

Dev Jyoti Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Feb-25-2003

Reported in : 2003(2)JKJ782

Judge : R.C. Gandhi, J.

Acts : Jammu and Kashmir (Appointment of Outstanding Sports Persons) Rules, 1998 - Rule 3; ;[Constitution of India](#) - Article 14 and 226

Appeal No. : SWP No. 219/2003

Appellant : Dev Jyoti

Respondent : State and ors.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : S.K. Shukla, Adv.

Disposition : Petition dismissed

Judgement :

R.C. Gandhi, J.

1. The petitioner has acquired the academic qualification of Higher Secondary Part-II and being sports person represented the Government of Jammu and Kashmir State in national and international competition. Petition sought

appointment in terms of SRO 349 of 1998 which contains Rules known as J&K; (Appointment of Outstanding Sports Persons) Rules, 1998, (hereinafter referred to as Rule, 1998). He has been appointed as Junior Assistant.

2. The petitioner has presented this petition seeking direction to appoint him as Sub-Inspector in Police Department in the non-gazetted service on the analogy of respondent No. 4 who has been appointed as Sub-Inspector on 6th June, 1998. The petitioner maintains this petition on the grounds of discrimination.

3. An outstanding Sports Person as defined in Section 2(ii) of Rules, 1998 is entitled to seek appointment to any non-gazetted service in terms of Rule 3 of the Rules, 1998. Rule 3 for convenience is reproduced as under:

'3. Appointment by the Government:

(1) Notwithstanding anything contained in the rules or orders for the time being in force, regulating the procedure for appointment to any non-gazetted service under the Government, General Administration Department shall, on the recommendation of a Committee constituted under Sub-Rule (2) consider the appointment of an outstanding sports person, at its sole discretion, in any Department, against any vacancy in the non-gazetted cadre as under:-

(i) Persons possessing qualification as 10+2 may be considered for appointment against a vacancy in the non-gazetted service;

(ii) Persons possessing qualifications less than as shown in Clause (i) above, may be considered for appointment against any class-IV posts:

Provided that a persons possessing qualification of graduation or above may be considered for appointment against a higher post in the non-gazetted service:

Provided further that the candidates are otherwise eligible for the posts under the relevant recruitment rules/regulations governing the said services besides having obtained the said services besides having obtained the certificate of being outstanding sports persons from Secretary of the Sports Council.'

4. The petitioner being possessing qualification of 10+2 has been considered and appointed against the non-gazetted post. He could be considered for higher post provided he possesses qualification of Graduation as provided in the first proviso appended to Rule 3 of Rules, 1998.

5. The plea of learned counsel for the petitioner that the petitioner has been discriminated is not sustainable for the simple reason that before asserting discrimination, it is obligatory upon the petitioner to make out that the order sought to be relied upon is valid and sustainable in the eyes of law and not passed in breach of any mandatory provisions of law. The discrimination is not a negative concept. Respondent No, 4 was not entitled to be appointed to the post of Sub-Inspector. If at all he has been appointed by the respondents it does not vest any right in the petitioner to ask for appointment tracing discrimination. Dealing with such proposition of law, the Supreme Court in Chandigarh Administration and Anr. v. Jagjit Singh and Anr., AIR 1995 SC 705 has held as:

'... Generally speaking, the mere fact that the respondents-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law- indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law- but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not

condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.....'

6. For the aforesaid reasons, no case for admission of the petition is made out. The petition is accordingly dismissed.

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