

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

LPA No.264/2019
CM No.8001/2019

Reserved on 03.05.2023
Pronounced on 17.05.2023

State of Jammu and Kashmir and others

....Petitioner(s)/Appellant(s)

Through :- Mr. KDS Kotwal, Dy. AG.

Versus

Dr. Dil Bhadur Singh

....Respondent(s)

Through :- Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhirash Sharma, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

TASHI RABSTAN, J:-

1. Instant appeal has been preferred by the appellants-State of Jammu and Kashmir (now Union Territory of Jammu and Kashmir) against the judgment dated 17.05.2017 passed in **SWP No.55/2015** titled *Dr. Dil Bhadur Singh vs. The State of Jammu and Kashmir and others*, by learned Single Judge. The appellants, on the strength of grounds taken in this appeal are seeking setting aside of the judgment dated 17.05.2017.

2. In nutshell, the factual matrix of the case is:

The respondent had applied for admission to B.V.Sc & AH course under Scheduled Caste Category as well as Actual Line of Control Category and he was selected for the said course at Sher-e-Kashmir University of Agricultural Sciences and Technology, Kashmir in the year 1986. Vide Government Order No.43-ASH of 1994 dated 08.03.1994, the respondent was appointed as

Veterinary Assistant Surgeon under Open Merit Category which is apparent from the communication of Secretary, J&K Public Service Commission, Jammu addressed to the Commissioner/Secretary to Government, Agricultural Production, Animal Husbandry Department. The Government of Jammu and Kashmir introduced the Jammu and Kashmir Reservation Act, 2004 and also framed the Jammu and Kashmir Reservation Rules, 2005. In light of above Act and Rules, the Director, Animal Husbandry issued a Circular dated 06.02.2006 requesting controlling officers to furnish list of all the employees who belong to the reserved categories along with their original certificates. The respondent gave an option under the ALC Category, however, his claim for promotion was rejected on the ground that he was appointed as Veterinary Assistant Surgeon under the Scheduled Caste Category, therefore, the respondent questioned Order No.151-ASH of 2014 dated 31.12.2014 before the Writ Court issued by appellant No.4 herein. After considering the matter, the learned Single Judge quashed the order impugned and directed the appellants herein to treat the service/career progression of the respondent under ALC category in terms of Section 19 of the Jammu and Kashmir Reservation Act, 2004 as per the choice/option exercised by the respondent.

3. The precise ground of challenge thrown by the appellants in this appeal is that the learned Single Judge has not considered the facts and circumstances of the case and had passed the judgment impugned without having regard to provisions of the Jammu and Kashmir Reservation Act, 2004, particularly, Section 19 of the Act.

4. Mr. KDS Kotwal, learned Dy. AG appearing for the appellants submitted that the learned Single Judge has erroneously recorded the incorrect fact to the extent that respondent herein has entered into service by availing the benefit of

Scheduled Caste Category, rather he has been selected under the open merit category but as he has already taken the benefit of reservation under SC Category while exercising his option in terms of Section 19 of the Reservation Act while getting admission in the B.V. Sc & AH Course, therefore, he is not entitled to the benefit of reservation again under SC category or ALC category or any other category in appointment or promotion in terms of Section 19 of the Reservation Act during his service tenure. It is the submission of learned Dy. AG that the learned Single Judge has misdirected itself with regard to the provision of J&K Reservation Act, 2004, particularly Section 19 of the Act and has passed the impugned order which is bad in the eye of law and prays that the same may be set-aside.

5. On the other hand, Mr. Abhinav Sharma, learned senior counsel appearing for the respondent has staunchly supported the judgment passed by the learned Single Judge and submitted that no fault can be found with the judgment passed by the learned Single Judge as the learned Single Judge has appreciated the facts and circumstances of the case in its true perspective. Refuting the interpretation of Section 19 of the Reservation Act given by Mr. KDS Kotwal, learned Dy. AG; Mr. Abhinav Sharma, senior counsel submitted that the intent of Section 19 of the Reservation Act is that one can exercise his option for availing the benefit of reservation for admission in professional course only in one category if he possesses more than one category; and, he can also exercise his option only once by either seeking appointment and in case his appointment is under open merit category then he can take benefit of reservation in promotion.

6. Heard learned counsel for the parties, considered their respective submissions and perused the impugned judgment.

7. For putting the matter to quietus, reproduction of Section 19 of the Reservation Act, 2004 is imperative and same reads thus:

“19. Choice

A candidate belonging to more than one category shall be entitled to claim the benefit of reservation in one category only, as per his choice, for appointment or promotion in Government service or admission in Professional Institutions, as the case may be.”

8. A quick gander of Section 19 of the Reservation Act, 2004 would make it pellucid that the interpretation given by learned senior counsel appearing for the respondent is the right one. What more is discernible from the perusal of the record as well as impugned order is that the respondent, at the time of entry into the service, has been appointed as Veterinary Assistant Surgeon in the year 1994 as candidate under ‘open merit category’ and not under SC category as is inadvertently mentioned in the impugned order.

9. Section 2(j) of the Reservation Act, 2004 delineates ‘Professional Institutions’ means the institutions notified from time to time, by the Government and shall initially include Government Medical College, Srinagar/Jammu, Government Dental College, Srinagar, Government Polytechnics, both male and female, Government College of Education and Government College of Engineering and Technology, Jammu.

10. Apparently, the admission of respondent/writ petitioner to B.V. Sc. & AH Course under Schedule Caste category is in the institution i.e. Sher-e-Kashmir University of Agricultural Sciences & Technology, Srinagar which is not covered under the definition of ‘professional institutions’ as provided in Section 2(j) of the Reservation Act, 2004.

11. Learned counsel for the appellant/writ respondents has not produced any notification showing incorporation of the above institution in the category of

professional institutions as provided in the Section 2(j) of the Reservation Act, 2004.

12. In absence of any notification/communication shown by learned counsel for the appellant conclusively showing the above institute covered in the category of professional institutions as provided under Section 2(j) of the Act, the contention of the learned counsel for the appellant that the respondent/writ petitioner has already availed the benefit of category of his choice as provided under Section 19 of the Reservation Act, 2004 is therefore not tenable and is accordingly rejected.

13. Having given our thoughtful consideration to the case and also to the relevant provisions of the Reservation Act and barring the minor aberration on the part of the learned Single Judge to the extent aforesaid, we are of the opinion that the admission of the respondent to B.V. Sc & AH in Sher-e-Kashmir University of Agricultural Sciences & Technology, Srinagar under SC Category is in the institution which is not provided in Section 2(j) of the Reservation Act, 2004.

14. In view of the preceding analysis, we hold that the order impugned does not suffer from any illegality or perversity warranting interference of this court. The appeal sans any merit and is dismissed as such.

15. No order as to costs.

Jammu:
17.05.2023
Raj Kumar

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable?:

Yes