

(2002) 05 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 426 of 2001

Zarin Akhtar

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4)
Jammu and Kashmir Reservation Rules, 1994 — Rule 1

Citation : (2003) 1 SCT 858

Hon'ble Judges : Tejinder Singh Doabia, J and Sudesh Kumar Gupta, J

Bench : Division Bench

Advocate : W.S. Nargal, A. Parihar, S.H. Shah Ashrifi, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—Admitted.

2. On 17th July 85, a decision was taken by the State Government to accommodate the Instructors of Non Formal Education Centres who had

continuously worked in these centers for four years. This accommodation was by way of absorbing 3% of such category of Instructors to the post

of teachers. This Government order, for facility of reference is being reproduced below :

.....Govt. Order No. 325Edu of 1985

Dated : 1771985

Sanction is accorded to the reserving of 3% posts of teachers in each District for the Instructors of Non Formal Education Centres who have

continuously worked in the Centres for at joint (at least ?) four years and have also retained minimum enrolment of 25 students on an average for

the same period.

By order of the Government of Jammu and Kashmir.

Sd/

(Secretary to Govt.)

Education Department.

3. The appellants came to this Court with a prayer, that they should be adjusted against this 3 percent reservation made available for part time

Instructors working in Non Formal Education Centres. This plea of theirs was rejected on the ground that no such reservation is now mentioned in

the Jammu and Kashmir Reservation Rules of 1994. It was observed that on account of enforcement of the above Rules, any reservation made

vide any Government order would cease to operate. The observations made to the above effect by a learned Single Judge of this Court are the

subject matter of challenge in the present appeal.

4. We are of the opinion that the Jammu and Kashmir Reservation Rules of 1994, are the Rules which are made under Article 16(4) of the

Constitution of India. Under this Article, the State can make a provision for reservation of appointment or a post in favour of any backward class

of citizen which in the opinion of the State is not having any representation. Therefore, the reservation contemplated by Reservation Rules of 1994

is entirely different. This has got nothing to do with the order dt. 17th July 85 noticed above. The circular in question only provides a channel for

appointment or for absorption. As in different services, there is a provision for making appointment by direct recruitment or by promotion and a

ratio proportion is fixed, similarly, the circular aforementioned provides that whenever vacancies of teachers are to be filled, then at least 3 percent

posts should be filled from amongst the Instructors of Non Formal Education Centres who have continued to work for four years having an

enrolment of 25 students on an average for the same period. As indicated above, the reservation contemplated by the Jammu and Kashmir

Reservation Rules of 1994, is relatable and owe its origin to Articles 15(4) and 16(4) of the Constitution of India. The Circular, referred to above,

only provides for a channel of absorption. The scope of this circular is entirely different. It is not a reservation but, as indicated above, is a channel

or mode of absorption of a person who has already rendered some service for the State and is working on a consolidated salary. As such, we are

of the opinion that the view expressed by the learned Single Judge is not sustainable. The judgment under appeal is accordingly set aside. The State is directed to consider the claims of the appellant in terms of the circular referred to above.

5. Disposed of as such.