

CASE NO.:
Appeal (civil) 4927-29 of 2002

PETITIONER:
Pankaj Gupta & Ors., etc.Appell

RESPONDENT:
State of Jammu & Kashmir & Ors.

DATE OF JUDGMENT: 16/09/2004

BENCH:
K.G. Balakrishnan & Dr. AR. Lakshmanan.

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL NOS.4930-32, 4941, 4933-40, 4944, 4943, 4942 OF 2002

AND

CIVIL APPEAL NOS. OF 2004
[ARISING OUT OF SPECIAL LEAVE PETITION [CIVIL] NOS. 21267,
22983-22991, 23119 OF 2003, 990 OF 2004 AND 3781-3789 OF 2004]

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 Servers, 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 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.

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.

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 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 filling up these posts. The names of these appellants were recommended by the 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 habitants of rural areas and there was no adequate representation for this rural population 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.

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.

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.