
(2001) 03 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 3909 Of 1997

Sonam Yonjour and another	Vs	APPELLANT
State of J&K and another		RESPONDENT

Date of Decision : 04-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) KashLJ 514 : (2002) 3 SCT 836

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

Bench : Single Bench

Judgement

T.S. Doabia, J.—The petitioner No. 1 came to be appointed as Naib Tehsildar on 8th of Nov. 1985 and petitioner No. 2 came to be

appointed in the same capacity vide order dated 16th of Jan. 1987. Copies of these orders have been placed on the record as Annexure ""A"" and

B"". In the orders referred to above, it was categorically mentioned that the petitioners have to pass the examination meant for Naib Tehsildar. This

was to be passed within a period of two years. There was a condition that if this is not done, then the petitioner would be reverted. The petitioners

submit that the examination which was to be conducted on 4th of March 1991, the petitioners were not permitted to take part in the process of

examination as they were called upon to take part in the election process. The petitioners submit that now an order of reversion has been passed

on 1st of Sept. 1997. In para ""3"" of this order, it is mentioned that the petitioners have failed to qualify in the Naib Tehsildar's examination and

have rendered themselves ineligible for continuing in substantive capacity against the posts of Naib Tehsildars. It is this order which is subject

matter of challenge in this petition.

2. The petitioners submit that they cannot be held liable for inaction on the part of the respondents. The petitioner submit that they were willing

and ready to take part in the process of examination but could not take part in the examination on account of the fact that they were called upon to

take part in the election process.,

3. It be seen that whether any examination was held or whether the petitioners were called upon to take part in the election process is not clear

from the objections. It be seen that whether any examination was held or whether the petitioners were called upon to appear in the examination is

not apparent from the stand taken by the respondents. In this situation what was said by the Supreme Court of India in case reported as State of

Maharashtra Vs. Jagannath Achyut Karandkar, AIR 1989 SC 1133, would be attracted to the facts of this case also. In the above case it was

noticed that the State Government did prescribe department examination as a condition precedent for promotion to the cadre of Superintendents.

The examinations were required to be conducted every year, and the officials had to pass this examination within the time frame were to lose their

seniority but they could be promoted as and when they qualified themselves. The government for some reason or the other could not hold the

examination every year. The Government at the same did not pass any order extending the period prescribed for passing the examinations and

promoted the senior officials subject to their passing the examination. The junior officials who qualified themselves were also promoted over

looking the case of senior officials and senior officials were only promoted upon their passing the examination. Later on, the cadre of Superintendents, the

Government revised the seniority list so as to reflect the rankings in the lower cadre irrespective of the date of promotion.

4. It was held that those persons who had not exhausted the available chances to appear in the examination could not be denied their seniority. It

was also observed that it would be unjust, unreasonable and arbitrary to penalize a person for the default of the government to hold the

examination every year. If the examination was not held in any year, the person who has not exhausted all the permissible chances had a right to

have his case considered for service. Putting them into the category of "Late Passing:", with a view to remove hardship caused to them, the

Government it was observed, did justice to restore the legitimate seniority in the promotional cadre and there was nothing improper or illegal in the action of the State Government.

5. The aforementioned view would be attracted to the facts of this case also. The assertion of the petitioners that they were not allowed to take part in the examination, as they were busy in Election duty has not been denied. Therefore, there is apparent merit in the submissions made by the petitioners. Respondents are accordingly, directed to reconsider the matter in the light of the observations made by the Supreme court of India in the above mentioned case, Respondents would take a fresh decision. Till a fresh decision is taken the petitioners be not reverted.

6. Disposed of accordingly.