

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

IA Nos. 11&12 IN

C.A.No. 8269/2001

State of Jammu & Kashmir

Appellant (s)

versus

H.S.Sahni & Ors.

Respondent (s)

(For permission to file appln. and for clarification/Directions of Court's order dt. 16.2.2004  
)

Date: 25/8/2005 This matter was called on for hearing today.

CORAM:

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s) Mr.Anis Suhrawardy,adv.

For respondent(s) Mr.Ranjit Kumar,Sr.adv.

Ms.Binu Tamta,adv.

Mr.N.Ganpathy,adv.

Mr. E.C.Agrawala,adv.

UPON hearing counsel the Court made the following

O R D E R

I.As. are disposed of.

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

IA NOS. 11 & 12 IN

CIVIL APPEAL NO. 8269 OF 2001

State of Jammu & Kashmir .. Appellant

vs.

H.S.Sahni & Ors. .. Respondents

O R D E R

This is an application for modification/clarification of an order dated 16th February 2004 filed by the applicant who holds a Degree in Engineering. Initially the rules framed for the purpose of appointment/recruitment to the post of Junior Engineer was provided for by the Jammu and Kashmir Engineering (Subordinate) Services Recruitment Rules 1997. The qualification and method of recruitment of Junior Engineers were provided for against Serial No.III. Note 3 to serial No.III provided "appointment of Junior Engineers to Grade II shall be made in the ratio 1:3 between Degree and Diploma holders respectively". This Note was challenged by the Degree holders before the High Court as being unconstitutional under Art.226 of the Constitution of India. There was a difference of opinion between the two learned judges who heard the

matter. Accordingly the matter was referred to a Third Judge. The Third Judge concurred in the view expressed by one of the judges that Note 3 was unconstitutional. It was therefore set aside as being ultra vires. The matter was ultimately disposed of by the High Court by directing :

i)that the State Government could work out a solution and/or prescribe a proper and reasonable ratio between the Diploma holder and Degree holder Engineers within a reasonable time, say eight weeks, in light of the observations made in this judgment:

ii)that in case some appropriate ratio between the two sources of recruitment is provided, the Selecting Authority could proceed accordingly and make appropriate recommendations. It would be open for the Selection list in accordance with the newly prescribed

ratio on the basis of tests and interviews/selection process already completed. In case of deficiency of suitable candidates in either category, having regard to the number of posts for which selection process was initiated, it would be open for the selecting Authority to make good the said deficiency from respective sources on the basis of merit obtained by the candidates in the selection process already completed.

iii)These observations made in paras (i) and (ii) above shall not, however be taken as directions from this Court."

Being aggrieved the State Government preferred an appeal. The appeal was disposed of by an order dated 4.9.2003. By this order the Court

said that the counsel for the parties had suggested that the State Government would frame appropriate recruitment Rules for appointment of Junior Engineers taking into consideration various factors including the recruitment of the Department and that no further order was required to be passed in the appeal. The suggestion was accepted and the Civil appeal was disposed of by not passing any further orders in the appeal. The interim order granted during the pendency of the appeal before this Court, namely, that of status quo, was vacated.

The State Government correctly understood that by not passing any further orders, this Court had not in any way disturbed the outcome of the proceedings before the High Court by which Note 3 had been struck down. That was why they issued a Notification on 9/1/2004 in exercise of the power conferred by the proviso to Sec.124 of the Constitution of Jammu and Kashmir, deleting Note 3 appearing in Schedule II-A (Executive) appended to the Jammu and Kashmir Engineering (Subordinate) Service Recruitment Rules 1997 under the Heading 'Method of Recruitment' against Clause III category A.

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An application was thereafter filed by the State Government for clarification of the order dated 4.9.2003. In the body of the application it was incorrectly stated that this Court had disposed of the appeal by observing that the ratio of 1:3 between Degree holders and Diploma

holders mentioned against Rule relating to the appointment of Junior Engineers Grade II had been upheld. The submission was incorrect. However, in the substantive portion of the application the State Government merely stated that the existing recruitment Rules would suffice and there was no need to frame fresh Recruitment Rules.

We can only understand this submission to mean that the existing Recruitment Rules were those Rules which had, after 9.1.2004, stood amended by virtue of the Notification issued by the State Government. We can only assume that this is the manner in which this Court also understood the application. That was why this Court disposed of the State Government's application for clarification/modification of the order dated 4.9.2003 on 16th February 2004 by recording that the Rules were already in existence and that being so the State could continue with those Rules.

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The upshot of the two orders passed by this Court is that the Rules would continue to operate with Note 3 deleted therefrom as had been found categorically by the High Court. This Court has done no more than to affirm the High Court judgment which will hold the field. The order dated 16.2.2004 disposing of the IA filed by the State Government for modification is clarified in its own turn in the manner aforesaid.

The I.As. are disposed of. It is made clear that there is no question of the State Government recruiting on the basis of Note 3 in any fashion

whatsoever.

.....J.

(RUMA PAL)

.....J.  
(Dr. AR. LAKSHMANAN)

New Delhi;  
August 25, 2005.