
(1993) 08 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : O. Writ Petition No. 84/1993

Sulakshana Jasrotia

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) JKLR 689 : (1994) KashLJ 41

Hon'ble Judges : M.L.Kaul, J

Bench : Single Bench

Advocate : Sakal Bhushan , S.K.Anand, Advocates appearing for the Parties

Judgement

The petitioner Smt. Sulakshana Jasrotia, working as a teacher in the grade of Rs. 12002040 in Govt. Middle School (Boys) Barnoti, District

Kathua, seeks the writ of Mandamus commanding the respondents to promote her to the nongazetted Master Grade of Rs. 17603200 with effect

from 17101992, on the ground that she has passed M.A. in Hindi in the year 1973, B.E.d, in 1979 and M.A. in Dogri in the year 1988. She was

appointed as a Teacher on 2331974 when she was M.A. in Hindi the other qualification were acquired by the petitioner during her service as a

teacher. She is an Orthopaedically Handicapped lady being an old patient of the postpolio residual paralysis involving right upper limb which is

flaib. The respondents vide order No. DSEJ/ANG/ 98 of 1992 dt. 17101992 promoted the trained postgraduate/trained graduate teachers to the

grade of Rs. 17603200 which is technically termed as Master Grade. That 366 male teachers and 156 female teachers in the open category have

been promoted to the Master Grade vide the aforesaid order. According to the petitioner, the last date of appointment in case of the male

candidates has been taken as 1141974, whereas the last date of appointment in case of the female candidates as 2121974, thereby arbitrarily

depriving the petitioner of her promotion, although her date of appointment is 2331974. Therefore the Staterespondent has denied her promotion

by causing a sex discrimination against the female teachers when the male teachers appointed in between 1141974 and 21274 were promoted and

ignored the female teachers who also could be promoted during the said period. Moreover, no reservation has been made in favour of the

physically handicapped persons, though such a reservation has been kept for the said category as envisaged under General Department's

communication No. GD(EST)RB/25/77 dated 1641977 for appointment to the nongazetted posts. The impugned order has accordingly been

challenged by the petitioner on the ground that the same is bad in law, because the date of appointment for the purpose of promotion of the male

teachers has been taken on account of sexdiscrimination against female teachers and the petitioner who was appointed on 2331974 has been

arbitrarily deprived of the promotion opportunity visavis her male counterparts. The impugned order is a special and typical example of the

constitutionally and judicially rejected practice of sexdiscrimination and is thus violative of the petitioner's right to equality as enshrined under Article

14 and 16 (2) of the Constitution of India. The impugned order is further bad in law to the extent that it does not extend the benefit of 3%

reservation in nongazetted posts to the physically handicapped persons, as has been envisaged under General Department's communication dated

1641977.

After rule nisi was issued, Mr. S.K. Anand, GA, appeared and filed objections on behalf of the respondents. The writ petition was resisted on the

ground that the 3% quota is meant only for the initial appointments, when a person enters into the Government service in any department either

directly or through the State Recruitment Board and the said 3% quota is not meant for promotion to inservice employees. Having regard to the

large number of male candidates in the Education Department, previously 10% quota was reserved for the female candidates and now with the

expansion of the Department and male candidates serving in the Department the quota has been considerably enhanced from 10% to 30% and if

the plea of the petitioner is accepted and equal number of female candidates are also promoted in a particular promotion zone, then it will create

anomalies in the department and also discrimination against the male candidates in as much as a male candidate who is appointed in the year 1970

may not come in the consideration zone for the promotion to the Master's grade and a female candidate who is appointed in the year 1970 may

even be successful in getting the next higher grade.

It was resolved by learned counsel for the parties that the writ petition may be disposed of at the admission stage for no counter was required to

be filed by the respondents other than the objections filed by them.

Heard learned counsel for the parties and also had a thoughtful consideration over the record on the file.

Simply the grievance of the petitioner is that the lady teachers working in the educational line doing the same job, as is being done by the male

teachers, are being discriminated against in as much as while they are called upon to do the same work as their counter parts (male teachers), they

have been denied promotion to the post of Senior Teachers as two cut off dates have been taken for the purposes of promotion whereas the last

date of appointment in the case of female candidates has been taken 21/2/1974 and the last date of appointment for promotion in the case of male

candidates has been taken as 11/4/1974, and thereby the petitioner who on 23/3/1974 has been arbitrarily denied the promotion was appointed to a

Master Grade when she was legally entitled to be promoted on the cut off date on which the male teachers have been promoted.

I have gone through the writ petition, objections filed by the respondents and also considered the submissions made on either side and am of the

view that under the constitutional arrangement there is no occasion for a different treatment between the male and a female teacher in the Education

Department, when they are doing the same nature of job. I do not find any justification for preferential treatment in the matter of affording

promotional avenues for the male teachers.

Mr. Anand, learned counsel for the respondents, is correct in saying that the 3% quota is available for the handicapped persons at the time of their

initial appointment, but they are not entitled to this percentage at the time of their promotion as well. Mr. Sakal Bushan is satisfied with this legal

position of the case and has thus withdrawn from his stand that the petitioner is entitled to promotion as a handicapped employee in the Department.

However, the point remains that the petitioner has been definitely discriminated on the basis of sex although she has been appointed as a teacher on

2331974 and being a qualified persons for promotion as a Master, has been arbitrarily discriminated for consideration by promotion for two cut

off dates have been taken into consideration by the respondents for the purposes of promotion to the posts of Masters between the male and the

female candidates. In this manner, all the lady teachers who have been appointed from 2121974 to 1141974 appears to have been discriminated

for the purpose of their promotion, even though some of them fall within the consideration zone for such promotion.

In the case on hand it is clearly found, and even has not been rebutted by the respondents as well, that the petitioner has been appointed as a

teacher on 2331974 and on the basis of cut off date on which male teachers have been promoted as Masters in a higher grade she too was entitled

to be considered for promotion to the post as a Master.

It is a clear cut case of sexdiscrimination and I find no justification for a preferential treatment which has been made by the respondents in the

matter of affording promotional avenues to the male teachers.

While taking this view I am fortified in AIR 1992 SC 1695, wherein it has been held that there was no justification for a preferential treatment in

the matter of affording promotional avenues for the male teachers over the lady teachers, when they are performing same job and avenues of

promotion could not be stopped to the female teachers in the proportion in which they were available to the male teachers. As the promotions have

since been made and it will therefore create a great hardship to hundreds of Masters, if the promotion order is quashed, at this stage.

Hence the petition is allowed and by issuing a Mandamus the respondents are directed to consider the case of the petitioner on the basis of same

cut off date, on which the male teachers, have been promoted to the Master's grade. Such a consideration shall be made by the authorities

competent within a period of two months so that the grievances ol1 the petitioner is properly met.

However, the petitioner shall also be at liberty to make a representation to the respondents within fifteen days from today, whereafter the respondents shall consider her case, as already directed hereinabove, and pass appropriate orders in this regard.

The writ petition, alongwith its connected CMP, is disposed of accordingly.