

SUPREME COURT OF INDIA

Mohd. Shafi Pandow

Vs.

State of J&K

(G.B. Pattanaik and U.C. Banerjee JJ.)

20.07.2000

ORDER

1. Delay in filing rejoinder affidavit is condoned.

2. This appeal is directed by grant of special leave against the judgment of the Division Bench of Jammu and Kashmir High Court at Srinagar in Letter Patent Appeal No. 14/1987. The dispute relates to the advertisement that was issued for filling up of the posts of Junior Research Assistants and Surveyor. On 20th October, 1981, the Divisional Recruitment Board issued the advertisement for filling up of the aforesaid 3 posts, which are included in Category-A of the post under the Fisheries Department, as is apparent from Schedule-A to the Fisheries (Subordinate) Service Recruitment Rules, 1979 (hereinafter referred to as the "Recruitment Rules"). A bare look at the advertisement itself clearly demonstrates that the recruitment was for direct recruitment and not for promotion. Question of issuing any advertisement would not arise in case of promotion. The case of all eligible candidates would be considered by the departmental promotion committee. The appellant, who was also in service, and was serving at that point of time as Supervisor in the lower cadre, was also an applicant, pursuant to the advertisement issued. But being unsuccessful in getting the recruitment, he approached the High Court challenging, inter-alia, that the 3 posts for which advertisement had been issued could not have been filled up by direct recruitment and it tantamounts to violation of the relevant statutory rules governing the field. It was also contended that the third post against which Smt. Asifa Khan was appointed was not a post of Surveyor, and the appropriate authority has erroneously appointed her. The learned Single Judge disposed of the writ petition by coming to the conclusion that no material had been produced before him to come to a conclusion that there has been a violation of the quota rules, while advertising for 3 posts for direct recruitment. But he, however, interfered with the appointment of Smt. Asifa Khan, and issued direction for reconsideration of the matter. Said Smt. Asifa Khan moved the Division Bench in LPA. The Division Bench by the impugned judgment interfered with that direction of the learned Single Judge, and came to hold that there has been no infirmity in appointing Smt. Asifa Khan to the third post, which was one of the posts in the advertisement, and further, present appellant did not possess the requisite qualification. It is this judgment of the Division Bench which is subject matter of challenge in this appeal. It is strenuously contended before us that in view of the Schedule-A to the Recruitment Rules, the authorities concerned could not have filled up the posts by direct recruitment. It is no doubt true that Schedule-A indicates that 75% in Category-A post consisting of Surveyor, Fisheries Development Assistant and Junior Research Assistant shall be filled up by

promotion from Class-III Category-A and 25% by direct recruitment. But this obviously means the total cadre strength and not of the vacancy at any individual point of time. In view of the facts averred in the rejoinder affidavit filed in this Court as well as in view of the fact that the advertisement was for direct recruitment and the appellant himself, having made an application for the same, it would be futile for him to contend that there had been any violation of the statutory quota rules, while issuing advertisement for 3 posts in Category- A. Further, the appellant did not possess the minimum qualification required for direct recruitment, namely, TDC (Final) Medical, and therefore, he was ineligible for being considered as a direct recruit. In that view of the matter, he had no locus standi to assail the appointment made in favour of others who, pursuant to the advertisement, did make application and did possess the requisite qualification, and ultimately got appointed. In this view of the matter, we see no infirmity with the impugned judgment of the Division Bench requiring our interference with the same. The appeal fails and is accordingly dismissed.