

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 235-236 OF 2019

(Arising out of SLP(C)Nos.7843-7844 of 2014)

RAKESH BAKSHI & ANR. . . . APPELLANT(S)

VERSUS

STATE OF JAMMU AND KASHMIR & ORS. . . . RESPONDENT(S)

WITH

CIVIL APPEAL NO. 237 OF 2019

(Arising out of SLP (C)No.14660 of 2014)

STATE OF JAMMU AND KASHMIR APPELLANT(S)

VERSUS

HARVINDER SINGH & ORS. . . . RESPONDENT(S)

JUDGMENT

K.M. JOSEPH, J.

1. Leave granted.

2. Civil appeals (@ SLP(C) Nos.7843-7844 of 2014) by Special Leave are filed against the judgment of the High court of Jammu and Kashmir dated 04.03.2014 by which it set aside the judgment of the Single Judge and set aside the selection and appointment of the appellants as Junior Engineers. Civil appeal @ SLP(C)No.14660 of 2014 is filed by the State of Jammu & Kashmir against the impugned judgment.

3. The Services Selection Board of the State issued an advertisement on 01.07.1997 inviting applications for the post of Junior Engineers (Elect) Grade II. The last date fixed was 31.07.1997 for receipt of applications through registered post. It is also provided that the cut-off date for determining the eligibility is 31.07.1997. It is, accordingly, that party respondent No.3 hereinafter referred to as the writ petitioner filed SWP No.2186 of 2001 before the Court. The learned Single Judge, however, dismissed the petition but the Division Bench reversed the dismissal of the petition and set aside the judgment of the

Single Judge. The selection and the appointment of the appellants in these appeals arising out of the Special Leave Petition Nos.7843-7844 of 2014, came to be set aside.

4. The short ground on which the Division Bench set aside the appointment is that the result of the examination was declared only after the cut-off date and they were not found eligible.

5. We have heard the learned Counsel for the parties.

6. Learned senior counsel appearing on behalf of the appellants whose appointment stand interfered with made the following submissions. The academic session in which they studied for the Diploma Course was from 1993 to 1996 and there was some problem about the institution. The examination, though, it was in 1996, result came to be declared on 12.10.1997. There is no dispute that the last date for receipt of applications was 31.07.1997. As far as the first appellant i.e.

Rakesh Bakshi is concerned, the Board itself considered him eligible, as the result, was before holding of the interview. In regard to the second appellant, he was removed from the interview list. This led to the filing of a writ petition by the second appellant. The High Court took the view that if the Board has interpreted the eligibility clause in a particular manner in the case of first appellant who had cleared examination along with the second appellant, there is no justification to give different interpretation. In the case of second appellant, the petition was allowed and the second appellant was found entitled to the same benefit as given to the first appellant. A writ petition was filed challenging the appellant's appointment on the same ground. The writ petition was dismissed by the Single Judge. This Judgment, however, came to be set aside by the Division Bench and the appointment of the appellants was set aside. The matter travelled to this Court and this Court set aside the judgment of the Division Bench. The

judgment of the Single Judge came to be restored. The present appeal arises from a writ petition filed by another person, namely, party-respondent in these appeals Shri Harvinder Singh. The learned Single Judge dismissed the petition but as noticed the Division Bench allowed the writ petition reasoning that the result of the examination of the appellants was declared only after the last date of receipt of applications.

7. The Learned Senior Counsel would point out that the appellants have continued to work for long years and would further point out that the writ petitioner in this case did not secure sufficient marks so that he is not going to get any relief after setting aside the appointment of the appellants. He drew our attention to the order passed by this Court dated 14.03.2014. It reads as follows:-

“Taken on Board.

Mr. P.S. Patwalia, learned senior counsel appearing for the petitioners, submitted that without disturbing

respondent No.3, the claim of the petitioners be considered since they have been working from 1998 onwards.

Petitioners are directed to serve a copy of the SLP brief on the standing counsel for the State of Jammu & Kashmir, who will seek instructions in the matter.

Registry is directed to show the name of the standing counsel in the Cause List.

Until further orders, the services of the petitioners shall not be terminated. However, this order will not affect respondent No.3.

Put up after three weeks."

8. In short, appellants were working for the past nearly 18 years. As already noticed, the earlier litigation is also enlisted in their support. Also support is sought to be drawn from the judgment in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another 1997 (4) SCC 18, Counsel would also submit that the court may appreciate the plight of the appellants in that after the 1997 selection, selection was carried out in the years 2004, 2007 and 2009. But as the appellants were already selected and continued to work,

they have not applied pursuant to the selections. They have become age barred. The learned counsel for the petitioner, on the other hand, points out that the appellants were not eligible on the cut-off date and cleared the exam on the result being declared subsequently. This is a recurring lapse, he points out.

9. We proceed on the basis that the appellants were not possessing the requisite qualification as on the cut-off date, as such as the result was declared subsequently. The selection board, itself, had rejected the eligibility of the second appellant. This led to the filing of the Writ Petition but the said petition was allowed on the reason, that there could not be two yardsticks under the same selection. A writ petition filed in the meantime, challenging the appellants appointment was, though, dismissed by a Single Judge, in appeal the Division Bench set aside the appointment of the appellants which in turn was set aside by Hon'ble Court. It is thereafter that the Writ Petition filed by the present writ petitioner which was filed in

2001 came to be taken up and dismissed by the Learned Single Judge and allowed by the Division Bench. In between, almost two decades, rolled by with the appellant's continuing to work and the writ petitioner remaining unselected.

10. There is no argument pressed by the learned counsel that in law, the decision of Division Bench is wrong in that the appellants were not holding the requisite qualification as on the cut-off date and the selection and appointment is bad in law. But the only point raised is having regard to the efflux of time and having regard to the equities, in the matter including the result of the earlier litigation, the three selections held after 1997, appellants not applying thereunder having been selected under the impugned selection and appellant having become age barred and still further, the claim of the writ petitioner for appointment being meritless having regard to the Low Marks scored by him, the services of the appellants should not be dispensed with.

11. Having regard to the case law cited by the appellant i.e. *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*; 1997 (4) SCC 18, the facts may be noticed. On 01.07.1997, an advertisement was published for the post of Junior Engineers (Elect) Grade II in the State of Jammu and Kashmir. 33 persons had not passed BE Civil Examination before the last date and their results were declared after the cut-off date. They came to be interviewed, pursuant to instructions and they were selected. This came to be challenged. The Writ Petition was dismissed. No appeal was filed against the order. However, another Writ Petition came to be filed questioning the selection of 33 respondents on the very same grounds. The Writ Petition was dismissed. However, the Division Bench took the view that the 33 respondents could not have been allowed to compete for the post as they did not possess the requisite qualification. The appointment of the 33 persons was not set aside and they were ordered to be treated as junior to those selected candidates

who were fully qualified on the prescribed date. In other words, the candidates who were not qualified on the prescribed date were to be treated as junior en bloc to the fully qualified selected candidates. The 33 respondents appealed before this Court. The majority held that permitting the 33 candidates to appear for the interview was not impermissible. The other learned Judge, however, took the view that the 33 candidates should not have been allowed to appear. Even then, however, the learned Single Judge agreed with the majority that the seniority of the 33 candidates need not be disturbed in the particular facts and circumstances. The result was that three learned Judges allowed the appeal preferred by the 33 respondents and set aside the judgment of the Division Bench. The original writ petitioners filed for Review. The judgment rendered in the review is the reported judgment. The Court found that the majority judgment was unsustainable in law. It is reiterated that the person who clears the prescribed qualification after

the cut-off date cannot be considered qualified and their applications ought to have been rejected.

12. Thereafter, in paragraph 8, the Court addresses the question relating to the relief to be granted in the review applications. The learned Counsel for the 33 respondents in the review petition who were the appellants before this Court inter alia pointed out the dismissal of the earlier writ petition and that the said order had become final. Even the later writ petitioners (filed by four candidates), it was pointed out, had not sued in a representative capacity. Other aspects including that the 33 persons had completed 13 years, was pointed out. The Court held as follows: -

“Having given our anxious and earnest consideration to the question and keeping in view the fact that we are sitting in review jurisdiction and that this particular aspect is a matter lying within the discretion of the Court, we do not think it appropriate to interfere with the unanimous opinion of the three learned Judges of this Court on this aspect. It is true that the Division Bench of the High Court had granted the relief not only to the four review

petitioners/writ petitioners but to all the candidates falling in that category yet we cannot ignore the fact that even Sahai, J. who agreed with the review petitioners on the first issue, thought it just and proper not to disturb the inter-se seniority between these two groups of selected candidates. The said seniority was determined by the selecting Authority. Though certain allegations are made with respect to the fairness of the process of selection, that issue is not open in these review applications nor was it gone into by this court in the civil appeals."

13. Having heard learned Counsel for the parties, we are inclined to grant relief to the appellants against their being ousted after serving for nearly two decades. We are not for a moment doubting the correctness of the reasoning of the Division Bench in this case, that eligibility of the candidates must be decided with reference to the qualification possessed as on the cut-off date and the qualification acquired later in point of time cannot make a candidate eligible. However, having regard to the facts obtaining in this case, which we have set out and also the manner in which this Court has decided the matter culminating

in 1997 (4) SCC 18 the interests of justice would require the interference with the judgment of the Division bench. We particularly note that as far as the writ petitioner is concerned more than the efflux of time, the fact is that he cannot possibly secure selection. Thus having also regard to the fact that the writ petitioner would not stand to gain if we ousted the appellants having regard to his position in the selection, we allow Civil Appeal @ SLP (C)No.7843-7844/2014 and the judgment of the Division Bench will stand set aside and the writ petition will stand dismissed. Civil Appeal @ SLP(C) No.14660/2014 filed by the State will also stand allowed. There shall be no order as to costs.

.....J.
(Ashok Bhushan)

.....J.
(K.M. Joseph)

New Delhi;
January 22, 2019