

V~ITEM NO.1A

COURT NO.5

SECTION XVIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1393-1394 OF 2002

MADAN LAL

Appellant (s)

VERSUS

HIGH COURT OF JAMMU & KASHMIR & ORS.

Respondent(s)

WITH Civil Appeal NO. 1395 of 2002

[SUBHASH CHANDER MANSOTRITA & ANR. V. HON'BLE HIGH COURT OF J& K
& ORS.]

Date: 28/03/2014 These Appeals were called on for hearing today.

For Appellant(s) Ms. Binu Tamta, Adv.

In-Person(NP)

For Respondent(s)

Rr-Ex-Parte

Mr. Sunil Fernandes, Adv.

Ms. Purnima Bhat, Adv.

Mr. Dinesh Kumar Garg, Adv.

In-Person

Mr. Tara Chandra Sharma, Adv.

Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla pronounced the judgment of the Court for a Bench comprising of Hon'ble Mr. Justice Surinder Singh Nijjar and His Lordship.

For the reasons recorded in the signed reportable judgment, the appeals fail and the same are dismissed. No costs.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE.]
Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1393-1394 OF 2002

Madan Lal

...Appellant

VERSUS

High Court of Jammu & Kashmir & Ors.

...Respondents

With
CIVIL APPEAL NO.1395 OF 2002

Fakki r Mohamed Ibrahi m Kali fu l la, J.

1. These Appeals are directed against a common Judgment of the High Court of Jammu and Kashmir dated 31.01.2000 rendered in S.W.P. No.333 of 1999 and O.W.P. No.1641 of 1999 and other connected writ petitions. The Appellants herein were Petitioners in S.W.P. No.333 of 1999 and S.W.P. No.260 of 1999. In the Writ Petition(s) the challenge was to the selection and appointment to the post of District and Sessions Judge borne on the cadre of the service constituted under the Rules, namely, "The Jammu and Kashmir Higher

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Judicial Service Rules, 1983" (hereinafter referred to as "Rules, 1983"). The recruitment and appointment to the said cadre under the aforesaid Rules is from two sources, namely, 75% by way of promotion of in service candidates and 25% by direct recruitment. The challenge in the Writ Petition(s) related to the selection and appointment of candidates under the direct quota pursuant to the modified Notification No.16 of 1997 dated 05.09.1997. The earlier notification was Notification No.50 of 1995 dated 01.08.1995. As per the modified notification, four posts were advertised out of which two were for general category and one each for reserved categories of Schedule Caste and resident of Backward Area. The High Court conducted the written examination and declared the list of successful candidates. Candidates were called for viva- voce test on 27.02.1999. They were interviewed by the Committee constituted by the High Court.

2. Mr. S.C. Mansotra, who appeared before us as appellant- in- person, in fact, appeared before the High Court and raised as many as six contentions, namely, that the post of District and Sessions Judge being a constitutional post and consequently,

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it cannot be classified or placed along with the highest service of the administration / bureaucratic service and the mention of the post in the rule was unconstitutional which provides for 50% reservation to different classes of citizens in the society. Then it was contended that the selection was not made in accordance with the procedure prescribed as contained in Rules 4 to 9 of 1983 Rules. In that, it was contended that sub-rule (2) of Rule 5 was not complied with. It was also contended that the process of selection was not properly carried out as mandated by Rule 7. The contention was that there was no Selection Committee constituted by the Chief Justice. It was contended that the High Court was not justified in filling-up the posts by candidates belonging to reserved categories. It was then contended that the proviso to Rule 4 was unconstitutional inasmuch as recruitment of 25% quota would be restricted to permanent cadre strength. It was then contended that the determination of seniority between the direct recruits and promotees should be based on the date of appointment in the cadre.

3. The High Court by the impugned judgment answered all the points raised in seriatim. As far as the argument that the post of District and Sessions Judge is a Constitutional post, the High Court has rightly held that except making a bald averment Appellants could not substantiate the said contention. Consequently, the Division Bench held that the mention of the said post in Rule 9 of 1994 Rules did not violate any provision of law so far as it related to provision made for reservation. As far as violation of Rule 5(2) of 1983 Rules was concerned, the High Court has noted that the requirement of holding a medical test under the said sub-rule was only directory and not mandatory and, therefore, the holding of the said test after the viva-voce test did not in any way affect the selection made. As far as the contention based on Rule 7 that no Selection Committee was nominated by the

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Chief Justice, the High Court after referring to the proceedings relating to the selection found that the Chief Justice constituted a Committee for conducting the interview of the candidates, who passed the written test, and that in any event the criteria for qualifying the examination by prescribing the percentage of minimum marks to be secured were all approved by the Full Court and in the circumstances as the selection was broad-based on that ground there was no scope to interfere with the selection.

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4. As far as the arguments to the effect that the policy of reservation adopted by the High Court by a Full Court Resolution was not approved by the Governor and, therefore, the application of reservation was invalid, the Division Bench held that the Petitioner himself did not oppose the reservation in the service and when the same was made by a Resolution of the Full Court and in the light of SRO-126 of 1994 it was applicable to every service of the State and the High Court. So holding, the said submission was also rejected.

5. The Division Bench, however, broadly accepted the submission as against the proviso to Rule 4 under SRO-157 of 1995. The submission was that the prescription of 25% quota for direct recruitment to be restricted against the permanent vacancies may not be correct. The Division Bench held that determining the respective quota both permanent and temporary posts are required to be taken note of and to that extent there was some justification in the submission of the Petitioners before it.

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6. The last of the submission relates to determination of seniority between direct recruits and promotees. As far as the said contention was concerned, the Division Bench in the case on hand held that the seniority shall be governed by the date of appointment in the cadre which would be in tune with

a plain reading of Rule 17. It held that if a promotee had already been appointed and if that was not done as per the quota, necessary relaxation can be given. In that respect, the Division Bench took into consideration Rule 4(2) which makes it apparent that in case suitable candidates were not available for recruitment to the posts reserved for that category can be filled- up by promotion.

7. Having perused the above judgment impugned in these Appeals and having noted the answers to the various submissions made on behalf of the Petitioners before the High Court, we do not find any good ground to interfere with the judgment impugned. In fact, to our query to the Appellants before us, it was fairly submitted that they have no grievance against any of the selected candidates in that particular selection. Therefore, if at all the Appellants grievances are to

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be considered, relating to ascertainment of quota for direct recruit posts in these Appeals it would only amount to a consideration by way of a Public Interest Litigation which cannot be permitted to be made, more so, when the Appellants have chosen not to challenge the selection of any one of the candidates by way of direct recruitment or any of the promotees.

8. In this respect, it would be appropriate to refer to the compilation of guidelines to be followed for entertaining letters / petitions received in this Court as Public Interest Litigation based on Full Court decision dated 1.12.1988 with subsequent modifications based on Orders dated 19.08.1993 and 29.08.2003 of the then Hon'ble Chief Justice of India. Under the said guidelines, it has been specifically stipulated as under:

"Cases falling under the following categories will not be entertained as Public Interest Litigation and these may be returned to the petitioners or filed in

the PIL Cell, as the case may be:

1. xxxx xxxx xxxx
2. Service matter and those pertaining to Pension and Gratuity."

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9. That apart time and again this Court repeatedly held that in service matters Public Interest Litigation is not maintainable. We can profitably refer to a recent decision reported in Hari Bansh Lal vs. Sahodar Prasad Mah to - (2010) 9 SCC 655. Paragraphs 14 and 15 are relevant which are as under:

"14. In Ashok Kumar Pandey v. State of W.B. this Court held thus: (SCC pp. 358- 59, para 16)
" 16 . As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official

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documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."
The same principles have been reiterated in the subsequent decisions, namely, B. Singh (Dr.) v. Union of India , Dattaraj Nathuji

Thaware v. State of Maharashtra and
Gurpal Singh v. State of Punjab .

15. The above principles make it clear that
except for a writ of quo warranto, public
interest litigation is not maintainable in
service matters."

10. As we have found that the challenge made to the selection
was not justified on merits and also on the ground that the
Appellants had no grievance against any of the selected
candidates, these Appeals fail. That apart, as the Appellants
had no grievance as against the selected candidates and the
challenge is the Writ Petition as well as in these Appeals are
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as a pro bono publico , these Appeals cannot be entertained
since as per the guidelines of this Court as well as based on
the earlier decisions of this Court wherein it was held that
Public Interest Litigation in service matters cannot be
entertained. Therefore, on all the above grounds the Appeals
fail and the same are dismissed. No costs.

J

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[Suri nder Singh Nijjar]

.....J.

[Fakk i r Mohamed Ibrahi m Kali fu l la]

New Delhi;
March 28, 2014

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