

Pawan Kumar Vs. State of Jandk; and ors

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Court : Jammu and Kashmir

Decided On : Aug-07-2012

Judge : Mr. Justice J.P.Singh

Appellant : Pawan Kumar

Respondent : State of Jandk; and ors

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. SWP No. 2427 OF 201.Pawan Kumar Petitioners State of J&K and ors Respondent !Mr. Tashi Rabstan, Advocate ^Ms. Neeru Goswami, Dy.AG. Mr. S.K.Shukla, Advocate. Mr. Anil Sethi, Advocate Mr. Justice J.P.Singh Date:

07. 08.2012 :

: Though tentatively indicated in the List of selected candidates against one of the posts of Dental Assistant reserved for Scheduled Caste Category in District Rajouri, the petitioners name did not figure in the Provisional Select List, which indicated Shashi Bhushan-respondent No.3 as the selected candidate. He objected to respondent No.3s inclusion in the Select List urging it to be unwarranted and illegal relying on the stipulation appearing in Advertisement Notice No.03 of 2006 dated 28.12.2006, in terms whereof a candidate who had applied for one and the same post in more than one district including the district of his/her domicile, would be considered for the district in which he/she ordinarily

resided 2 and would not be considered for selection in other district, in that, being a permanent resident of Doda, respondent No.3 who had failed to make the grade in Doda District was not entitled to selection as Dental Assistant in District Rajouri. Without waiting for the consideration of his Objections, the petitioner questions the selection of respondent No.3 and his substitution in his place by this Writ Petition. The petitioners only plea to question Shashi Bhushans selection that the later was not entitled to consideration for selection in the district other than his own, cannot be entertained in view of the legal position settled by Honble Supreme Court of India in Vinod Kumar Koul v. State of Jammu and Kashmir and others decided on July 16, 2012, where dealing with a similar objection, it was held as under:- 10. There is nothing in the language of Rule 13(i) or any other Rule from which it can be inferred that for the District cadre post only a permanent resident of the particular district can apply. Rather, Rule 13(i) postulates inviting of applications from the permanent residents of Jammu and Kashmir and not any particular district. Only in terms of clause (ii) of Rule 13 the candidature of a person who applies for more than one district can be considered for the district in which he is ordinarily residing. In our view, in the absence of any statutory stipulation in that regard, it cannot be said that a candidate who is a permanent resident of the State of Jammu and Kashmir is not eligible to be considered for a District cadre post merely because he is not a permanent resident of the particular District for which the post has been advertised.

11. It is neither the pleaded case of the respondents nor it has been brought to our notice that the decision contained in Circular dated 20.5.1993 is a part of the scheme of the Rules or the same embodies some directive or instructions issued by the State Government in the General Administration Department under Rule 17 of the Rules. As a matter of fact, a plain reading of the circular shows that it contains an administrative decision taken by the Board in its meeting held on 20.4.1993

12. In our view, the administrative decision of the Board, which is ex-facie inconsistent with the plain language of Rule 13 (i), could not have been relied upon for determining eligibility of the appellant for appointment as laboratory Assistant in District Udhampur and the learned Single Judge and the Division Bench of the

High Court committed serious error by negating the appellants challenge to the decision of the Selection Committee not to consider his candidature and that too by overlooking the fact that at the time of submission of application, the appellant was residing in District Udhampur, which is an integral part of the State of Jammu and Kashmir. The petitioners challenge to the selection of respondent No.3 is, therefore, without merit, hence rejected. This Writ Petition is, accordingly dismissed. (J.

P. Singh) Judge JAMMU:

07. 08.2012 Pawan Chopra.

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