

(2009) 11 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1557 Of 2008, CMP No.3245 Of 2009 c/w Service Writ Petition (SWP) No. 1606 & CMP No.3249; Service Writ Petition (SWP) No. 1598 Of 2008 & CMP No.3256; and Service Writ Petition (SWP) No. 1761 Of 2009 & CMP No.3281 Of 2009

Syed Shamim Rizvi & Ors.

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967 — Rule 7

Citation : (2009) JKJ 299 Supp

Hon'ble Judges : Barin Ghosh, J and Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : Azhar-ul-Amin, J.A.Kawoosa, S.S.Wani, M.A.Qayoom, Advocates appearing for the Parties

Judgement

1. Rule 7 of the Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967 mandates that no person shall be recruited to the Service

who is more than 35 years of age on the first day of January of the year in which the advertisement for the posts of Munsiffs is issued. The Jammu

and Kashmir (Classification, Control and Appeal) Rules, 1956 also prescribe the maximum age of 35 years for appointment to Government

service. However, Rule 17 of the said Rules authorizes relaxation of such age limit, which authority is absent in the Jammu and Kashmir Civil

Service (Judicial) Recruitment Rules. The Jammu and Kashmir Civil Service Regulations also specify the maximum age limit as 35 years and, at the

same time, grant power of relaxation. It appears, the Government, by an order dated August 5, 2005, has increased the maximum age limit for

posts falling under direct recruitment to Government services, other than those

filled through Combined Competitive Examinations, to 37 years with effect from January 1,2005.

2. In these writ petitions, it has been contended that restricting age limit to 35 years, as contained in the Jammu and Kashmir Civil Service (Judicial)

Recruitment Rules, 1967, is improper, incorrect and illegal and, in any event, should not be permitted to remain in view of increase of the age limit

under other Rules governing appointment to Government services, referred to above.

3. In some of the writ petitions, it is the additional contention that, earlier in some other writ petitions, petitioners, who are above 35 years of age,

have been permitted, by interim orders of the Court, to submit their application forms for the Examination notified on October 24,2008, and the

Public Service Commission was asked to accept their forms subject to the condition that such acceptance shall not confer any benefit on the

petitioners, and the interim directions were ordered to remain operative till objections are filed. In those writ petitions, it has been contended that in

terms of such interim orders, forms have been submitted by the concerned petitioners and accepted by the Public Service Commission. It was

contended on behalf of the writ petitioners that since they are within the age of 37 years, they should be permitted to sit in the Examination. In three

of those writ petitions, CMPs have been filed seeking directions that respondent no.2, i.e., the Public Service Commission, be directed to issue

Roll number slips/admit cards in favour of the petitioners so as to enable them to sit in the Examination scheduled to be held from November 18,

2009. The fourth writ petition is a fresh petition seeking same or similar reliefs.

4. We have heard learned counsel for the parties on merits of the writ petitions and by this order propose to decide the same finally with consent of

the learned counsel for the parties.

5. The Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 apply to all services and to all persons appointed to

any service before or after the date of commencement of the said Rules, except to the extent otherwise expressly provided, (a) by or under any

law or rules for the time being in force; or (b) in respect of any member of such service by a contract or agreement subsisting between such

member and the Government; as specified in Rule 3 thereof.

6. The Jammu and Kashmir Civil Service Regulations, 1956, apply to all Government servants. Rule 37(3) thereof deals with age limit in respect of direct recruits to Government service in all subordinate and gazetted services.

7. At the same time, Section 110 of the Constitution of Jammu and Kashmir provides that appointments of persons, other than District Judges, to

the Judicial Service of the State, shall be made by the Governor in accordance with the Rules made by him in that behalf after consultation with the

Public Service Commission and with the High Court. Persons appointed in Judicial Service, though are Government servants, but they can only be

appointed, as directed in Section 110 of the State Constitution, in accordance with the Rules made by the Governor of the State after consultation

with the Public Service Commission and with the High Court. In the event no such rules have been made, general rules applicable to Government

servants can be looked at. However, in exercise of power conferred by Section 110 of the Constitution of the State, the Jammu and Kashmir Civil

Service (Judicial) Recruitment Rules, 1967 have been framed. In the matter of making the said Rules, Government alone could not play any role.

The Government, in order to make the said Rules, was required to consult not only the Public Service Commission, but also the High Court.

Similarly, in order to change any provision of the said Rules, the Government is required to consult not only the Public Service Commission, but

also the High Court. The same cannot be done by the Government alone; whereas it is free to change the other Rules, referred to above, which

have been made by the Government in exercise of its power under Section 124 of the State Constitution, with which neither the Public Service

Commission, nor the High Court has anything to do.

8. The question is, because the Government in its wisdom thought that upper age limit for recruitment to Government services should be increased

to 37 years, can it be said that the Rules made under Section 110 of the State Constitution, prescribing a lower maximum age limit, is liable to be

struck down? In the event, accepting the prayer of the writ petitioners, Rule 7 of the Jammu and Kashmir Civil Service (Judicial) Recruitment

Rules, 1967 is struck down, that would tantamount that any one of any age, even those who have attained otherwise the prescribed age of

superannuation, may seek for appointment in the Judicial Service. The same

would create an anomalous situation. The petitioners, however, do not want the same; they want the Court to increase the maximum age limit prescribed in Rule 7 of the said Rules to 37 years. In other words, the petitioners want this Court to legislate. In none of these writ petitions, the High Court has been made a party; whereas the High Court has been granted constitutional right to be a part of the consultation process for framing Rules for recruitment of persons in Judicial Service.

9. In the case of *State of Bihar v Bal Mukund Sah*, reported in AIR 2000 SC1296, there was a set of reservation policy which was not incorporated in the Rules framed for recruitment of persons in Judicial Service. In that case, the Hon'ble Supreme Court held, by looking into the provisions of the Constitution of India, which are akin to the provisions of the Constitution of Jammu and Kashmir, that the same accord a distinct intention of the framers of the Constitution as regards the supremacy and separateness of the judiciary from the legislature and the executive; Article 309 should be treated as a general provision, Articles 233 to 235 should be treated as special provisions; and general rules made by the Government cannot be brought in or forced upon in rules framed for recruitment of persons in Judicial Service. Merely because the Government felt that the upper age limit of 37 years in other Government services would be appropriate, the same would not render the collective thought of the Government, the Public Service Commission and the High Court, that upper age limit of persons to serve Judiciary shall be 35 years, redundant or bad or illegal. On the basis of thought expressed by the Government in its own domain, while cannot be forced upon others, who are equal partners in the matter of framing rules for recruitment of persons to serve the Judiciary, such a thought on the part of the Government cannot be treated as the yard stick to determine the efficacy or legality of the thought expressed by the Government in consultation with other partners in the matter of framing Recruitment Rules for appointment of persons to Judicial Service and continuing the same.

10. The question of discrimination, as has been sought to be highlighted, has no application at all. Persons to be recruited for serving the Judiciary, and for whom it is not only the Government, but also the Public Service Commission and the High Court are required to frame Rules for

recruitment, stand, as a class, apart from other services of the Government.

11. The fact that some of the writ petitioners have been permitted to submit their forms by way of interim orders, passed in some of the writ

petitions, would not confer any right upon them to appear in the concerned Examination despite being ineligible, for, having had crossed the age

bar.

12. The conclusion would be that there is no merit in any of these writ petitions. The same are, therefore, dismissed. Interim directions passed shall

stand vacated.