
(2008) 02 J&K CK 0009
In the Jammu And Kashmir High Court

State of J. and K. and Others

APPELLANT

Vs

Sunita Anand and Another

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2009) 2 JKJ 637

Hon'ble Judges : K.S. Radhakrishnan, C.J.;N.A. Kakru, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, C.J.—Writ petition was preferred by the respondent herein for a declaration that she should be deemed to have been

appointed with effect from September 20, 1984 to the post of Under Secretary under reserved category quota of female candidates and conferred

all the consequential benefits of salary, promotion, seniority etc. Direction was also sought for refixing her seniority after inducting her at proper

seniority position under reserved category for female candidates at serial No. 265 below Mrs. Zahida Parveen in the list of selected candidates in

the Combined Service Examination with all other consequential benefits.

2. The Learned Single Judge allowed the writ petition, holding that the petitioner would be entitled to get appointment under reserved category and

the relief already given to her by the State Government as per the decision of the Supreme Court was inadequate. It is also ordered that she would

be entitled to get restoration of her seniority etc. The State has come up with this appeal aggrieved by the directions give by the Learned Single

Judge. i ,

3. Learned Counsel appearing for the State Government submitted that the

Learned Single Judge has committed an error in holding that the petitioner would be entitled to get appointment in the reserved category, a contention which was never raised by the petitioner in her previous writ petition. Further it was also submitted that the petitioner and other similarly placed persons were not appointed on the basis of recommendations of the Public Service Commission in the Combined Competitive Examination and various writ petitions were preferred claiming appointment. The matter ultimately came up before the Supreme Court in Civil Appeal, ""State of J & K etc. v. Javaid Iqbal and Ors."" The appeals were disposed of

by the Apex Court on August 27, 1992, directing as follows:

The selection in this case was completed in the year 1982. Most of the writ petitions were filed in the High Court and in this Court during the year

1984. Some of the petitions before the High Court were also filed during the period 1985 to 1989: We are of the view that only the candidates

who filed the writ petitions are entitled to the relief granted by the High Court. We, therefore, modify the relief granted by the High Court to the

extent that only the candidates who filed writ petitions in the High Court or in this Court are entitled to be appointed in terms of the High Court

judgment. We grant two months time from today to the State Government to make the necessary appointments in terms of the High Court

judgment as modified by us.

4. The Judgment of the Apex Court was implemented and the matter was given a quietus. Petitioner is now claiming a fresh relief which she had

not raised in the earlier writ petition, stating that she should have been appointed in the 5% quota earmarked for female candidates in the year

1984 - a contention which she might and ought to have taken at the earliest point of time if she was aggrieved. Now, if the claim of the petitioner is

accepted that would affect the seniority position of several officers.

5. Public Service Commission on a direction given by this Court filed an affidavit. Counsel submitted that the petitioner had obtained only 419

marks while the last female candidate appointed had secured 423 marks. Learned Counsel for the petitioner, however, submitted that the

Commission had committed an error in including the female candidates both in the merit list as also in the reserved quota, We find no reasons to

examine those questions after a lapse of more than two decades. Petitioner, in

our view, if she had any such grievance, should have raised it at appropriate time. Having not done so, the petitioner is estopped from raising this plea in the present writ petition.

6. The principle of constructive res judicata has been settled by a catena of decisions of the Apex Court. Reference may be made to the decision

of the Apex Court in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, . The Court held every other

matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter

of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matter of claim or defence. The

principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same

thing as if the matter had been actually controverted and decided. Therefore, the judgment of the High Court in the earlier writ petition would

operate as res judicata even where one of the grounds taken in the subsequent writ petition before the High Court was absent in the earlier writ

petition.

7. The principle 'might and ought' is squarely applicable to the facts of this case. In such circumstances, the contention of the Learned Counsel for

the petitioner is clearly hit by the principle of res judicata also on the ground of delay and laches.

8. In the circumstances, we are inclined to allow this appeal and set aside the judgment of the Learned Single Judge.

9. Ordered accordingly.