

(2023) 04 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2381 Of 2022, Civil Miscellaneous No. 6337 Of 2022

Adil Hussain Malik

APPELLANT

Vs

National Institute Of Technology And Others

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(1)
Rights of Persons with Disabilities Act, 2016 — Section 33, 34 (ii), 34(2)

Citation : (2023) 04 J&K CK 0019

Hon'ble Judges : Moksha Khajuria Kazmi, J

Bench : Single Bench

Advocate : Aamir Latoo, Jahangir Iqbal Ganai, Junaid-Bin-Azad

Final Decision : Dismissed

Judgement

Moksha Khajuria Kazmi, J

1. Petitioner, a PwD candidate in a selection process initiated for filling up the post of Assistant Professor Grade-II Level 10 in the department of Mathematics, National Institute of Technology, Srinagar, for short Institute, has not found place in the selection list framed in this behalf, therefore, is challenging the selection of respondent no. 4 who has been selected against the post in question under UR category and seeks quashment of such selection. Furthermore, the petitioner seeks a direction in the name of respondents to select him under PwD category for the post of Assistant Professor Grade-II.

2. Precisely, the case of the petitioner is that pursuant to advertisement notice bearing No. NIT/Faculty-Recruitment/2022/1 (F) dated 11.02.2022 issued by the respondent Institute for filling up, amongst others, a post of Assistant Professor in the department of Mathematics Grade-II Level 10, he offered his candidature under UR-PwD category. The selection process culminated into selection of one Bilal Ahmad Wani, respondent no. 4, a UR category candidate.

3. Aggrieved of his non-selection, the petitioner challenges the selection of respondent no. 4 inter alia on the grounds that the selection is arbitrary; violative of Reservation Rules, the advertisement notice, Article 14 & 16 of the Constitution.

4. Upon notice, the respondents 1-3 appeared and filed their reply, wherein, it is stated that the petitioner has no case in his favour as the post against which he is laying his claim has remained unfilled and has been carried forward for the succeeding recruitment year after having declared the petitioner as not suitable. The course has been adopted by the respondents in view of the instructions notified by the Government of India vide Office Notification dated 15th January, 2018, which provides for carry forward method in case the candidate applying under the PwD category is found unsuitable by the selection committee.

5. The respondent no. 4 chose not to file any reply. However, since the action of the respondents 1 to 3 is under challenge in the writ petition, therefore, the stand of respondents was of more importance than that of the respondent no. 4. In that view of the matter, the writ petition has been heard finally for disposal on the basis of the available pleadings.

6. It is further stated in the reply that no indefeasible right has accrued in favour of the petitioner as mere participation in the selection process does not confer any right of appointment in his favour. The respondents, therefore, have stated that no rule or statute has been violated in the process.

7. Heard learned counsel for the parties.

8. Mr Aamir Latoo, the learned counsel for the petitioner, submits that the action of the respondents 1-3 in not selecting the petitioner for the post in question is violative of the Reservation Rules as the petitioner was entitled to be selected for the post being a PwD candidate irrespective of his merit obtained in the selection process. He further submits that respondents could not have selected respondent no. 4 as the said post was meant for the PwD category candidate and since there was only one candidate i.e. the petitioner having applied under such category, therefore, he ought to have been selected in place of respondent no. 4.

9. The learned counsel for the petitioner further submits that since the petitioner belonged to a PwD category, therefore, in terms of the advertisement he was entitled for a horizontal reservation and should have, as such, been selected in place of respondent no. 4.

10. In support of his submissions, the learned counsel referred to and relied upon the judgments delivered in cases titled *Rajesh Kumar Daria v. Rajasthan Public Service Commission*, reported as 2007 (8) SCR 972 & *Yogesh Yadav v. Union of India* reported as 2013 0 AIR (SC) 3372.

11. Mr Jahangir Iqbal Ganai, the learned senior counsel, on the other hand submits that none of the rights of the petitioner have been violated as the post against which he is laying his claim has only been forwarded to the succeeding

recruitment year after the selection found him as "not suitable".

12. He further submits that the selection list has been issued in due regard to the relevant provisions of law which includes the Reservation Rules. He further submits that the recommendations of the selection committee cannot be challenged except on the ground of malafides and serious violation of statutory rules. The learned senior counsel further submits that the Court cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal as this discretion has been given to the Selection Committee only and the courts rarely interfere with such recommendations and to examine the selection of the candidates.

13. The learned senior counsel, therefore, prays that the writ petition being without any merit deserves to be dismissed. In support of his submissions, the learned senior counsel referred to and relied upon the judgments of the Apex Court delivered in cases titled *M. V. Thimmaiah and others v. Union Public Service Commission and others*, 2008 (2) SCC 119; *Central Electricity Supply Utility of Odhisa v. Dhobei Sahu and others* with *Bijaya Chandra Jena v. Dhobei Sahu and others*, 2014 (1) SCC 161.

14. Considered the submissions made.

15. The admitted position is that the petitioner amongst other eligible candidates responded to the advertisement notice No. NIT/Faculty-Recruitment/2022/1 (F) dated 11.02.2022 and offered his candidature for the post of Assistant Professor, Grade-II Level 10, he was called for the interview against a post reserved for UR-PwD candidate out of 26 posts of Assistant Professors across board and was interviewed subsequently and that the petitioner in the process obtained 42.72 points while as the respondent no. 4 obtained 77.94 points.

16. The respondents while issuing selection list selected respondent no. 4 in the UR category against the post of Assistant Professor Grade-II Level 10 in the department of Mathematics besides selecting two more candidates in the said department under EWS, and SC category.

17. Aggrieved of the selection of respondent no. 4 who has been selected under UR category for the post in question, the petitioner has filed the instant writ petition on the ground that the post was required to be filled up from the UR-PwD category and he being the lone candidate having applied for the post in Mathematics stream should have been selected in place of respondent no. 4.

18. The petitioner has filed the writ petition against the selection of respondent no. 4 on the belief that there was no scope for the respondents 1 to 3 to have selected a candidate from the UR category as the post was meant for the UR-PwD category. However, the fact of the matter is that the post on which the petitioner is laying claim is stated to have been left unfilled because the petitioner, as the only candidate available against such post in the discipline in question, was found "not suitable" for selection by the Selection Committee.

Therefore, the challenge to the selection of respondent no. 4 appears to be without any basis. Insofar as the suitability of the petitioner is concerned, the respondents 1 to 3 were well within their powers to make appropriate recommendations on case to case basis while taking into consideration the performance of the candidates as also other relevant factors.

19. Otherwise also, it is not the case of the petitioner that the Selection Committee has arbitrarily or with mala-fides declared the petitioner as not suitable for selection, therefore, this court does not require to go into that aspect of the matter. Having said that, the petitioner appears to have filed the instant writ petition under a wrong belief that the post meant for the PwD category candidates has been filled up by selection of respondent no. 4 under UR category as the respondents are on record to say that the post has not been filled up and has been carried forward for the succeeding recruitment year.

20. In order to appreciate the submission made by the learned counsel for the petitioner that the petitioner was required to be selected in place of respondent no. 4, irrespective of merit, in his capacity as a PwD category candidate and entitled for horizontal reservation is noted to be rejected only for the reason that the reservation provided to the physically handicapped person relatable to Article 16 (1) of the Constitution would be, for the purpose of computation of vertical reservation, adjusted against the respective categories. If for example a physically handicapped person selected for appointment happens to be a scheduled caste category he will be taken to have exhausted one seat of scheduled caste category. If however, he belongs to open competition category, he will be placed in that category by making necessary adjustments. The purpose of this is to ensure that the horizontal reservation provided within the vertical reservation may not result in exceeding the prescribed quota. Furthermore, in terms of the Rights of Persons with Disabilities Act, 2016, in section 34 (ii) clearly prescribes that if a suitable person is not available or for any sufficient reason, the vacancy can be carried forward to the successive recruitment year. As against the old Act i.e. Persons with disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995, which provided reservation to physically handicapped category candidates under Section 33, there was no provision to carry forward of seats which could not be filled up from a candidate having different kind of disablement for want of a suitable person or any other sufficient reason, but now the Act of 2016 has provided so in Section 34 (2). Therefore, the petitioner cannot question the decision of the respondents 1 to 3 to carry forward the post to the successive recruitment year owing to the fact that the only two candidates who had applied under such category were found not suitable. The respondents 1 to 3, have thus followed the mandate provided in the Office Notification dated 15th January, 2018 issued by the Government of India. The clause 8.1 of the said notification is taken note of herein, thus:-

"8.1. Where in any recruitment year any vacancy cannot be filled up due to non-availability of suitable person with benchmark disability or for any other sufficient

reason such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable candidate with benchmark disability is not available it may first be filled up by the interchange among the following four categories of disabilities at one percent each to each category.

a) Blindness and low vision.

b) Deaf and hard of hearing.

c) Locomotor disability including cerebral palsy leprosy cured, dwarfism, acid attack victim and muscular dystrophy.

d) Autism, intellectual disability, specific learning disability and mental illness.

e) Multiple disabilities from amongst person under clause a to d including deaf blindness." (Emphasis supplied)

21. The Hon'ble Supreme Court in case titled Central Electricity Supply Utility of Odisha v. Dhobei Sahu and others with Bijaya Chandra Jena v. Dhobei Sahu and others, (2014) 1 SCC 161 has held that in the judicial review of the appointment, to determine the suitability or eligibility of candidate for appointment is within the domain of the Appointing Authority. Courts can only scrutinize whether appointment is contrary to the statutory provisions or rules. It would be profitable to reproduce paragraphs 20 & 47 of the said judgment herein, thus:

"20. In Centre for PIL and Another v. Union of India and Another, a three-Judge Bench, after referring to the decision in R.K. Jain (supra), has ruled thus: -

"64. Even in R.K. Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decision when impugned under the judicial review jurisdiction."

"47. The whole thing has to be scrutinized from the point of view of power. Suitability or eligibility of a candidate for appointment to a post is within the domain of the appointing authority. The only thing that can be scrutinized by the Court is whether the appointment is contrary to the statutory provisions/rules."

22. The Hon'ble Apex Court in another case titled M. V. Thimmaiah and others v. Union Public Service Commission and others (2008) 2 SCC 119, has, in paragraph nos. 21 and 22 held as under:-

"21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory Rules. The Courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the Court of appeal. This discretion has been

given to the Selection Committee only and Courts rarely sit in court of appeal to examine the selection of the candidates nor is the business of the Court to examine each candidate and record its opinion. In this connection, learned senior counsel for the appellants has taken us through various following decisions of this Court.

(i) AIR 2003 SC 3044 Surya Dev Rai v. Ram Chander Rai & Ors.

(ii) (1993) 3 SCC 319 P.M.Bayas V. Union of India & Ors.

(iii) (1985) 4 SCC 417 Ashok Kumar Yadav & Ors. V. State of Haryana & Ors. Etc.

(iv) (1981) 1 SCC 722 Ajay Hasia & Ors. V. Khalid Mujib Sehravardi & Ors.

(v) 2007 (3) SCALE 219 Union Public Service Commission v. S.Thiagarajan & Ors.”

“22. Keeping in view the ratio laid down by this Court in several decisions, now we shall examine the argument of learned senior counsel for the appellants which had been addressed. But we may at the very outset observe that the Court while considering the proceedings of the Selection Committee does not sit in a court of appeal. Courts have limited scope to interfere, either selection is actuated with mala fide or statutory provisions have not been followed. In the present case, 39 candidates were examined by the Selection Committee for being recommended for appointment to the I.A,S. The selection process took place between 24.11.2003 and 28.11.2003 whereby the Selection Committee scrutinized the service records of the individual candidates and interviewed them and the Selection Committee selected those candidates who were found to be having outstanding merit and ability.”(Emphasis supplied)

23. It is not the function of the court to hear appeals over the decision of the Committees and to scrutinize the relative merit of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise.

24. The Hon’ble Apex Court in yet another case titled Sureshkumar Lalitkumar Patel & Others v State of Gujarat & others, 2023 Livelaw (SC) 137, has held that reducing the cut-off marks to pave way for a particular category is violative of Article 14 of the Constitution of India. Paragraph no. 25 of the said judgment, being relevant, is taken note of herein, thus:

“Admittedly, in the case on hand, the appellants are entitled to get the respective posts as per the advertisement issued. The said advertisement has not been amended. It was sought to be modified on the advice of the Government, though an earlier decision was taken on the similar line but wisely withdrawn. Fixing cut-off marks for a particular category has got a rationale behind it. Reducing it only for the purpose of providing employment to a particular category, when the others have already acquired some right would be an affront to Article 14 of the Constitution of India.”

25. Even the advertisement notice annexed with the writ petition by the petitioner contains such clauses which very clearly provide the method which has been followed in making the selection in question. It would be appropriate to reproduce Note V and the clause 17 to 19 of the advertisement herein, thus:-

"Note V: The above department-wise distribution of vacancies is tentative and is subject to change/re-appropriation as per the decision of Selection Committee based on suitability of the candidates. No candidate reserves any claim for the vacancies mentioned in the above table if otherwise decided by the selection committee(s) concerned."

17. All recruitment and pay-fixation shall be done by the Board of Governors (BoG) of the Institute only on the recommendations of duly constituted Selection Committees. The decision of the Appointing Authority shall be final.

18. The Selection Committees shall be constituted as per the Statute 23, Sub-Statute 5 (a) of the First Statutes of the NITs issued in April 2009 and amended in July 2017.

19. The Selection Committees shall examine credentials of all the candidates who have been called for interview, interview the eligible candidates and recommend the appointment of the most suitable candidate to the competent authority for approvals."

26. In view of what has been said hereinbefore, the writ petition is held to be without any merit, therefore, dismissed along with all CMs. Interim direction dated 28.10.2022 shall stand vacated.

27. There shall be, however, no order as to costs.