

A

## STATE OF JAMMU &amp; KASHMIR

v.

RAJ DULARI RAZDAN &amp; ORS.

December 15, 1978

B

[V. R. KRISHNA IYER, P. N. SHINGHAL, P. S. KAILASAM, D. A. DESAI  
AND A. D. KOSHAL, JJ.]

*Jammu and Kashmir Constitution—Section 133(2)(b), interpretation  
—Whether consulting the Public Service Commission is mandatory.*

C

The appellant State Government's Order No. 643-HTE dated July 25, 1969 promoting certain professors was quashed by the High Court of Jammu & Kashmir while allowing the Writ Petition No. 124/69 filed by the respondent.

Leaving out the merits for decision by another Bench of this Court.

D

HELD : 1. What clause (b) of sub-section (2) of s. 133 of the Jammu & Kashmir Constitution requires is that the Commission shall be consulted : (i) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and (ii) on the suitability of candidates for such appointments, promotions or transfers. No other interpretation is really permissible on the plain language of the clause. It is not provided by s. 133 of the Constitution that all the members of the Commission should have interviewed all or any of the candidates, or that it was not permissible for the Commission to entrust the selection to a committee consisting of only one of its members, so long as the Commission reserved to itself the right to approve or disapprove the committee's report and actually discharged that constitutional responsibility. [872 F-H, 874 B-C]

E

2. The question whether the requirement for consulting the Commission is mandatory or not does not arise in this case. [873 A].

F

3. The High Court erred in holding that the Commission was not consulted in the manner required by s. 133 of the Jammu & Kashmir Constitution and in regard to the principles to be followed in making the promotions to the posts of professors on the suitability of selected candidates for the promotions. [873 B, 874 D-E]

G

On the facts which have been brought on the record it is established that (a) the Commission was consulted in regard to the principles to be followed in making the promotions to the posts of professors as laid down in the "Jammu & Kashmir Professors of Colleges (Selection) Rules, 1969", and [873 C-D].

H

(b) the Commission was consulted on the suitability of the candidates for promotion as professors and the second requirement of clause (b) of sub-section (2) of s. 133 was also complied with, since the selection of the respondents (to the Writ Petition) was made on the recommendation of the Public Service Commission after their names were sent strictly in order of seniority as per direction of the Commission, after they had been interviewed and examined by the Selection Committee, formed and presided over by one of the members of the Commission as Chairman. [873 F-H, 874 A].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 246 of 1973. **A**

Appeal from the Judgment and Order dated 1-11-1971 of the Jammu and Kashmir High Court in W.P. No. 124/69.

*S. V. Gupte, Attorney General, Altaf Ahmed* for the Appellant.

*L. N. Sinha, K. P. Gupta, D. B. Tawkley and Vineet Kumar* for RR 1-21, 23, 25, 27 to 29 and 31-38. **B**

*G. L. Sanghi, R. K. Mehta and Miss Uma Mehta* for RR 55 and 72.

*S. S. Khanduja* for RR 53.

The Judgment of the Court was delivered by **C**

SHINGHAL J.—This appeal by certificate is directed against the judgment of the High Court of Jammu and Kashmir dated November 1, 1971, in writ petition No. 124 of 1969. That petition was filed against the promotions of respondents Nos. 1 to 46 and others as Professors in supersession of the claims of the writ petitioners who contended that they were senior and more qualified for promotion. The High Court allowed the writ petition and quashed the State Government's Order No. 643-HTE dated July 25, 1969, in regard to the appointments of respondents Nos. 3 to 46 and directed that it would be open to the State Government to make a fresh selection of Professors in accordance with the law. A review petition was filed against the judgment but was dismissed on September 14, 1972. The State Government is aggrieved and has filed the present appeal. **D**

When the case was taken up for hearing on November 28, 1978, it was brought to our notice by counsel for the respondents that it will not be possible for them to advance their arguments with reference to article 16 of the Constitution of India as the various sealed covers containing the date on which the selections were made have not been received from the High Court. Learned Attorney General and the counsel for the respondents were in agreement that as the constitutional point which arises for consideration in this case relates to the interpretation of section 133(2) (b) of the Constitution of Jammu and Kashmir, hereinafter referred to as the Constitution, it will be enough to consider, at this stage, whether that section has been correctly interpreted and whether the Public Service Commission for the State of Jammu and Kashmir, hereinafter referred to as the Commission, has been consulted in accordance with its requirement. We have accordingly heard the arguments only on these two points, and will confine **E**  
**F**  
**G**  
**H**

**A** ourselves to them, leaving the question of the applicability of article 16 of the Constitution of India on the merits for consideration by the Bench before which the case may be taken up for hearing hereafter.

**B** The controversy relates to the interpretation of clause (b) of sub-section (2) of section 133 of the Constitution which, when read with the other connected provisions, provides as follows.—

“133(2) The Commission shall be consulted—

(a) .....

**C** (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) .....

**D** and it shall be the duty of the Commission to advise on any matter so referred to them or on any other matter which the Governor may refer to them :

**E** Provided that the Governor may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Commission to be consulted.”

**F** Although it has been urged in the written arguments of the appellant that section 133(2)(b) was “not at all attracted in the matters of making promotions in the same service”, and its true and correct interpretation would be that “it is applicable only to ‘making promotions and transfers from one service to another’,” learned Attorney General has, with his usual candour and fairness, stated that he does not find it possible to support that contention. He has therefore argued that what clause (b) of sub-section (2) of section 133 requires is that the Commission shall be consulted; (i) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another, and (ii) on the suitability of candidates for such appointments, promotions or transfers. He has urged that as this requirement of the Constitution was duly complied with, the High Court erred in taking a contrary view.

**H** The interpretation put by learned Attorney General is quite correct and we have no hesitation in approving it as in our opinion no other interpretation is really permissible on the plain language of the clause.

The question whether the requirement for consulting the Commission is mandatory or not does not arise in this case, because it is not disputed, and is in fact the case of the appellant State, that the Commission was consulted. The question which remains for consideration is whether this was really so.

Learned counsel for the respondents was not able to refer us to any averment in the writ petition that the Commission was not consulted either in regard to the principles to be followed in making the promotions in question, or on the suitability of selected candidates for the promotions. We have, all the same, gone through the record, and we find that the State Government at first framed rules on November 15, 1968, for selections to be made to posts of Professors in the colleges. By Notification No. SRO-161 dated March 25, 1969, those rules were replaced by the rules made by the Governor specifically for the appointment of Professors, which were called the "Jammu and Kashmir Professors of Colleges (Selection) Rules, 1969." It has been specifically stated on behalf of the State that it consulted the Commission under section 133 of the Constitution, and as the writ petitioners have not ventured to take a plea to the contrary, we have no hesitation in holding, on the facts which have been brought on the record, that the Commission was consulted in regard to the principles to be followed in making the promotions to the posts of Professors.

We have also examined the record to ascertain whether the other requirement of clause (b) of sub-section (2) of section 133 of the Constitution that the Commission shall be consulted on the suitability of the candidates for promotions to the posts of Professors, has been complied with. The State Government has stated in its reply to the writ petition that for every post of Professor, names of four Lecturers, strictly in order of seniority, were sent to the Commission "at its direction" and they were interviewed and examined by the Selection Committee which was "formed" by the Commission, and a member of the Commission was appointed its Chairman. It has further been stated that the commission's recommendation for selection was made on the basis of the marks obtained by the respondents (to the writ petition) at the interviews and that the selection was also made "on the basis of the recommendation of the Public Service Commission" and there was "no deviation from the merit list prepared by the Public Service Commission." The State Government has in fact placed on record the minutes of the Commission dated July 22, 1969, which make it quite clear that the State Government referred the selections to the Commission, a Committee was appointed by the Commission for that purpose, the Committee was

- A** presided over by a member of the Commission, the report of the Committee was formally submitted to the Commission under the Chairman's note dated June 2, 1969, and the Commission then took its decision regarding the recommendation to be made to the State Government for the appointments. The Commission set out the reasons for its decision, and finally made its recommendation on merits. The Commission was
- B** therefore consulted on the suitability of the candidates for promotion as Professors and the second requirement of clause (b) of sub-section (2) of section 133 was also complied with. It is not provided by section 133 of the Constitution that all the members of the Commission should have interviewed all or any of the candidates, or that it was not permissible for the Commission to entrust the selection to a committee consisting of only one of its members, so long as the Commission reserved to itself the right to approve or disapprove the committee's report and actually discharged that constitutional responsibility. No argument to the contrary has in fact been urged for our consideration. Had the Commission *de facto* abdicated its power in favour of some committee
- C** composed of strangers to the Commission the position might have been different. Here, it was not so.
- D**

It would thus appear that the High Court erred in holding that the Commission was not consulted in the manner required by section 133 of the Constitution and that the selection made by it was invalid for that reason. With this finding we shall have the rest of the case for decision by the Bench concerned.

**E**

V.D.K.

*Appeal accepted, leaving  
the merits for decision by  
another Bench of the Court.*