

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

**SWP No. 1095/05**

**Dated:8.5.07**

**Jagmohan Singh                      v.                      State and ors**

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Coram:-

**Hon'ble Mr Justice   Nirmal Singh, Judge**

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Appearing counsel:

For petitioner(s):                      Mr Rahul Pant

For respondent(s):                      Mr BS Salathia, AAG

**JUDGEMENT**

Petitioner has filed this writ petition under Article 226 of the Constitution of India read with Section 103 of the State Constitution seeking following substantive reliefs:-

“-     *Mandamus commanding the respondents to consider and appoint the petitioner against the post of Sub Inspector in Jammu and Kashmir Police;*

-     *Mandamus commanding the respondents to grant age relaxation in favour of the petitioner keeping in view the fact that petitioner was denied the appointment at the relevant point of time when the select list was issued and presently the petitioner has become over aged because of the pendency of the case of the petitioner in the Civil Secretariat...”*

The case of the petitioner is that in pursuance to an advertisement notice No. AIG(P)-33159-219 dt. 20<sup>th</sup> of Aug'91, issued by the respondents, he applied for the post of Sub Inspector in the executive wing of the Jammu and Kashmir Police. It is stated that as per the advertisement the educational qualification required for the post was graduation and the maximum age limit was fixed as 28 years as on 1st of Jan'91. The petitioner being eligible submitted his application to be considered against the said post and participated in the selection process which comprised of physical measurement test, out door test, written test and viva-voce. It is stated that the petitioner qualified all the tests and was called for interview also. It is further stated that the petitioner had applied under NCC category as he was possessing "B" and "C" certificates under this category and had to be considered accordingly. It is stated that in terms of Circular No.7-GD/Admn of 1976 dated 27<sup>th</sup> of April'76, the persons who were having "C" certificate in NCC category were to be given preference while seeking appointment in the Police department. The respondents issued the select list in the month of Nov'92, in which the name of the petitioner did not figure.

The grievance of the petitioner is that even though he had secured 164 marks, one Jabeen Akhtar who had secured only 161 marks was given the appointment, whereas the petitioner having higher merit was ignored. It is stated that the aforesaid Jabeen Akhtar was selected under "women category" whereas no such category was provided in the advertisement notice. It is thus stated that the petitioner who was having better merit as compared to the aforesaid Jabeen Akhtar was entitled to

be considered for appointment to the post of Sub Inspector. The further grievance of the petitioner is that after his name was ignored, he moved a representation before respondent No.2 who recommended the case of the petitioner for appointment vide his communication dt. 29<sup>th</sup> of Sept'93. It is stated that before the concerned authorities could consider his case for appointment in view of the recommendations made by the respondent No.2- Director General of Police, the petitioner became over-age. It is further stated that the petitioner made a representation before the then Chief Minister, who also recommended the case of the petitioner with the following remarks:-

*“He has been a victim of official apathy in earlier case too. A way should be found to undo the wrong done to him.”*

It is stated that respondent No.2 thereafter again vide his letter dt. 7<sup>th</sup> of Feb'04, addressed to the Financial Commissioner, Home Department of J&K Government, recommended the case of the petitioner for appointment to the post of Sub Inspector in relaxation of rules and upper age limit, but the said recommendation was not acted upon and the case of the petitioner has been rejected. It is thus stated that due to the fault of the respondents, the petitioner has been deprived of his legitimate right of being considered for appointment as Sub Inspector in the year 1992 as he had secured higher marks than the aforementioned Jabeen Akhtar, who was wrongly given the appointment ignoring the claim of the petitioner.

Respondents have filed objections in which it has been pleaded that the selection process in the present case was completed in the year 1992 and the petitioner has filed this writ petition after 13 years, and therefore, the writ petition is barred by delay and laches. It is stated that the petitioner had secured 164 marks whereas the last candidate in the open category had secured 180 marks and as he could not make a grade therefore, his claim was rightly rejected. So far as appointment of aforementioned Jabeen Akhtar is concerned, it is stated that in terms of Government instructions U.O. No. 1204/PA/GAD/91 dt. 17<sup>th</sup> of Sept'91, 5% seats are reserved for Women candidates and it was under this quota, the case of Jabeen Akhtar was considered and she was appointed as Sub Inspector. It is further stated that the representation of the petitioner was forwarded to the competent authority for grant of relaxation in age, which was not accorded by the competent authority. It is further stated that as the case of the petitioner was recommended for appointment against a suitable post on contract basis and as there is no provision for contractual appointment in the Police Department, therefore, the case of the petitioner has been recommended to the Government in the year 2004 for relaxation of age limit so that his case could be considered for appointment as Constable, which is still awaited.

I have heard learned counsel for the parties and perused the record.

Admitted.

Petitioner is struggling for the last about fifteen years to get his rightful claim settled which has been denied to him by the respondent-State. Petitioner as noticed above appeared in the process of selection to the post of Sub Inspector in the year 1991-92. He qualified all the requisite tests but was not included in the select list due to the limited number of vacancies. Petitioner was possessing "C" certificate in NCC. In terms of Circular No. 7-GD/Admn of 1976 dt. 27<sup>th</sup> of April'76, the candidates possessing this certificate were to be given preference while making appointments to non-gazetted posts in the Police department, Home Guard, Forests and Excise Department. Same principle was to be adopted while making selection to the post of Nurses, Receptionists and Telephone Operators. The General Department of the State vide this Circular had issued instructions to all the departments of the State to take action in this regard for implementation of this circular. Petitioner as indicated above was having this certificate but the same was not taken into consideration by the respondent authorities while considering the case of the petitioner for selection to the post of Sub Inspector. Petitioner thereafter made a representation to the authority concerned that he has not been given the benefit of the "C" certificate of NCC as per the circular aforementioned. The Director General of Police, Jammu and Kashmir, vide his letter dt. 29<sup>th</sup> of Sept'93, addressed to the Additional Chief Secretary Home, Jammu and Kashmir, recommended the case of the petitioner for his appointment to the post of Sub Inspector in relaxation of recruitment rules and upper age limit as the petitioner by that time had become over age by one year, one month and 23 days. The case of the petitioner, however, remained pending and was not considered. Thereafter vide letter

dt. 27<sup>th</sup> of Nov'03, the Under Secretary to Government, Home Department, requested the Director General of Police, Jammu and Kashmir, to suggest a suitable post against which the petitioner could be considered for adjustment in the police department on contract basis in relaxation of recruitment rules and upper age limit by 2 years and 5 months. There was again a correspondence between the office of Director General of Police and the Financial Commissioner wherein vide letter dt. 7<sup>th</sup> of Feb'04, the Financial Commissioner, Home Department, J&K Government, Jammu, was requested by the aforesaid officer to accord necessary sanction for appointment of the petitioner as Sub Inspector in relaxation of recruitment rules and upper age limit, but again no action was done by the authorities concerned and the case of the petitioner remained pending with them.

Respondents in their reply to paras 8 to 12 of the petition have pleaded as under:-

*“....that the answering respondents time and again recommended the claim to the Government for accord of sanction to the post of Inspector in relaxation of recruitment rules and upper age limit in favour of petitioner. It is stated that only the Government is empowered to relax such rules vide letter No. Home/112/Apptt/93/PB-111 dated 3.3.2004 communicated that the matter was examined in the Home Department and it was proposed to appoint Sh Jag Mohan Singh as Sub Inspector in the J&K Police Department in relaxation of method of recruitment and upper age limit by 2 years and 5 months as on 01.01.1995. The proposal was submitted to his excellency the Governor through Chief Secretary on 17.02.1995*

*and the file was sent to the General Administration Department for necessary action but the necessary approval of the competent authority was not received by the respondent/Department. In reference to the fresh representation the case of the petitioner was again examined in the Home Department and after obtaining approval of the Hon'ble Chief Minister was referred to GAD for proper appreciation of the back ground of the case and their advice in the matter. The GAD has advised the Home Department to utilize the service of the petitioner in the police department to engage a candidate on contractual basis the Financial Commissioner to Home Department J&K vide PHQ Letter No.Pers-A67/8/93/23242 dt. 19.4.2004 was requested by the respondents that the petitioner can be appointed as constable in J&K Police on compassionate grounds only if relaxation of 11 years and 05 months as on 01.01.2004 be accorded by the Govt in favour of the petitioner. It is stated that the same is pending before the Government. As and when relaxation in age is accorded by the Government the answering respondent will have no hesitation in appointing the petitioner as constable on compassionate grounds."*

It is pertinent to mention here that in the year 1995 vide letter No. HOME/112/.../93 dt. 17.2.1995, the Additional Chief Secretary, Home Department even prepared a note and submitted the same to His Excellency the Governor of the State through Chief Secretary for giving appointment to the petitioner as Sub Inspector in the J&K Police department. The relevant

portion of the said draft note reads as under:-

*“Accordingly the Addl. Chief Secretary (Home) with the approval of Advisor (Z) submits the following draft order for approval of H.E. the Governor through Chief Secretary:*

*“Sanction is accorded to the appointment of Shri Jagmohan Singh S/o S.Satwant Singh R/o Digiana, Jammu as Sub Inspector in J&K Police Department in relaxation of method of recruitment and upper age limit by two years and five months as on 1.1.1995.”*

At the hearing when it was pointed out to the learned Additional Advocate General, appearing for the respondent-State whether His Excellency the Governor has rejected the proposal for giving appointment to the petitioner, he made a statement that this file including the draft prepared by the Home department was misplaced. In view of this statement made by the learned Addl.Advocate General, I am of the opinion that for the negligence of the department concerned, the petitioner cannot be made to suffer. When the respondents themselves have recommended the case of the petitioner for appointing him to the post of Sub Inspector, then he cannot be denied of his rightful claim merely because the file was mis-placed. Even the Chief Minister of the State before whom the representation was made by the petitioner examined the case and as indicated above, made the following remarks:-

*“”He has been a victim of official apathy in earlier case too. A way should be found to undo the wrong done to him.”*



It is further pertinent to mention that the petitioner has pleaded that a candidate namely Jabeen Akhtar with lesser merit had been selected and appointed. It is stated that the petitioner had obtained 164 marks whereas the aforementioned Jabeen Akhtar had obtained only 161 marks.

Respondents in their objections have pleaded that in terms of Government instructions dt. 17th of Sept'91, referred to above, 5 percent seats are reserved for Women candidates and it was under this quota, the aforesaid candidate namely Jabeen Akhtar was selected and appointed even though she was possessing lesser merit than the petitioner.

The respondents, however, while inviting the applications have not mentioned in the advertisement notice that there will be reservation for women candidates, therefore, the aforesaid plea of respondents that Jabeen Akhtar though lesser in merit was appointed under the aforesaid category cannot sustain. It would be apt to mention here that even if the said plea of the respondents is accepted that the reservation as provided under the circular aforementioned was to be given to women candidates, then the plea of the petitioner that the General Department had already issued instructions vide Circular dt. 27<sup>th</sup> of April'76, noticed above, which was in force regarding giving special preference to the candidates possessing "C" certificate in NCC, has to be given more weightage. The petitioner as indicated above, was possessing this certificate but the same was not considered by the respondents while making the selection for the reasons best known to them. If the respondents would have taken into consideration the said certificate possessed by the

petitioner and also the fact that the petitioner was having better merit than the aforementioned Jabeen Akhtar, who was selected on the basis of the quota meant for women candidates, even though, the same was not provided in the advertisement notice, the petitioner definitely would have succeeded in getting the appointment order. But the claim of the petitioner, as indicated above, was wrongly ignored by the respondents.

In view of the above, I am of the opinion that the case of the petitioner merits consideration in the light of the fact that he was denied of his rightful claim due to the lapse on the part of the respondents because as noticed above, a draft note was prepared in this case by the authority concerned vide which sanction was accorded to the appointment of the petitioner as Sub Inspector in J&K Police Department in relaxation of recruitment rules and upper age limit by two years and five months as on 1st of Jan'95, in favour of the petitioner and this draft note so prepared on 17<sup>th</sup> of Feb'1995, was sent for the approval of His Excellency the Governor of the State but the file as per the stand taken by respondents was misplaced in the office concerned. Therefore, as observed above, this is a case in which I would be having no hesitation in directing the respondents to issue an appointment order in favour of the petitioner even though, I am aware of the fact that it would not be proper to direct the respondents to appoint the petitioner as Sub Inspector after about one and a half decade but I feel that the respondents due to the lapse on their part are duty bound to adjust the petitioner on a post having a pay scale equivalent to the post of Sub Inspector in the Home Department of the State.

For the reasons mentioned above, this petition is accepted and disposed of with the following directions:-

I/ That the respondent will issue appointment order in favour of the petitioner against a post having the same pay scale as that of Sub Inspector in the Home Department after relaxing the age limit as on the date a copy of this order is made available to the respondents by the petitioner;

II/ The needful would be done by the respondents within a period of two months from the date a copy of this order is made available to the respondents by the petitioner.