

(2002) 11 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : CIMA No. 5-A of 1999

S.L. Sailova

APPELLANT

Vs

Pritam Dass and Others

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Jammu and Kashmir Reservation Rules, 1994 — Rule 11

Citation : (2003) 1 JKJ 12

Hon'ble Judges : B.C. Patel, C.J; Muzaffar Jan, J

Bench : Division Bench

Advocate : Sunil Sethi, for the Appellant; D.K. Khajuria, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant, the then chairman, Jammu and Kashmir State Subordinate Service Recruitment Board has filed this appeal against the order made by the Learned Single Judge in COA (w) No. 16-A/1996, decided on 02-11-1998, whereby respondents 3 & 4 were held liable to be punished under the provisions contained in the contempt of the Courts Act and were fined Rs 1000/- each (in default of payment of fine, fifteen days civil prison).
2. At the time of hearing, we were taken through the Judgment dated 25-10-1993, delivered by the Learned Single Judge in OWP No. 78/1989 and OWP No. 1141/1989. The said Judgment was challenged by preferring Letters patent Appeal and therefore we were taken through the Judgment of Division Bench delivered in LPA (sw) No. 348/1993, decided on 20-12-1994.
3. According to the original petitioners who are respondents herein, fresh consideration on preferential basis was the criteria on which they were

required to be appointed as teachers under the Border Development Area Scheme. According to the learned counsel appearing for the original

petitioners, though in view of the order made by the court, they were called for interview by the Selection Committee on 13th and 14th Nov. 1995

but were not given the treatment on the preferential basis and, therefore, it was a clear case of contempt and the learned Single Judge rightly

arrived at a conclusion. Learned Counsel for the original petitioners also pointed out that the Learned Single Judge has taken into consideration the

dictionary meaning of word ""Preferential"" & as per Dictionary meaning no preferential treatment was given.

4. Learned counsel, Mr. Sunil Sethi was requested to assist the court in the matter. According to the learned counsel, the Division Bench

considered the facts and circumstances of case. According to him, the word ""preferential"" has been diluted by making the observations that the

original petitioners were to be considered as and when any centrally sponsored or State sponsored Scheme is to be implemented for the purpose

of appointment of the teachers. The Division Bench observed as under :-

..... the respondents including the Boards of Selection shall consider these appellants 1 to 16 as and when any scheme either centrally

sponsored or the State sponsored is to be implemented for the appointment of teachers in the respective districts of the appellants as per the

directions contained in the order of the learned Single Judge, including age criteria as observed. It is not possible to fix the time within which the

directions should be implemented in as much as within what time such vacancies are to occur, is definite. However, the respondents shall consider

the cases of the appellants as per directions of the Court without any delay"".

5. It is in the view of these observations it was submitted that the cases of the appellants were required to be taken into consideration and board

has considered such cases,

6. It was submitted that even the learned Single Judge while deciding the Contempt application has observed as under :-

..... As already observed preferential basis would in the context of the present case mean giving some advantage to the petitioner over other

similarly situate persons.....

7. Thus, in view of the opinion expressed by the learned Single Judge in the

contempt petition that if, it was a clear case that two candidates were similarly situated, and, one was the petitioner then the petitioner was required to be preferred and not the other one. According to the learned counsel for the original petitioners, there is nothing on the record to indicate that even such treatment was given. It was pointed out by the learned counsel for the appellant that the cases of the petitioners were taken into consideration by the Selection Committee and in the process of interview they were not selected. Learned Single Judge has observed that the petitioners were considered but there is nothing to suggest that on preferential basis they were considered. Once it is pointed out that they were considered and were not selected, without any material it cannot be said that there is disobedience. It was specifically stated on oath that they were interviewed and considered but had not qualified for selection due to inferior merit. The deliberations of the Board Meeting placed on the record reveals that they did not possess the requisite merit to qualify for the selection of teacher in District Rajouri. It is specifically stated that cut of point of the last selected candidate was fixed at 54 points and none of the petitioners have secured more points than the last candidate. This makes it clear that they could not earn minimum points. If they would have secured higher than minimum, question of preference would arise and not otherwise.

8. Learned counsel appearing for the appellant submitted that the Division Bench in the case of Jammu and Kashmir Service Selection Board Vs.

Kulbhushan Singh & Ors. (LPA (sw) No. 211/2001) decided on 27-08-2002, considered Rule 11 of Jammu & Kashmir Reservation Rules

1994. Another Division Bench's decision in case of Vipin Kumar Vs State of J & K & Ors. (LPA (sw) No. 134/2000) decided on 23-05-2002,

was considered in the aforesaid case.

Rule 11 came up for consideration before the Division Bench of this Court in Vipin Kumar Vs. State of J&K & Ors. (LPA (sw) No. 134/2000)

decided on 23-05-2002. The LPA bench, on plain reading of Rule 11 opined as under

We are of the view that above Rule 11 of the said rules deals with the question of granting of preference. Last two lines of Rule 11(1) are to the

effect that children of Defence personal shall get preferential treatment to the

extent of 5 % in each service, class, category and grade. This Rule

make it apparent that no separate reservation has been provided for the Children of Defence Personnel. The marginal note reads as ""Concession"".

This concession is available both in the open and reserved categories. A child of Defence Personnel is thus entitled to preference. Preference

would mean selecting one over the other. This implies giving of precedence. In case of reservation a slot is provided for a category but where

preference is to be given there may be several person eligible but only a candidate who is equal in merit would get preference.

9. The Division Bench also approved the following observations of the learned Single Judge in SWP No. 2101/1998.

Another reason to take this view is that on a plain reading of Rule 11 (1) (supra) it is only preference that needs to be given to the children of

Defence Personnel to the extent of 5 % of the posts as contained in Rule. The question of preference as it is understood in common parlance will

arise when other things being equal, Children of the Defence personnel have to be preferred vis-a-vis their counter parts in the respective category

to the extent of 5% and nothing else.

10. Thus, it is in view of this, the selection is to be made by giving preference, if both are equal. When a contempt petition is filed by the applicant,

it is for him to point out to the court that though the petitioners secured marks equal to the others & yet they were not taken into consideration and

others has to point out by making specific averments and placing reliable material to substantiate his case. Suffice it to say, that in the instant case of

the candidates were called for interview but they did not obtain minimum marks required as pointed out by the learned counsel for the appellant

from the record and therefore, they were not required to be taken into consideration. Even the petitioners have not pointed out, as indicated

above, about the marks obtained by the petitioners and others. Therefore, in the facts and circumstances of the case, it cannot be said that the

learned Single Judge was right in holding the original respondents 3 and 4 guilty for dis-obedience of the order of the court.

In the aforesaid premises, we allow the appeal. Order passed by the learned Single Judge is quashed and set aside.