

(1998) 12 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1300 of 1997

Som Nath

APPELLANT

Vs

State of J&K through Chief Secretary, J&K Govt.

RESPONDENT

Date of Decision : 31-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (1999) 1 SCT 787

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : H. Rehman, S. Kour, Advocates appearing for the Parties

Judgement

This petition has come to be filed in this Court under the following circumstances :

The two petitioners are working as Live Stock Assistants. They can be sent for undergoing training Course at SheriKashmir University of

Agricultural Sciences & Technology, R.S. Pura in the discipline of B.V.Sc. & A.H. As the eligibility criteria of this was indicated in the order

passed by the Government on 24.10.1988. Copy of this order is annexureG. For facility of reference this is being noticed below :

In supersession of all orders on the subject it is hereby ordered that selection of departmental candidates for admission in B.V.Sc. Course in

SheriKashmir University of Agricultural Science and Technology shall be made by the Animal/Sheep Husbandry from amongst the Veterinary

Assistants, Flock Supervisors, Livestock Asst. or those belonging to the categories falling below these categories who qualify according to the

belowmotioned standards on the basis of seniority ensuring that the candidate is selected from each wing i.e. Animal/Sheep Husbandry Department

:

1. Academic qualification = 10+2, TDCI or equivalent examination with medical group of subject.

2. Minimum marks in the Aggregate (Excluding Practical), = 40%

3., Minimum years of field/Lab. Service, = 10 years.

By order of Government of Jammu and Kashmir.

The petitioners even though, they were seniors to Mohinder Singh, Vidya Parkash and another, they have not been sent for the course. The

grievance of the petitioners is that they were fully eligible for being sent for the course, but under the circular notified above, they were found

eligible in the year 1994, their names have not been cleared and sent even though they are seniors.

Respondents have filed objections.

The stand taken by them is that the circular issued in 1988 stands superseded by fresh circular issued on 18.8.1997. The stand taken by the

respondents is that the petitioners were found ineligible because they are beyond 43 years of age.

The petitioners submit that the fixation of the age at 43 years has no nexus with the object sought to be achieved. As to why this age of 43 years is

fixed, is not being indicated. It is also urged this has been done mala fide. The age limit was fixed on 18.8.1997 and the list was prepared on the

next day, is being urged with a view to show that the exercise undertaken by the respondents is mala fide.

The stand taken by the respondents is that by issuing a communication on 18th August 1997, a condition was imposed. This was to the effect that

only that person who is 43 years of age as on 15th July, 1997 would be eligible for promotion. The memorandum which has been placed on the

record by way of Annexure 'A' is also being noticed. This reads as under :

In supersession of all orders on the subject it is hereby ordered that selection of departmental candidates for admission in B.V.Sc. Course in

SKUAST shall be made by the Animal/Sheep Husbandry Department from amongst the Veterinary Assistants, Block Supervisors and Livestock

Assistants who qualify according to the below mentioned standards on the basis of seniority. The candidates will be selected in the ratio of (sic)

from the Animal Husbandry Department and Sheep Husbandry Department respectively :

Academic qualification :

1. 10+2 or equivalent examination with Biology, Physics, Chemistry and English Subjects, under NCERT/CBSE education system.
2. Minimum Marks in the aggregate excluding practicals 50%
3. Minimum years of field/laboratory experience 10 years.
4. 0.5% marks shall be added to the aggregate marks of the qualifying examination for each year of complete service subject to a maximum of 10 marks.
5. Age as on 15th July 1997 43 years"".

I am of the opinion that on the basis of aforementioned memorandum, the petitioners cannot be deprived of the promotion. This is because by

issuing a letter on 18th August 1997, the civil servants are being disqualified w.e.f. 15th July 1997. It is settled law that the State Administration is

not competent to issue any administrative order which may affect the rights of a civil servant retrospectively. The power to make retrospective

legislation vests in the legislature and to some extent with the subordinate Legislative authority. The order annexure 'A' reproduced above does not

fall within the parameters of Legislative enactment or proceeding arising out of legislative initiative. Therefore, this letter cannot be given effect to

visavis rights of the petitioners.

Independently of above, even if the aforementioned letter is taken into consideration, it is vague. All that is mentioned is that the age as on 15th July

1997 should be 43 years. It does not indicate as to whether this is the minimum age or the maximum age. The letter is apparently vague and

therefore, cannot have the effect of taking away the rights of the petitioners.

Even otherwise, if it be presumed that the age of 43 years has been fixed, even then, the date of 15th July 1997, has no nexus with the object

sought to be achieved. The petitioners were to become eligible a few days after 15th July 1997. As to why this date was fixed and as to why the

age has been fixed as 43 years is also not clear. The petitioners were otherwise eligible. On account of age fixation, they have been excluded from

being sent to the course. This writ petition is accordingly allowed. The

respondent authorities are directed to send the petitioners to take part in the Course.

Disposed of accordingly.