

(2000) 10 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 414 of 1997

Shakeel Ahmad

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-10-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 4 SCT 49

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : D.S. Chouhan, Sunil Sethi , S. Shakeel Ahmad, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—The petitioners have come to this Court with a plea that they being residents of district Udhampur are eligible for

being considered from this district. This claim of theirs is sought to be rebutted on the plea that in the State Subject certificate issued in their favour,

they have been shown to be the residents of Poonch, and, therefore, they cannot be considered in the district of Udhampur.

2. With a view to appreciate the controversy as projected in the writ petition, some further facts as given by the petitioner be taken note of.

3. Petitioners in para 2 of the writ petition submit that they had passed their B.A. examination in the year 1995 from Udhampur. For this reliance is

being placed on Annexures P.2 and P.3. The further stand taken in para 4 of the petition is that the father of the petitioners joined service in district

Udhampur in the year 1972/73 and since then, they alongwith their father and other family members are staying in the township of Udhampur. It is

stated that a house has also been built up by their father in this very place. The

certificates by the name of Permanent Resident Certificates have been placed on record. These are annexures P.4 and P.5. On the basis of these certificates, it is sought to be urged that the petitioners being the residents of district Udhampur were entitled to be considered from this district only.

4. The stand taken by the respondents, as indicated above, is that the petitioners are in possession of State subject certificates which were/obtained from Poonch and, therefore, their claims were negated.

5. The case of the petitioners is that they were interviewed in the selection process whereas the case of the respondents is that as they were not eligible, they were not considered for the post in question.

6. I am of the opinion, that the point of view put across by the petitioners deserved to be accepted. The stand taken by the petitioners in para 4 of

the writ petition is that the father of the petitioners has done all his service in district Udhampur and that they are in possession of Permanent

Resident Certificate issued by the concerned authority in the district Udhampur. For facility of reference, this para is being reproduced below :

That the petitioners' father had joined service as Patwari in district Udhampur as back as in 197273 and ever since he has been both living

alongwith family and serving in district Udhampur alone. It is relevant to bring to the notice of this Hon'ble Court that simultaneous to his joining

service in Udhampur the petitioners' father had decided to permanently, settle in the township of Udhampur and as a resident of the District the

latter has been living there alongwith his family including the petitioners. It was in this background that the petitioners made applications for grant of

permanent resident applications (hereinafter, PRC) before Dy. Commissioner, Udhampur, who after requisite inquiry and also on the basis of the

documents such as voter list, ration card etc. issued PRC's in their favour. Copies whereof are enclosed as Annexure P.4 and P.5.

7. The reply submitted to this para by the respondents be also noticed :

That the averments made in para No. 4 of the writ petition pertain to the family history of the petitioner which is denied for want of knowledge so

far answering respondent is concerned. Issue of certificate of Permanent Resident in favour of the petitioner is a matter of record.

8. If the above aspect of the matter is taken note of, then it becomes apparent

that the petitioner's plea as put forward by them in para 4 of the petition has not been rebutted. This is one aspect of the matter. Independently of the above, it be seen that the stipulation in the notification that only the residents of district Udhampur would be eligible is a stipulation which runs counter to the decisions of the Supreme Court on the issue.

Some of these decisions are as under :

9. *Rajendran v. State of Madras*, AIR 1968 SC 1012 is a case in which it was observed that districtwise selection would result in discrimination.

In as much as, better qualified candidates from one district may be rejected while less qualified candidates from other district may be admitted from

either of the two sources. The same view was expressed in the case of *Miss Nishi Haghu v. State of Jammu and Kashmir and others*, AIR 1980

SC 1975, wherein it was observed that the classification made for rectification of regional imbalance without identifying the areas suffering from

imbalance is vage and the selection made under this head would be invalid.

10. *Naresh Kumar Joshi and others v. State of Punjab and others*, 1982 Lab. I.C. 498 is another case. In this case, the decision given in

Rajendran's case (supra) was noticed. It was observed that the spirit behind district wise allocation is that the selection should be made from the

entire State and thereafter the allocation can be done districtwise. Same view has been expressed in latter decision in case of *Ram Vijay Kumar*

and others v. State of Bihar and others, 1988(9) SCC 227 and also in case of *Radhey Shyam Singh and others v. Union of India and others*,

1997(1) SCT 627 (SC) : 1997(1) SCC 60 .

11. The aforementioned decisions were noticed by this court in *Hardesh Kumar v. State of Jammu and Kashmir*, 2000(3) SCT 304 , wherein it

was observed that creation of educational zone in the same district itself is contrary to the scheme of the Constitution, which scheme is based upon

equality clause.

12. Again, it be seen that the State subject certificate is valid for the entire State. The permanent resident certificate is relevant only for a particular

area. The residence of a person can shift and this would be true of younger generation and they may not like to stick to places where their parents

are residing. In the present case, even the parents of the petitioners have allalong resided at Udhampur. The petitioners lived with their parents at

Udhampur. Therefore, for all intents and purposes, they would be treated as the residents of Udhampur.

13. In view of the above and in view of the fact that the averments made in para 4 of the petition have not been rebutted, this petition is allowed.

The respondents would consider the claims of the petitioners. A decision in this regard would be taken and conveyed to the petitioners within a

period of two months from the date, a copy of this order is made available to the respondents by the petitioners.

14. Disposed of as such.