

PANKAJ GUPTA AND ORS. ETC.

v.

STATE OF JAMMU AND KASHMIR AND ORS.

SEPTEMBER 16, 2004

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Service law :

Appointment—Government jobs—Rural masses—Inadequate representation of—Discussion in Legislative Assembly—Decision by State Government—Heads of departments making appointments for Class IV posts on recommendation of Members of Legislative Assembly/Council—No advertisement/notification issued inviting applications for those posts—Effect of—Held: Appointments were illegal—Neither any criteria approved by Government nor any rules of recruitment followed in making appointments—Appointees had no right to regularization in service as procedure for their appointment was erroneous—Directions issued for filling of posts by regular process—Appointees permitted to submit application with relaxation of upper age limit.

Appellants were appointed as Class IV employees with respondent-state. Their appointments were challenged on the ground that there was no advertisement calling for applications to fill up the vacancies. A Single Judge of High Court held that the appointments were illegal. On appeal, Division Bench confirmed same. Hence the present appeal.

Appellants contended that pursuant to discussion in the Legislative Assembly regarding lack of proper representation of rural masses as compared to urban candidates in Government jobs, State Government made a decision, and their names were recommended by Members of Legislative Assembly and Legislative Council to heads of various departments who were competent to appoint them. Hence, their appointments were legal. They contended further that as they have been working since last several years and crossed maximum age fixed for entry to Government service, their services may be regularized.

Disposing of the appeals, the Court

A HELD : 1. No person illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he should be continued in service. In this situation, there is no reason to interfere with the impugned order of the High Court. [462-H; 463-A]

B 1.2. There was no publication of a notification inviting applications for filling up these posts. The names of these appellants were recommended by the Members of Legislative Council and the Legislative Assembly for appointment. There is no evidence to show that any criteria approved by Government or any rules of recruitment were followed while making these appointments. It may be true that the appellants may have been habitants of rural areas and there was no adequate representation for this rural population in Government jobs. But the Government or the heads of various departments could have formulated and resorted to some rational modalities approved under the rules of recruitment to see that rural population also got adequate representation in public employment. But same could have been done within constitutional limitations. [462-D, E, F]

C

D

2. The appointees have no right for regularization in the service because of the erroneous procedure adopted by the concerned authority in appointing such persons. [463-A]

E 3. It is directed that,

F (i) all the vacant posts shall be notified for appointments and applications called for in accordance with the Rules within six months.

(ii) all appellants herein may be permitted to submit application for appointment against such notification.

G (iii) as regards the upper age limit, the appellants shall be given relaxation but there shall not be any relaxation in the matter of the basic qualifications for appointments to Class IV posts.

H (iv) the appellants may be allowed to continue in service till such regular recruitments are made and these posts are filled up by a regular process of appointments. [463-D, E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4927-4929 of 2002.

From the Judgment and Order dated 8.11.2000 of the Jammu and Kashmir High Court in L.P.A. (SW) Nos. 283, 377 and PERLP No. 589 of 2000.

WITH

C.A. No. 4930-32, 4941, 4933-40, 4944, 4943, 4942/2002 and C.A. Nos. 6079, 6070-6078, 6068, 6069 and 6059-6067 of 2004.

Raju Ramachandran and D.C. Raina, G. M. Kawoosa, S.S. Jamwal, N. Ganpathy, A. K. Raina for Anil Kr. Jha, Bhim Singh, B.S. Billowria, S. Vig, Ms. Purnima Bhat, Goodwill Indeevar, Ashok Mathur, C.K. Sasi, P.D. Sharma, V.N. Raghupathy, C.L. Raina, G.G. Upadhyay and R.D. Upadhyay for the Appellants.

J.S. Attri, Anis Suhrawardy, C.P. Pandey and Prakash Pandey for the Respondents.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. : Leave granted.

The appellants in these civil appeals are Class IV employees in the State of Jammu and Kashmir. They were all appointed in 1997 and ever since their appointment, they have been working as Orderlies, Process Service, Guards etc. The appointments of these appellants were challenged by the respondents on various grounds. The respondents alleged that there was no advertisement calling for applications to fill up the vacancies of Class IV employees and the names of these appellants were suggested by the Members of the Legislative Assembly and Legislative Council and the heads of various departments appointed these appellants based on such recommendations. The learned Single Judge before whom the various writ petitions came up for consideration held that the appointments of these appellants were illegal and were not made in accordance with law. The appellants herein contended that on 11.11.1997, there was a government decision made by the State of Jammu & Kashmir pursuant to a detailed discussion on the floor of the Legislative Assembly regarding lack of proper representation of rural masses as compared

A to urban candidates in government jobs. It was probably felt that only persons staying in urban areas, who alone could get adequate education, and thereby obtained government jobs and it was in these circumstances that various Members of Legislative Assembly and Legislative Council made their recommendations for appointment of these appellants to Class IV posts.

B The learned Single Judge, after elaborate discussions on the matter held that appointments of these appellants were illegal and they were liable to be removed from service. These appellants preferred an appeal and by the impugned judgment, the Division Bench confirmed the judgment of the Single Judge.

C We heard the appellants' counsel and counsel for the respondents. The counsel for the appellants contended that the appointments were made pursuant to a government decision and the names of these appellants were recommended by various Members of the Legislative Assembly and the
D Legislative Council. It was argued that the heads of various departments were competent to make appointments to Class IV posts and, therefore, the appointments of these appellants are legal. We are unable to accept this contention. Admittedly, these posts were not notified by the government. There was no publication of a notification inviting applications for filing up these posts. The names of these appellants were recommended by the
E Members of the Legislative Council and the Legislative Assembly for appointment. There is no evidence to show that any criteria approved by government or any rules of recruitment were followed while making these appointments. It may be true that the appellants may have been inhabitants of rural areas and there was no adequate representation for this rural population
F in Govt. jobs. But the government or the heads of various departments could have formulated and resorted to some rational modalities approved under the rules of recruitment to see that rural population also got adequate representation in public employment. But the same could be done within the constitutional limitations.

G The appellants' counsel lastly pointed out that all these appellants have been working since last several years and many of them have already crossed the maximum age fixed for entry to government service, hence they may be regularised.

H No person illegally appointed or appointed without following the

procedure prescribed under the law, is entitled to claim that he should be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right for regularisation in the service because of the erroneous procedure adopted by the concerned authority in appointing such persons. Hence, the reliefs are required to be moulded especially in view of the fact that the appellants were appointed as early as in the year 1997 and ever since they have been working as Orderlies, Process Servers, Guards, etc. Moreover, the appointments of the appellants were made on the basis of the recommendations of the members of the Legislative Assembly and Legislative Council and on the basis of the decision made by the State of Jammu & Kashmir pursuant to a detailed discussion on the floor of the Legislative Assembly regarding lack of proper representation of rural masses as compared to urban candidates in government jobs. Hence, we issue the following directions :—

1. All the vacant posts shall be notified for appointment and applications called for in accordance with the Rules within six months from the date of the receipt of this Judgment.
2. All the appellants herein may be permitted to submit application for appointment against such notification.
3. As regards the upper age limit, these appellants shall be given relaxation but there shall not be any relaxation in the matter of the basic qualifications for appointment to Class IV posts.
4. The appellants may be allowed to continue in service till such regular recruitments are made and these posts are filled up by a regular process of appointment.

All these appeals shall stand disposed of with the aforesaid observations. There shall be no order as to costs.

V.S.S.

Appeals disposed of.