

Priti and anr. Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/900511

Court : Jammu and Kashmir

Decided On : May-13-2008

Reported in : 2008(2)JKJ717

Judge : Y.P. Nargotra, J.

Appellant : Priti and anr.

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. Siddiqui

Disposition : Petition dismissed

Judgement :

Y.P. Nargotra, J.

1. The petitioners participated in the selection process under the Handicapped Category for selection of the candidates for J&K; Combined Services (Mains) Examination as per SRO 161 of 1995 carried out by the Public Service Commission. Admittedly, the petitioners had successfully qualified the preliminary test and, thereafter, competed in the Mains Examination. Since the petitioners could not make the grade in the Main Examination, therefore, they were not called for interview. Being aggrieved of the same, the petitioners have filed the instant writ petition.

2. At this stage, Mr. Siddiqui, learned Counsel for petitioners, seeks deletion of the name of petitioner No. 2 from the writ petition. The prayer made is allowed and the name of petitioner No. 2 is deleted from the array of writ petitioners.

3. The contention of Mr. Siddiqui, learned Counsel for petitioners, is that in terms of Section 22 of The Jammu & Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998, three percent of the posts, i.e., four vacancies, were required to be reserved for the candidates of Handicapped Category, whereas the Government in the selection process carried out by the Public Service Commission requisitioned only two vacancies under the Handicapped Category. According to him, if the Government had allocated four vacancies to Handicapped Category out of the total posts advertised, the petitioners as per their merit would have come within the select list and, thus, would have become entitled for being called for interview.

4. The contention of Mr. Raina, learned senior counsel is that the Public Service Commission being a selecting agency on its own cannot increase the number of vacancies requisitioned by the Government. Since the Government had allocated two vacancies under the Handicapped Category, therefore, the Commission made selection against those two posts. As the petitioners could not make the grade, therefore, they were not selected. However after selection, in the Handicapped Category the selection of one of the selected candidates was cancelled and since petitioner No. 2 was next in merit, so he has been selected and that is why learned Counsel for petitioners has sought the deletion of name of petitioner No. 2 from the array of petitioners.

The contention of Mr, Siddiqui is that in terms of Section 22 of the Act, the Government was under a statutory obligation to have allocated three percent of the posts under the Handicapped Category out of the total vacancies.

5. Though response on behalf of the State has not been filed, however, Mr. Salathia, AAG, contends that in the present case three percent reservation under Section 22 of the said Act was maintained. The process for selection was initiated for different posts existing in different departments through combined examination, therefore, three percent reservation was to be allocated to the pots in each

department for which the selection process was carried out. The break-up of these departments for which the selection was being made has been indicated in the advertisement itself, which reads as follows:

S. No.	Service	Open	RBA	SC	ST	LAC	SLC	Handic	Total	Apped(Horizontal Reservation)
1.	Police	24	07	03	04	01	01	-	40	(Backlog vacancy)
2.	Excise & Taxation	06	02	01	01	-	-	-	10	
3.	Cooperative	02	01	01	-	-	-	-	04	
4.	Accounts	10	02	01	01	01	01	01	14	
5.	Community Development & National Extension	17	05	02	02	01	-	-	27	
6.	Tourism	01	-	-	-	-	-	-	01	
7.	Social Welfare	23	07	03	03	02	-	01	38	
8.	Transport	-	01	-	-	-	-	-	01	

6. Mr. Salathia submits that so far as the Police Department is concerned, it has been excluded from the purview of reservation for Handicapped Category. According to him, three percent reservation has been maintained with regard to the vacancies in each department and going by the number of posts, only two posts would have fallen to the share of Handicapped Category.

7. I am in agreement with Mr. Salathia. In the present case the reservation envisaged by Section 22 of the said Act was to apply as per the posts available in different departments. The total number of posts available in different departments cannot be clubbed together for working out three percent reservation for the Handicapped Category. The issue already stands settled by this Court in SWP No. 1117/2004, entitled, Jyotsna Mengi vs Chairman, JKPSC, decided on 11.7.2006.

8. In view of the above, there is no merit in the writ petition. It is as such dismissed along with the connected CMP. Interim direction, if any, shall stand vacated.