

**SUPREME COURT OF INDIA**

Maharaj Krishan Bhatt

Vs.

State of J&K

C.A.Nos.8481-8482 of 2003

(C.K. Thakker and Lokeshwar Singh Panta JJ.)

01.08.2008

**JUDGMENT**

**C.K. Thakker, J.**

1. The present appeals are directed against the judgment and order passed by the Division Bench of the High Court of Jammu & Kashmir (Jammu Bench) on October 11, 2002 in LPA (SW) No. 466 of 2001 and also against an order dated February 2, 2003 rejecting Review (LPASW) No. 42 of 2002.

2. The facts of the case in short are that under the Jammu & Kashmir Police Manual, certain posts of Sub-Inspector of Police ('PSI' for short) were to be filled in. The appellants herein were Constables. They made a representation on January 8, 1987 along with Mohd. Abbas, Mohd. Amin and Hamidullah Dar. A similar representation was also made on the same day by one Abdul Rashid Rather to Hon'ble the Chief Minister of the State of Jammu & Kashmir. In both the representations, a request was made to consider the cases of the respective applicants for appointment to the post of PSI by granting necessary relaxation in Rules against 50% direct recruitment quota as envisaged by Regulation 174 of Chapter VII of Jammu & Kashmir Police Manual. The representations made by the petitioners and other persons were sent by the office of the Hon'ble Chief Minister, Jammu & Kashmir for comments to the Director General of Police, Jammu & Kashmir by a forwarding letter dated January 14, 1987. The then Director General of Police, Jammu & Kashmir, vide his letter dated January 23, 1987 recommended the name of Hamidullah Dar only for his appointment to the post of PSI under 50% direct recruitment quota. Accordingly, Hamidullah Dar, Constable was appointed as PSI vide order dated April 1, 1987. Remaining five persons including the appellants herein as also Abdul Rashid Rather were neither recommended for such appointment, nor appointed to the post of PSI. The appellants along with Mohd. Abbas and Mohd. Amin, filed SWP No. 351 of 1987 in the High Court of Jammu & Kashmir. The writ petition was disposed of on September 13, 1991 and a direction was issued to the Director General of Police, Jammu & Kashmir to consider the cases of the petitioners for appointment to the post of PSI by relaxation of Rules. Abdul Rashid Rather also filed a

similar petition which was registered as SWP No. 519 of 1987 in the High Court of Jammu & Kashmir at Srinagar. The said petition was also admitted and rule nisi was issued.

3. Pursuant to the direction given by the High Court of Jammu & Kashmir (Jammu Bench) in SWP No. 351 of 1987, the Director General of Police considered the cases of the appellants, of Mohd. Abbas and of Mohd. Amin, but the prayer was rejected vide order dated December 13, 1991 without any reason. They, therefore, filed Contempt Petition No. 24 of 1992 before the High Court and once again, the High Court vide order dated September 16, 1992, issued direction to consider the cases of the applicants afresh. However, again the applicants were not granted benefit. Another Contempt Petition No. 162 of 1992 was filed in December, 1992 which was also disposed of on May 9, 1994. The appellants, in the circumstances, filed Letters Patent Appeal No. 45 of 1994 against the order dated May 9, 1994. The said appeal was disposed of on July 11, 1997. Pursuant to the observations made by the Division Bench, the appellants filed fresh SWP No. 3735 of 1997 before the High Court of Jammu & Kashmir at Srinagar which was subsequently transferred to Jammu Bench.

4. In the meanwhile, SWP No. 519 of 1987 filed by Abdul Rashid Rather, Constable came up for hearing before a Single Judge and the learned Single Judge allowed the said petition by judgment and order dated September 24, 1998. The appellants have annexed a copy of the said judgment in the present proceedings. The State, being aggrieved by the order of the Single Judge, preferred Letters Patent Appeal No. 8 of 1999 before the Division Bench of the High Court, but the Division Bench dismissed the said appeal by judgment and order dated July 30, 1999. The decision in the Letters Patent Appeal is also produced by the appellants. The Government, thereafter, preferred Special Leave Petition in this Court but it was also dismissed by this Court and the order passed by the High Court attained finality.

5. In the light of the judgment delivered in the case of Abdul Rashid Rather given by a Single Judge and confirmed by the Division Bench as also by this Court, Abdul Rashid Rather had been appointed as PSI on December 16, 1999 and granted all consequential benefits with effect from April 1, 1987. Even that order has been produced by the appellants.

6. In view of the above decision and the orders passed by the High Court and by this Court when SWP No. 3735 of 1997 filed by the present appellants came up for hearing before a Single Judge, it was allowed by judgment and Order dated April 30, 2001 following the earlier judgment wherein the learned Single Judge, inter alia, observed that the cases of the appellants-writ petitioners were similar to the case of writ petitioner in Writ Petition No. 519 of 1987. Accordingly, a direction was issued to respondents to appoint the appellants and to grant all benefits which had been granted to writ petitioner in Writ Petition No. 519 of 1987 (Abdul Rashid Rather).

7. Being aggrieved by the judgment and order passed by the learned Single Judge, the Government of Jammu & Kashmir filed Letters Patent Appeal No. 466 of 2001 and the said appeal came to be allowed by the Division Bench. The judgment and order passed by the Single Judge was set aside and the Writ Petition was ordered to be dismissed. A reviewfield

against the said judgment was also dismissed by the Division Bench. The said order is challenged in the present appeals by the appellants.

8. On April 28, 2003, this Court issued notice to the respondents. Leave was granted on October 27, 2003. As per the order passed by the Bench presided over by Hon'ble the Chief Justice of India, a direction was issued to the Registry on April 11, 2008 to list the appeals "during summer vacation". That is how the matter has been placed before us.

9. We have heard learned counsel for the parties.

10. The learned counsel for the appellants vehemently contended that the Division Bench of the High Court was wholly in error in allowing the appeal and in setting aside the order passed by the learned Single Judge. It was submitted that when in an identical case, a petition was allowed by a Single Judge and the said order was confirmed not only by the Division Bench of the High Court but also by this Court, the matter was finally concluded in favour of the appellants and the Division Bench ought not to have reversed the decision of the Single Judge. It was also submitted that as per settled law, one Division Bench of the High Court cannot refuse to follow a judgment rendered by another Division Bench of the same Court and when in a similar case another Division Bench has dismissed the Letters Patent Appeal against the judgment rendered by a Single Judge, in the instant case, the Division Bench ought to have followed the said course which has not been done. It was submitted that even if the Division Bench felt or was of the view that the judgment and order passed by the Division Bench in a similar case did not lay down correct law or the Court was not right in granting the relief, only course available and to be followed was to refer the matter to a 'larger' Bench. But the Division Bench failed to do so. The Division Bench ought to have considered the fact that in a similar matter, the State of Jammu & Kashmir approached this Court and even Special Leave Petition was dismissed. Thus, there was no earthly reason on the part of the Division Bench in not granting the benefit to which they were otherwise entitled, which had been granted in favour of similarly situated employee and against which proceedings had been initiated but the State authorities failed upto this Court.

11. The learned counsel also submitted that the impugned action was clearly violative of Articles 14 and 16 of the Constitution. It was submitted that initially such violation had been committed by the State Authorities i.e. Director General of Police and State Government inasmuch as though cases of all the Constables were similar and representations were made on one and the same day, the Director General of Police, Jammu & Kashmir recommended the name of only Hamidullah Dar who was appointed as PSI and cases of other similarly situated applicants were rejected. The appellants and other adversely affected Constables approached the High Court and a Single Judge allowed the petitions and directed the Government to consider the cases of the writ petitioners. In spite of such an order, the Government did not appoint the applicants as PSIs without any reason whatsoever. Contempt Petitions were required to be filed but even those orders were not complied with. In Letters Patent Appeal, again direction was issued by the Division Bench. In any case, after the decision in SWP No.519 of 1987 (Abdul Rashid Rather), the Government ought to have granted benefits to the appellants which was not done. The learned Single Judge was,

therefore, right in allowing the petition. By setting aside the judgment and order of the learned Single Judge and in allowing Letters Patent Appeal as also in dismissing Review Petition, the Division Bench of the High Court had committed an error of law as well as of jurisdiction and the present appeals deserve to be allowed.

12. The learned counsel for the respondents-State, on the other hand, supported the judgment and order of the Division Bench of the High Court. He submitted that the Division Bench was right in setting aside the judgment and order passed by the Single Judge as according to the Bench, there was no reason to grant benefit to the writ petitioners by appointing them as PSIs by relaxing Regulation 174. It was stated that so far as Hamidullah Dar is concerned, he was having Postgraduate Degree and his case was totally different and that is how his name was recommended by the Director General of Police and accordingly he was appointed as PSI. Other Constables did not possess such qualification and hence the Director General did not think it proper to recommend their cases for appointment as PSI and there was no illegality in taking such action.

13. It was admitted by the learned counsel for the respondents-State that the writ petitions filed by the appellants-writ petitioners came to be allowed and direction was issued to the authorities to consider their cases. But it was stated that the cases of the writ petitioners were considered by the authorities and it was not found fit to recommend their appointments as PSIs and accordingly the prayer was rejected. It was also admitted that writ petition of Abdul Rashid Rather was allowed and he was granted benefit but it was stated that it was done because of the issuance of writ by the learned Single Judge which was confirmed by the Division Bench as well as by this Court. Since the writ petition was allowed and the said decision was approved by the Division Bench as also by this Court, the authorities had no alternative but to implement the said order. The said fact, therefore, cannot be construed in favour of the appellants. When a similar order was passed by a Single Judge in favour of the appellants and directions were issued by the Single Judge to give benefit similar to one which had been granted to Abdul Rashid Rather, the State Government approached the Division Bench and the Division Bench allowed the intra- Court appeal. In the circumstances, the action of the State Authority cannot be termed as illegal. It was, therefore, submitted that the appeals deserve to be dismissed.

14. Having heard learned counsel for the parties and having gone through the facts and circumstances of the case, in our opinion, the appeals deserve to be allowed. Firstly, representations were made by several Constables requesting the authority to appoint them to the post of PSI. The office of the Hon'ble Chief Minister sent all the applications to the Director General of Police who recommended only one name of Hamidullah Dar. It was stated that the said Constable was having Postgraduate qualification and the Director General thought it proper to recommend his name for appointment as PSI in relaxation of Regulations. Even if it is assumed that educational qualification was a relevant consideration, at the most it would go to show that appointment of Hamidullah Dar was proper. Nothing more than that.

15. But, once a similar case of Abdul Rashid Rather came up for consideration before a Single Judge and his writ petition was allowed, a direction was issued to the authorities to appoint him as PSI by granting consequential benefits, the learned Single Judge could not be said to have committed any error of law in following the said decision, in allowing the writ petition filed by the present appellants-writ petitioners and in issuing similar directions to the State Authorities. This was particularly true because the judgment and order of the learned Single Judge was confirmed by the Division Bench and even by this Court inasmuch as Special Leave Petition was also dismissed.

16. In our considered opinion, in the light of the facts and circumstances, the Government ought to have accepted and respected the decision of the learned Single Judge without filing intra-Court appeal. No distinguishing feature had been brought to the notice of the Division Bench, nor the Division Bench set aside the judgment and order passed by the learned Single Judge holding or observing that though Abdul Rashid Rather was granted the benefit and the learned Single Judge ordered extension of those benefits to the writ petitioners, they were not entitled because the case of Abdul Rashid Rather was different. Even before us, nothing special or extraordinary fact or circumstance was shown to distinguish the case of Abdul Rashid Rather and of the present appellants. In our opinion, therefore, the learned Single Judge was wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

17. It was no doubt contended by the learned counsel for the respondent-State that Article 14 or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief illegally or against a statute. There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing Writ petition No. 519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in consonance with law, the Division Bench confirmed it and this Court did not think it proper to interfere with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in Writ Petition No. 519 of 1987 in the case of present writ petitioners also. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State Authorities ought to have gracefully accepted the decision by granting similar benefits to present writ-petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed Letters Patent Appeal by affirming the order of the Single Judge. The Letters Patent Appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored.

18. For the foregoing reasons, the present appeals deserve to be allowed and are accordingly allowed. The judgment passed by the Division Bench in Letters Patent Appeal as well as

Review Petition are set aside and the order passed by the learned Single Judge in SWP No. 3735 of 1997 is restored. The appellants are held entitled to all the reliefs which had been granted to Abdul Rashid Rather in pursuance of the judgment and order dated September 24, 1998 in SWP No. 519 of 1987. The respondent-State of Jammu & Kashmir will grant all the benefits as have been granted to Abdul Rashid Rather within a period of three months from today.

19. On the facts and in the circumstances, the appeals are allowed with costs.