
(1996) 08 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : 305 of 1995

Sunil Dutt Balotra & Ors.

APPELLANT

Vs

Pawan Kumar & Ors.

RESPONDENT

Date of Decision : 30-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) KashLJ 400 : (1997) 2 SCT 612

Hon'ble Judges : R.C.Gandhi, J and R.Ramakrishna, J

Bench : Division Bench

Advocate : R.L.Bhatia, Gagan Basotra , D.S.Chauhan, Advocates appearing for the Parties

Judgement

1. This LPA is directed against the orders made by the learned Single Judge on Nov. 21 and 27, 1995 in SWP No. 747 of 1995, titled Pawan

Kumar and ors vs State of J&K and ors, for the reasons set out in the grounds of appeal.

2. A few salient facts, which are necessary for disposal of this appeal are as follows: The J&K Service Selection Recruitment Board, hereinafter

called the Board (respdt. No. 29 herein) had issued a Notification dated 22.12.1993 calling for applications from eligible candidates to fill up

certain vacancies of teachers in Districts Kathua. It is stated that pursuant to the said notification about 6000 candidates had applied for the posts

of teachers. It is further stated that against 6000 candidates, about 146 candidates had been short listed and accordingly called for interview by the

Board.

3. While the selection process was going on, respondents 1 to 27 (petitioners in W.P. No. 747/1995) approached the writ court challenging

correctness and legality of the action taken by the concerned authority of the Board in shortlisting the candidates for being interviewed. In the said

Writ petition, the writ petitioners had not only challenged the selection, but also called for quashing Rule 13(ii) of SRO 194 of 1992 (J&K SSR

Rules, 1992).

4. When the writ petition came up for consideration before the learned Single Judge on July 7, 1995 the writ court issued notices to respondents 1

to 4 therein (respondents 28 to 31 herein) who alone were made respondents in the writ petition. No interim direction, whatsoever, was granted

by the writ court on that date.

5 However, respondents 28 to 31 herein, functionaries of the State Govt. having filed objections in detail in the writ petition, urged that the writ

petition is required to be dismissed for the reasons stated therein.

6. The learned Single Judge, however, after hearing learned counsel on both sides, by any order dated 21.11.95 issued the following directions:

Petitioners are candidates for the posts of teachers in Kathua District. Almost all of them hold the higher qualification and some of them may have

qualified their MAs also. Their grievance is that they were not called for interview. No interim relief was granted to them on 7.7.1995 when L.

counsel for respondents sought time to explain the position regarding the short listing of the candidates.

Respondents have filed the objections and in the meanwhile because the petitioners' case could not be taken up for consideration, L.C. for

respondents Mr. Bhatia has informed that selection had already been finalised. In other words, he wanted to convey that this petition had become

infructuous with the efflux of time.

However, when the matter was considered Mr. Bhatia was asked to explain the criterion for shortlisting of candidates. He referred to some

mathematical formula at page 4 of the objections, but could not explain how this formula was applied to the petitioners to exclude them from the

interview. His only argument was that the criteria laid down by the Board for selection was upheld by this court losing distinction in the process that

the criteria for selection of the candidates could not be the criteria for shortlisting of the candidates.

Considering educational qualifications of the petitioners and their fundamental

right to seek consideration for employment coupled with the well established legal position laid down by the Supreme Court that the area of competition is required to be broadened and taking in regard the failure of the respondent Board to explain rationale of the criteria applied by it to exclude the candidates from interview and its action in finalising the selection during the pendency of the writ petition, which is loaded with depriving the petitioners from consideration for all times to come, I am left with no option to direct the State respondent and its functionaries effect to the selection in question for the posts of teacher in Kathua district. In case any candidates joined pursuant to such selection, they shall not be allowed to discharge their duties and those, who have not joined, shall not be allowed to join till the SSRB explains the rationale of the criteria adopted by it to exclude the candidates including the petitioners for interview. List on 27th November, 1995. This order shall be conveyed by the Additional Registrar to the Addl. Advocate General, Mr. Kapoor, during the course of the day, who is directed to seek compliance from the concerned authorities. Again on making a motion by the learned counsel for the writ petitioners, the learned Single Judge, by another order dated November 27, 1995, made the following order

.....On hearing Mr. Jam it appeared that a candidate possessing superior merit in higher qualification could be weeded out for his post inferior performance in 10+2 examination which raises serious doubts about the rationale of the criteria. Mr. Jan is, therefore, directed to produce the relevant record showing the application of the criteria to all the candidates in Kathua district so that it can be ascertained whether candidates possessing superior qualification have been excluded from interview on the basis of their low percentage of marks in 10+2 examination.

One week's time is granted for the purpose. List thereafter. Interim direction to continue till the next date.

The above referred two orders made on November 21 and 27 1995 by the learned Single Judge in SWP No. 747 of 1995 have been called in question by the appellants 1 to 24 in the present appeal.

7. We have heard learned counsel on both sides. Learned counsel for the appellant has raised a preliminary objection that since the writ court proceeded to issue a direction, as stated above, in the absence of appellants 1 to

24 herein having not been arrayed as necessary party respondents

in the writ petition, though the orders made by the learned single Judge affected their right and interests in as much as since as on the dates two

orders made by the learned Single Judge, referred to above, the appellants having been selected by the Board not only have been appointed to the

posts to which they were selected, but also they have undergone orientation course for the teachers job. To demonstrate this fact, a copy of

certificate of appreciation (Annexure AA) has been produced by the appellants along with their appeal. Inter alia, learned counsel for the appellants

submitted that the two orders made by the learned Single Judge under appeal, cannot be sustained for the simple reason that in the absence of the

appellants upon whom certain benefits have been secured and that without hearing them, the writ court could not have passed the order effecting

the interests of the appellants and to that extent the orders under appeal cannot be sustained under law. The learned counsel for the appellants

supported his contention by placing reliance upon the decision of Supreme Court delivered in *Ishwar Singh and others Vs Kuldip Singh* 1995

S.C.C. Supplement (1) 179.

8. The learned counsel for respondents 1 to 27 herein, however, submitted that even though in the writ petition appellants 1 to 24 having not been

made necessary parties (respondents) still the writ court was right in passing the orders under appeal with a view to prevent any injury that may be

caused to the writ petitioners.

Another submission is that since Rule 13(ii) of SRO 194 of 1992 (J&K Subordinate Services Recruitment Rules, 1992) had been challenged

before considering the legal contention as to the validity of the said rules, the court intended to give relief to the writ petitioners and it is for this

reason that the two orders dated November 21st and 27th, 1995 came to be passed by the writ court. It is with a view to protect the interests of

the writ petitioners.

9. We do not see any force in the submission made by the learned counsel for the respondents.

10. It is claimed that the preliminary objection raised in this appeal that in the absence of appellants 1 to 24 having not been made as parties

respondents in the writ petition, the orders made by the learned Single Judge on

November 21 and 27, 1995 cannot be sustained in the eye of law, must be upheld.

11. A similar question arose before the Hon'ble Supreme Court in Ishwar Singh's case (supra), wherein the Hon'ble Supreme Court laid down the following law:

4. It is not disputed by the learned counsel for the parties that except Ishwar Singh no other selected candidate was impleaded before the High Court. The selection and the appointment have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates, who was a party, had not been served and as such was not heard by the High Court. We are of the view that the High Court was not justified in hearing the writ petition in the absence of the selected candidates especially when they had already been appointed. We, therefore, set aside the judgement of the High Court dated December 8, 1992 and send the case back for fresh decision after notice to the parties. The appeals are allowed in the above terms. No costs.

12. Indeed, it is a fact, not only found in the above cited decision of the Hon'ble Supreme Court but in a number of decisions of the Supreme Court and other High Courts, that any order that may effect the interests of any citizen if passed being his back without giving an opportunity of being heard to him to that extent such an order is nullity and it cannot be sustained in law. 12. In view of the foregoing arguments, there is no need for us to consider the other questions of law involved in the matter. Therefore, the appeal is allowed and the two orders dated 21st and 27th

November, 1995 passed by the learned Single Judge in SWP No. 747 of 1995 are set aside. The writ petition will have to be heard and disposed of in accordance with law.