

Zarina Hassan and ors. Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Jun-04-1992

Judge : R.P. Sethi, J.

Acts : Jammu and Kashmir Constitution - Section 103; ;[Constitution of India](#) - Article 226

Appeal No. : Writ Petn. No. 808 of 1991

Appellant : Zarina Hassan and ors.

Respondent : State and ors.

Advocate for Def. : R.C. Gandhi, Addl. Adv. General

Advocate for Pet/Ap. : M.S. Malik, Adv.

Disposition : Petition allowed

Judgement :
ORDER

R.P. Sethi, J.

1. The prayer for the petitioners for the grant of a certificate under the category of 'Backward Areas' in terms of SRO-314 of 1986 dated 9-5-1986, was rejected by the respondents mainly on the ground that the petitioner-children or their parents

were proved to be not residing in the backward area within the time specified under the S.R.O. It is prayed by the petitioners that after quashing the orders of respondents 2 and 3 a direction be issued to them for the issuance of a certificate in terms of said SRO and respondent No. 4 to treat petitioner No. 3's application for selection to M.B.B.S. Course under the category of 'Other backward areas'. It is also submitted that the petitioners' parent village Jawalapur has been declared as a backward area where they own immovable property in the form of agricultural land and house. Their parents could not live in the village continuously for a period of 15 years as required on account of their being in Government service.

2. In the objections filed on behalf of the respondents it is submitted that the petitioners are not entitled to the grant of benefit under the SRO. The SRO is aimed at giving benefit to such people who have suffered socially and educationally deprivation by living in a particular area for not less than 15 years continuously. The petitioners' parents are residing at Jammu since last more than 15 years disentitling them the benefits of the aforesaid SRO. If the case of the petitioners is accepted then the same will defeat the purpose and purport of the SRO which is intended to confer benefits upon socially and educationally deprived people living in such backward areas. The orders impugned are stated to be legal valid and passed strictly in accordance with the said SRO.

3. I have heard learned Counsel for the parties and perused the record.

4. Under SRO-314 'Other Backward Areas Candidates' have been defined to mean such candidates who permanently reside in village of the State identified as backward area. Under item 2(b) it is provided:

'2. Safeguards:

a) xx xx xx xx

b) A person claiming benefit on the grounds that he/she belongs to an identified Backward Area or an Area near the Line of Actual Control must establish that he/she or his/her father or if father is dead other member of his/her family on whom he/she is dependent, has resided in the area for a period not less than 15

years prior to the claim of benefit. The candidates must also establish that he/she or his/ her father or the person on whom he/ she is dependent is actually residing in such area where the benefit is claimed. However, a candidate shall not be disentitled from claiming this benefit only on the ground that his father or the person on whom he/she is dependent is living in a place which is not identified as Backward or Area near the Line of Actual Control, on account of his employment, business or other professional or vocational reason, provided the per capita monthly income of his family does not exceed Rs. 600/-,

Provided that benefit shall be limited for one generation only: Provided further that no candidate can claim benefit under any category, except Scheduled Castes and Sports, if his father or the person on whom he is dependent (if father is dead) has already received benefit under such category,'

A perusal of the above referred provision shows that a candidate is entitled to claim the benefit even if his father or the person on whom he or she is dependent is not living in that area on account of his employment, business or other professional, vocational reasons provided the per capita monthly income of the family does not exceed Rs. 600 (now Rs. 700). In view of this provision, the argument of Mr. Gandhi that the SRO was enacted with the object of providing benefit of reservation to the people who have suffered socially and educationally deprivation by living in a particular area for a specified period, though very attractive, genuine and reasonable, yet, is not acceptable. It does not appear that the said SRO was intended to give relief to such students who were educationally backward on account of the non-availability of the facilities available to the students living in urban areas. I also agree with the argument of Mr. Gandhi that implementation of this SRO and the possible interpretation given to it may defeat the proclaimed object of providing opportunities to socially and educationally deprived people, but, in view of the plain language used in the SRO, no other interpretation is possible. In view of the fact that the parents of the petitioners belong to an area which has admittedly been declared as a backward area and their permanently residing out of the area on account of their Government service particularly when their income is admittedly within the ceiling prescribed, no option is left to the authorities but to grant certificate as demanded. The Government may

be well within its rights to modify the said SRO so as to give protection to such students who are deprived of getting better education not only because of their poverty but also on account of the nonavailability of better facilities on the ground of their being residents of such backward areas. Different criteria can be prescribed and one of such criteria, as suggested by Mr. Gandhi, may be to determine at least the early education of such candidates claiming the benefits under the SRO-314. Until unless the said SRO is amended or modified, the petitioners are entitled definitely to the grant of certificate being admittedly the residents of the backward areas and having income within the ceiling limits. The respondents were, therefore, not justified in rejecting petitioners' application for the grant of certificate under the said category.

5. Under the circumstances this petition is allowed by quashing the orders impugned passed by respondents 2 and 3 by which applications of the petitioners for the grant of certificates under the category of 'Backward Area' was rejected and a direction is issued to the said respondents to issue the aforesaid certificates in favour of the petitioners enabling them to get such benefits as are conferred upon them under the SRO or any other law, enactment or other Govt. Order. Upon issuance of such certificates, respondent No. 14 shall consider the case of any one of the petitioners for selection to the M.B.B.S. Course or any other course for which they or any one of them has applied under the said category. This order shall, however, not debar the Government from rescinding, modifying or amending SRO-314 in the light of observations made hereinabove.

6. This also disposes of C.M.P No. 2064/91.