

(2003) 08 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : LPA (SW) No's. 152 and 162 of 2003

Umesh Sharma and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2003) 3 JKJ 511

Hon'ble Judges : Y.P. Nargotra, J; R.C. Gandhi, J

Bench : Division Bench

Advocate : Arfan Noor, Adv and Vinod Bakshi, Dy. A.G, for the Appellant; D.C. Raina and Sindhu Sharma, for the Respondent

Judgement

R.C. Gandhi, J.—These Letters Patent Appeals have been preferred against the judgement dated 7.8.2002 passed in SWP No. 525/2000.

Whereby Learned Single Judge while disposing of the writ petition has quashed the appointments of respondents 7 to 20 except the appointment

of the respondent-Rashpal Singh having been appointed by the respondents on compassionate-grounds.

2. Respondent No. 3 Director of Horticulture Department appointed the respondents 7 to 20 and the appellants in LPA(SW) 152/2003 as Mali.

Notification of advertising the post was also issued for filling up the vacancies. The petitioners in the writ petition pleaded that they applied for the

said posts and came to know that posts have already been filled up appointing respondents No. 7 to 20 of the writ petition. They approached the

Court for quashing the selection. The Learned Single Judge after hearing the learned counsel for the parties and considering the rival contentions

quashed the selection and directed that the posts be filled up in accordance with

law.

3. The order under appeal passed by the Learned Single Judge in writ petition SWP No. 525/2000 has been challenged by both the appellants

and the respondents.

4. Mr. Vinod Bakshi, learned Deputy Advocate General has submitted that the appointments were made prior to the Advertisement Notice issued

by the Director Horticulture Department. It is also submitted that appointments have been made by the Director Horticulture, who was competent

as per Schedule IB of J&K Civil Services Regulations. So far as the power and competence to order appointment by the Director Horticulture is

concerned, there is no dispute. The dispute is with regard to the exercising of power. The selection of the suitable and eligible candidates is

required to be made by a Selection Committee after conducting the interview. No such committee was constituted. The Director Horticulture has

not interviewed the candidates. The appointment orders have been issued in breach of the rules and guidelines notified by the State for selection of

suitable candidates. The argument, therefore, cannot be accepted and is rejected,

5. The posts cannot be filled up in the manner it has been done by the Director Horticulture. There should be equality of opportunity to all the

eligible citizens in the matters relating to employment. As the posts were not advertised the desirous and eligible candidates could not get

opportunity to prove them worth to be the suitable candidates. Employment is a national wealth. The largess of the State cannot be distributed in

the manner it is done, as held by the Supreme Court in case reported as State of Maharashtra Vs. Chandrabhan Tale, , observing as under:--

Public employment opportunity is national wealth in which all citizens are equally entitled to share and no class of people can monopolise public

employment in the guise of ""efficiency"" or other ground, but the right to equal opportunity to public employment cannot be treated as a new form of

private property with its attribute of competitive exploitation.

6. However, it is submitted at the Bar that the appointment of respondent-Rashpal Singh as recorded in having the order under appeal xxx having

been made by the respondents on compassionate grounds is wrong on facts. It is submitted that appointment of respondent-Rashpal has been

made under the provisions of SRO 64 of 1994. This appointment shall be treated

to be made under the provisions of SRO 64 of 1994. It is also stated at the Bar that the appointments of Suresh Kumar and Rattan Lal have been wrongly quashed, as the Learned Single Judge has not taken into consideration the fact that these appointments have been made in terms of SRO 43 of 1994 respectively. It is submitted that these appointments having been made on compassionate grounds should have not been quashed being made without process of selection. That selection and appointment is also protected.

7. We are of the opinion that the selection of the candidates has not been made by the Selection Committee after conducting interview, thus cannot be maintained. We uphold the appointments of Suresh Kumar, Rattan Lal and Rashpal Singh as observed above. We do not find any merit in both the appeals and the same are disposed of.