

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.782/2009

CMP No.1051/2009

C/W

SWP No.1814/2009

CMP Nos.2890/2009,2880/2009,2402/2009 & 3093/2009

Date of decision:21.04.2010

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Parveen Akhtar & Ors.	Vs.	State of J&K & anr.
Dr. Madhu Sharma and ors.	Vs.	State of J&K & anr.

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Coram :-

**Mr. Justice J. P. Singh, Judge.**

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**Appearing Counsel:-**

For Petitioner(s) : Ms. Veenu Gupta, Advocate

For Respondent(s) : M/S Neeru Goswami, Dy.A.G.,  
D.C. Raina, M.K.Bhardwaj, Senior  
Advocates with F.A.Natnoo & Sachin  
Sharma, Advocates & W.S.Nargal,  
Advocate.

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| i)  | Whether approved for reporting<br>in Press/Journal/Media | : | <b>Yes</b> |
| ii) | Whether to be reported<br>in Digest/Journal              | : | <b>Yes</b> |
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The petitioners in these two Writ Petitions are the members of the Jammu and Kashmir Education (Gazetted) Service which is governed by the Jammu and Kashmir Education (Gazetted) Service Recruitment, Rules 1992. They are working as Lecturers in various disciplines in their respective Higher Secondary Schools (10+2).

The Jammu and Kashmir State Government has another service known as the Jammu and Kashmir Education (Gazetted) **Colleges Service** which was earlier regulated by the Jammu and Kashmir Education

(Gazetted) Colleges Service Recruitment, Rules 1995, which were later repealed by the Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment, Rules 2004, in terms whereof, mode of recruitment to the post of Lecturer in the Jammu and Kashmir Education (Gazetted) Colleges Service was indicated as 60% by direct recruitment and 40% by selection from amongst the Lecturers of Higher Secondary School/ Head Masters/Zonal Education Officers/Additional Zonal Education Officers/Zonal Education Planning Officers, having teaching experience of five years at Higher Secondary level in the Subject concerned, on the basis of open competition.

The Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment, Rules 2004 have been repealed by the Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment, Rules 2008 vide SRO 423 notified on December 23, 2008.

In terms of these rules, the mode of recruitment to the post of Lecturer as it existed in the repealed rules, was substituted by fresh mode i.e. 100% by direct recruitment.

The petitioners in both these Writ Petitions are aggrieved by the Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment Rules, 2008, in so far as these provide different mode of recruitment to the post of Lecturer than the one which existed in the

repealed rules providing for 40% posts of Lecturer to be filled up by selection from amongst the category, *inter alia*, of the petitioners on the basis of the open competition.

Questioning the vires of the Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment Rules, 2008, in so far as these provide 100% direct recruitment for the posts of Lecturer, the petitioners have filed these Writ Petitions seeking quashing of the Jammu and Kashmir Public Service Commission Notification No.06-PSC of 2009 dated March 06, 2009, inviting applications from permanent residents of the Jammu and Kashmir State for available posts of Lecturer in the Higher Education Department, the Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment Rules, 2008, besides a direction to the State Government to provide quota/provision for in-service Lecturers of the Higher Secondary Schools (10+2) as it existed in the repealed rules, for selection of the Lecturers in the Jammu and Kashmir Education (Gazetted) Colleges Service, hereinafter to be referred as the “Colleges Gazetted Service”.

The grievance projected by the petitioners is that the Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment Rules, 2008, hereinafter to be referred as the “impugned rules” and the Jammu and Kashmir Public Service Commission Notification No. 06-

PSC of 2009 dated March 06, 2009, hereinafter to be referred as the “impugned notification”, initiating selection process for filling up the available posts of Lecturer in the Colleges Gazetted Service, were violative of Articles 14 & 16 of the Constitution of India, in that, the rules and the notification deprive them of their constitutional right to consideration for selection to the posts of Lecturer in the Colleges Gazetted Service.

Petitioner's learned counsel Ms. Veenu Gupta refers to *H.L.Trehan and others versus Union of India & Others, reported as AIR 1989 SC, 568* to support her contention that the impugned rules and the notification take away the acquired right of the petitioners which stood vested in them in terms of the repealed rules to consideration for selection against 40% of the available posts of Lecturer in the Colleges Gazetted Service.

Mrs. Goswami, learned Deputy Advocate General and learned counsel appearing for those who seek impleadment in the proceedings, refer to *K. Nagaraj and others versus State of Andhra Pradesh and another, reported as AIR 1985 SC, 551, Chairman, Railway Board and others versus C.R.Rangadhamaiyah and others, reported as (1997) 6 SCC, 623, P.U.Joshi and others versus Accountant General, Ahmedabad and others, reported as (2003) 2 SCC, 632 and Inder Jeet Khurana versus State of Haryana and others, reported as AIR 2007 SC, 1190*, to support their contentions that

the State Government had the prerogative and authority to decide the mode for recruitment to the posts of Lecturer in the Colleges Gazetted Service, so as to satisfy the requirements of the service and that the petitioners, the members of a service other than the Colleges Gazetted Service, had no right to suggest mode of recruitment to the posts in the service.

I have considered the submissions of learned counsel for the parties and gone through the case law referred to by them.

Matters pertaining to the constitution of Service, prescription of mode of recruitment thereto, and allied issues connected therewith, operate in the field of policy which the State has the exclusive prerogative and domain to legislate on, and those desirous of becoming the members of such service may not have any right to suggest as to how should the Government legislate on such matters.

It was, therefore, the prerogative of the State to contemplate and prescribe such mode of recruitment to the Colleges Gazetted Service which, in its wisdom was best suited and conducive to the Service.

The Government had, prescribed filling up of 40% posts of Lecturer in the Colleges Gazetted Service, by the members of its another service i.e. the Jammu and Kashmir Education (Gazetted) Service earlier, which was, however, later done away with vide the impugned

rules as the State Government had been experiencing difficulty in getting suitable persons from the Jammu and Kashmir Education (Gazetted) Service to fill up 40% of the posts of Lecturer as a result whereof these posts remained vacant for quite some time, disabling the State to discharge its obligation of providing Lecturers in the Education (Gazetted) Service for imparting instructions to the Collegiate.

Exercising the same prerogative, it later decided to do away with the existing mode of recruitment to the posts of Lecturer in the Colleges Gazetted Service by providing a fresh mode of recruitment thereto indicating 100% direct recruitment against the posts to cater the existing need of the service. Such a course, would not, in my opinion, take away, any vested right of the petitioners, whose service conditions are governed by the Jammu and Kashmir Education (Gazetted) Service Rules, which *inter alia* provide for their promotional avenues and other terms and conditions of the Service.

The repealed rules governing Colleges Gazetted Service, no doubt, had provided an additional avenue to the members of the Jammu and Kashmir Education (Gazetted) Service to compete against 40% posts of Lecturers in the Colleges Gazetted Service, which was a concession given to the members of the Education (Gazetted) Service that had to operate in future. The repealed rules providing for an opportunity to the

members of the Education (Gazetted) Service, had thus not created any such right in the members of the Service which may be construed as their “vested right” to operate for all times to come.

The impugned rules, which provide 100% direct recruitment for the posts of Lecturer in the Jammu and Kashmir Education (Gazetted) Colleges Service, therefore, do not, in any manner, offend the provisions of Articles 14 and 16 of the Constitution of India as urged by the petitioners, in that, what has been taken away by the State Government, by the impugned rules, is a concession allowed to the members of the Education (Gazetted) Service which had to operate in future and not a vested right. Such a concession could well be taken away in exercise of the constitutional power vested in the State Government under Section 124 of the Constitution of Jammu and Kashmir. I am supported in taking the above view by what was held by their Lordships of Hon'ble Supreme Court of India in *Chairman, Railway Board and others versus C.R.Rangadhamaiyah and others, reported as (1997) 6 SCC, 623* where their Lordships held as follows:-

“It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date, a benefit which has been granted or availed of e.g promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively;

And by *P.U.Joshi and others versus Accountant General, Ahmedabad and others, reported as (2003) 2 SCC, 632* where the State Government's prerogative to deal with the constitution, pattern, nomenclature of posts, cadres etc., was explained as follows:-

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of services, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

The case law cited by the petitioners' learned counsel may not thus be of any help to the petitioners, as the position in law on the issue in question as to whether the petitioners had any enforceable vested right to compel the State Government to prescribe a particular mode of recruitment to a service other than theirs, is well settled by a catena of judgments including those referred to by the learned State Counsel and others.

Petitioners' learned counsel's contention that the impugned rules in so far as they provide for 100% direct recruitment for the posts of Lecturer in the Colleges Gazetted Service, repealing the earlier rules providing for recruitment against 40% of the posts of Lecturer from the members of another service, had taken away the vested right of the petitioners violating the constitutional provisions, is thus found without merit.

The petitioners are, therefore, not entitled to the reliefs sought for in the Writ Petitions, in that, the impugned rules do not affect either their service conditions or the promotional avenues available to them under the rules by which they are governed.

The impugned Notification and the selection process initiated pursuant thereto, in which the petitioners too had participated, cannot thus be faulted for all what has been said above.

These Writ Petitions, therefore, fail and are, accordingly, dismissed.

(J. P. Singh)  
Judge

JAMMU:  
21.04.2010  
Pawan Chopra