recommending him for the

draftsman post in ROD and the government committed a mistake in considering the recommendation and taking a decision of his appointment in

PWD and that of Respondent No. 1 in ROD. The placement of the selected candidates in the selection list may be merit wise, but that has nothing

to do with allocation of the selected candidates to work as draftsman in various departments where the posts of Draftsman are available. More so,

when the advertisement notice or the rules do not provide anything of the sort. The respondent No. 1 who joined and worked as Draftsman (Civil)

in PWD on selection realised his dream of appointment on the post in ROD when the Government pursuant to the judgement of Hon'ble Single

Bench dated 261095 in SWP No. 313/94 reallotted to PWD on 361996. This judgement of October 26, 1995 was set aside on 1281996 by a

Division Bench of this court in LPA No. 95/96. Thereby the very basis of the order of reallocation has been knocked out. The Respondent No. 1

cannot claim any right on the basis of a judgement which has been set aside and that too in the context of LPA. Bench disbelieving the theory and

plea that Shah Pasandeeda has not given her option of reallocation to Public Works Department. The Division Bench in LPA has even seen traces

of manipulation of the so-called 'said option' to the ignorance and at the back of Shah Pasandeeda. Though the contention of the counsel for

appellant that there has been fraudulent manipulation of records, is not established on record by the norm and standard of proofs required to sustain

such a charge, but all the same the fact remains that in the case record has been manipulated at some level by a person who is interested in the

matter. So-called 'no option' for PWD or ROD on the part of Shah Pasandeeda has been manipulated in a manner only to serve Respondent No.

1.

12. For the aforesaid reasons, we are not in agreement with the Hon'ble Single Bench, that Sh. Bashir Ahmad Mir alone was to be selected and

appointed in Rural Development Department of the state and allocation of Shah Pasandeeda by the Competent Authority on appointment to the

post of Draftsman (Civil) in Rural Development Department was legally wrong. It is not just a question of "creation of mixup", but essentially

permeates the powers and functions of the statutory body like Service Selection Board and the competence and powers of the Government as

employer to allocate the appointees on selection to different departments of the government. As employer, the government alone has right and

choice to allocate the selectees appointees to different departments and it has the sole prerogative of deciding and seeing to it how best it can utilise

the services of its employees and enforce discipline and control within its ranks within the parameters of law. 13. In the result, we accept, this

appeal set aside the impugned judgement and order dated August 8, 1997. The writ petition is dismissed. With this shall go all other interim or

other directions issued by this court from time to time as the whole matter shall be deemed finally governed by this judgement.