

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 198 OF 2005

(Arising out of SLP(C) No.4360 of 2003)

J.&K. PUBLIC SERVICE COMMISSION

Petitioner(s)

VERSUS

ISRAR AHMAD & ORS.

Respondent(s)

OR D E R

Leave granted.

Heard counsel for the appellant and also counsel for the contesting respondent no.1.

The first respondent submitted an application for appearing in the Combined

Competitive service Examination for filling up the various posts in the State of Jammu & Kashmir.

The examination consisted of three stages, namely, the preliminary examination, the main examination

followed by an interview. The last date for submitting the application for preliminary examination

was 16th March, 1999. The first respondent submitted his application in time and in the application he

did not indicate that he was entitled to the benefit of SRO 126 of 1994 dated 28th June, 1994 issued by

the State of Jammu & Kashmir whereby the reservation was granted to the residents of the backward

area and the line of actual control. The preliminary examination result was published

on 15.5.2000

and the first respondent qualified himself in the examination. Applications were called for the main

examination and the last date for submitting the applications was 23rd August, 2000 and the first

respondent submitted his application wherein he indicated that he was entitled to the benefit of SRO

126 of 1994 dated 28th June, 1994. The appellant Public Service Commission considered the

application of the first respondent and took a decision that he was not entitled to claim benefit of the

reservation by virtue of SRO 126 of 1994 as he had not claimed the same in the preliminary

examination and the respondent was not included as a successful candidate in the category of reserved

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persons who were entitled to the benefit of SRO 126 of 1994.

The first respondent thereafter challenged the selection by filing a writ petition and the

learned Single Judge of the High Court of Jammu & Kashmir held that the first respondent was not

entitled to the benefit of reservation based on SRO 126 of 1994 as he had not indicated in his

application for the preliminary examination that he was entitled to such benefit. The writ petition

filed by the first respondent was dismissed and he challenged the same by way of an L.P.A. (SW) No.D-

29/2002 and the Division Bench of the High Court of Jammu & Kashmir held that the first

respondent herein in fact possess the eligibility for being considered in the reserved category even

before the date of advertisement and he submitted his proof only later and that by itself did not

disentitle him from claiming the reservation. Accordingly, the LPA was allowed and the direction to

treat him under the reserved category was issued. This is challenged before us by the Public Service

Commission.

Learned counsel for the Commission submits that as the last date for submitting the application was 16th March, 1999 and the respondent did not produce the certificate claiming

reservation nor did he indicate in the application that he belongs to that category. It was submitted

that several other applications of similar nature were rejected by the Commission and the

respondent's application also was treated alike and the Division Bench erred in coming to the

conclusion that he was entitled to get reservation. Counsel for the respondent on the other hand

pointed out that though the first respondent did not avail the benefit of reservation when he submitted

the application for the preliminary examination he had submitted the application for the main

examination in which he had clearly shown that he was entitled to get reservation as per SRO 126 of

1994 dated 20th June, 1994 and he had also produced the certificate along with the application for the

main examination. It is submitted that he had claimed the reservation for the main examination and

he should have been treated as a reserved candidate in the main examination.

We have considered the rival contentions advanced by both the parties. The contention

of the first respondent cannot be accepted as he has not applied for the selection as a candidate

entitled to get reservation. He did not produce any certificate along with his application. The fact

that he has not availed the benefit for the preliminary examination itself is sufficient to treat him as a

candidate not entitled to get reservation. He passed the preliminary examination as a general

candidate and at the subsequent stage of the main examination he cannot avail the reservation on

the ground that he was successful in getting the required certificate only at a later stage. The nature

and status of the candidate who was applying for the selection could only be treated alike and once a

candidate has chosen to opt for the category to which he is entitled, he cannot later change his status

and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also

had the qualification and the production of the certificate at

a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the

Division Bench and allow the appeal. No costs.

.....J

( K.G. BALAKRISHNAN )

.....J

( TARUN CHATTERJEE )

NEW DELHI,

7TH JANUARY, 2005.

ITEM NO.205

COURT NO.7

SECTION XVIA

## S U P R E M E C O U R T O F I N D I A

## RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4360/2003

(From the judgement and order dated 26/07/2002 in L.P.A. No. 29/2002 of HIGH COURT OF J &amp; K

AT JAMMU)

J.&amp;K. PUBLIC SERVICE COMMISSION

Petitioner(s)

VERSUS

ISRAR AHMAD &amp; ORS.

Respondent(s)

(With office report )

(FOR FINAL DISPOSAL)

Date: 07/01/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE Mr. JUSTICE TARUN CHATTERJEE

For Petitioner(s)

Mr.G.M.Kawoosa, Adv.

Mr. N. Ganpathy,Adv.

For Respondent(s)1

Mr. Dinesh Kumar Garg,Adv.

Mr.B.S.Bilowria, Adv.

Mr.Rohit Pandey, Adv.

Mr.D.K.GUpta, Adv.

Mr.S.K.Bandopadhyay, Adv.

Mr.Anis Suhrawardy, Adv.

Mrs.Shamama Anis, Adv.

Mr.S.Mehdi Imam, Adv.

Mr.Sameer Ranjan, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeal allowed in terms of the signed order.

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(G.V.Ramana)

(Veera Verma)

Court Master

Court Master

(Signed order is placed on the file)