

(2013) 05 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 489 of 2013 and CMP No. 787 of 2013

Aamir Hussain Malik

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) LabIC 3729

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : P.S. Ahmad, for the Appellant; S.A. Naik, I. Sofi and Mr. Hilal Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Ali Mohammad Magrey, J.—Feeling aggrieved of selection of respondent No. 6 against the post of ReT, petitioner filed the instant writ

petition, challenging the same. Facts, which have given rise to the filing of this writ petition, are detailed out as under.

2. The petitioner has passed his B.A. Final year examination in the year 2013 with Mathematics as one of the subject. The result of the B.A. Final

year examination of the petitioner has been declared on 27.01.2013. The petitioner is the resident of the backward area and to this effect,

certificate has been issued in his favour. Respondent No. 4 issued an advertisement notice on 21.01.2013 published in the newspaper inviting the

applications for making the selection of two ReT Teachers in the Government Primary School, Parraypora-Vio, upgraded to the Middle level. One

post was to be filled up from Math stream and the other from the Science stream. The last date for the submission of application forms was

27.01.2013.

3. That the petitioner being eligible in all respects submitted his application form pursuant to the above said advertisement notice before the

respondent No. 4 against proper receipt on 27.01.2013. The result of the B.A. Final Year examination of the petitioner was declared on

27.01.2013. The marks card was not available, as such, the petitioner produced the net based marks card before the respondent No. 4.

Respondent No. 4 framed the panel without taking into account the B.A. qualification of the petitioner. The respondent No. 4 has only considered

10+2 qualification of the petitioner. The panel was prepared by the respondent No. 4 without taking into confidence the Village Education

Committee and also in violation of the norms and rules governing the subject. When respondent No. 4 refused to taken into account the B.A. Final

Year qualification of the petitioner and to include him in the panel, the petitioner filed an application before the respondent No. 3 for redressal of

his grievance.

4. The petitioner alongwith some village Heads of Voi Bamdoora also approached respondent No. 3. Respondent No. 3 assured them that the

lapses committed by respondent No. 4 will be rectified. The petitioner on 18.03.2013 also served a legal notice through counsel upon the

respondents 1 to 4 impressing upon them to redress his grievance, but despite service of notice, nothing has been done.

5. Respondents notified the tentative selection list of the private respondents, whereby the private respondents were tentatively selected as ReT

Teachers in Government Primary School, Parraypora-Vio, upgraded to the Middle Level in terms of notification dated 22.03.2013. Having filed

objections against the tentative selection list on 27.03.2013, as stated by the petitioner, the same has not been considered.

6. Petitioner has challenged the selection of respondents 5 and 6 on the following grounds:-

a. That the impugned selection of the private respondents is illegal and bad in the eyes of law, violative of the rules and regulations governing the

Rehbar-e-Taleem Scheme, as such, the impugned selection list is liable to be quashed.

b. That the petitioner is having better claim over the post of Math Teacher in the

Government Primary School Parraypora-Vio Upgraded to the

Middle level than that of the private respondent No. 6. The private respondent has read Mathematics subject only upto 10+2 level while as the

petitioner has read Mathematics upto graduation level. On this count the impugned selection list merits to be quashed.

c. That the impugned selection list has been issued by the respondent No. 3 in favour of the private respondents for his extraneous considerations

and malafide intentions, as such, the same is liable to be quashed.

d. That the petitioner has passed the B.A. Final Year examination before the last date fixed for the submission of the application forms, the

petitioner has produced the net based marks certificate before the respondent No. 4 but still then the respondent No. 4 has not considered the

B.A. Qualification of the petitioner while framing the panel. On this count the impugned selection list is liable to be quashed.

e. That in case the B.A. Qualification of the petitioner is considered by the respondents, then the petitioner is sure of his selection as the petitioner

is having better claim than that of respondent No. 6 as the petitioner is having the higher qualification in the Mathematics, the petitioner is B.A.

Math while as private respondents No. 6 is 10+2 with Math. On this count the impugned selection list is liable to be quashed.

7. Official respondents on notice have filed reply and have submitted that consequent upon upgradation of Primary School Parraypora-Vio to the

status of Upper Primary School, vide CEO Anantnag's Order No. CEO/A/SSA/13/38475-77 dated 17.01.2013, an advertisement notification

vide No. ZEO/D/4068-69/13 dated 19.01.2013 was issued by respondent No. 4 through publication in Daily Aftab on 21.01.2013, inviting

applications from eligible candidates having qualification of 10+2 and above with Math and Science background only from the concerned

habitation. It was clearly stated in the advertisement notice that applications alongwith two sets of testimonials should reach to the office of

respondent No. 4 within seven days including holidays from the date of publication of the notice.

8. Official respondents have submitted that petitioner is not entitled to any weightage of B.A. qualification as he has submitted the same after the

cut off date.

9. Respondent No. 5 has also filed the objections and submitted that petitioner has no competition with the answering respondents because he has applied against the post of ReT for Math stream while as respondent No. 5 stands selected against the Science stream. This contention needs to be dealt with later.

10. Heard learned counsel for the parties and perused the records available on file.

11. The only issue to be settled in this petition is whether the petitioner is entitled to the weightage of B.A. qualification having secured the same on 27.01.2013 when his result was declared, which incidentally was also the last date for submission of application forms There is no dispute regarding other issues involved in the process of selection. Therefore, there is no need to deal with any other plea or objection raised in the pleadings.

12. Admittedly, petitioner while submitting his application form for competing the process of selection against the post of ReT in Math stream was possessed of 10+2 qualification. However, in the application, he had mentioned about his having appeared in B.A. Final Year examination for which result was awaited. The result of the B.A. Final Year examination was declared on the last date of submission of application Forms, i.e., 27.01.2013, which fact was brought to the notice of selection authority by the petitioner in the shape of application filed on 27.01.2013, i.e., on the last date of filing of the application forms. The fact that petitioner had submitted his B.A. Final Year Marks Card has been admitted by official respondents. However it is submitted by official respondents that the result was declared after cut off date, therefore, petitioner is not entitled to any weightage.

13. The writ petition stands admitted to hearing on 05.04.2013 and respondent No. 6 appeared on the said date and sought time to file reply but despite opportunity has failed to file the reply. However, Mr. Hilal Ahmad Wani, learned appearing counsel for respondent no. 6 submitted that the selection of respondent No. 6 is consistent with the policy and the norms governing the subject. Learned counsel for respondent No. 6 further submits that there is no scope for entertaining the degree certificate of the petitioner after the cut off date as established by law. Learned counsel

has referred to and relied upon the judgment of this Court reported in Yasmeen Hakim and Others Vs. State, wherein it has been held that the qualification required for the purpose of selection and appointment should be as on the last date of filing up of the forms and any qualification acquired after the cut off date cannot be considered while making the selection. It is now well settled law that the last date for acquiring essential qualification for any recruitment is the last date of receipt of application. Suitability and eligibility has to be considered with reference to the last date for receiving the applications. Admittedly petitioner has acquired qualification of B.A. Final year on the last date of receipt of application, therefore, the judgment cited by learned counsel for respondent no. 6 supports the contention of the petitioner.

14. As per the settled principle of law, the cut off date for submission of application forms for competing the process of selection has reference to all the qualifications for accord of weightage. The petitioner's result for B.A. Final Year was declared on the last date of submission of application, therefore, on that date petitioner was possessed of B.A. Final Year. The respondents, as such, by no stretch of imagination, were justified in depriving him from such weightage.

15. The object of ReT Scheme for providing teachers out of the meritorious candidates of habitation/revenue village is aimed at only to have a qualified candidate selected for such Schools. Process of selection has been initiated in the Month of January, 2013 and till date same has not been completed due to one reason or the other including the pendency of the writ petition. The petitioner is more qualified and meritorious than respondent No. 6. Therefore, the habitation for which ReT is required to be appointed should have the benefit of a qualified teacher. The habitation cannot be deprived of such facility on the ground that petitioner had not submitted the qualification certificate on the last date of filing of the application form. Admittedly, he did possess the qualification of B.A. on the last date of receipt of application forms, but, since only the result was declared on the cut of date, and he got the certificate only after it was made available to him by the University, he could not be denied weightage of the B.A. qualification. No fault can be attributed to the petitioner on that count. In that view of the matter, he is entitled to the benefit

of weightage to B.A. Final Year qualification.

16. The contention of Mr. I. Sofi learned counsel for respondent No. 5 that the selection of respondent No. 5 was challenged without any ground,

as the petitioner had no competition with the said respondent because petitioner had applied for Math stream while as respondent No. 5 has

applied for Science stream. The contention has force and learned counsel for petitioner has also accepted it, therefore, the selection of respondent

No. 5 needs no interference.

17. Viewed thus, this writ petition is allowed and by writ of certiorari selection list issued by respondent No. 3 vide No. CEO/A/Per/47135-37/13

dated 22.03.2013 to the extent of respondent No. 6 is quashed. By issuance of writ of mandamus, official respondents are directed to reframe the

panel to the extent of selection against the ReT in Math stream after giving weightage to B.A. qualification of the petitioner. Respondents are

directed to engage respondent No. 5 on the basis of selection already made without any further delay. The process of reframing the panel shall be

completed within a period of one month from today.

18. Disposed of along with connected CMP(s). Interim direction, if any, shall stand vacated.