
(2004) 03 J&K CK 0028
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 1418 of 2003

Basharat Hussain

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 08-03-2004

Acts Referred:

Citation : (2004) 2 JKJ 27

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Advocate : R.A. Khan, for the Appellant; M.A. Ganai, DAG for the Respondents 1 to 6 and S.A. Vakil, for the Respondent No. 7, for the Respondent

Final Decision : Allowed

Judgement

R.C. Gandhi, J.—Petitioners by means of this petition seek to quash order No. DDC/B/RTY Roh/Z/2003/1906-8 dated 22-07-2003

issued by the Deputy Commissioner, Baramulla whereby approval has been conveyed for engagement of education volunteers in EGG Centres

created under the Sarva Shiksha Abhiyan Scheme (for short "the Scheme") and order No. ZEO/R/EGS/2585-87 DATED: 29-07-2003 issued by

Zonal Education Officer (ZEO) where by respondent No. 7 has been engaged as Education Volunteer at EGC Centre, Gujjar Patti.

2. The Government opened 846 new Primary Schools in the State of J&K in all the Districts of the State in implementation of the Scheme

sponsored by Government of India. Against the posts earmarked for District Baramulla, a post was to be filled up in Primary School Gujjar Patti.

Advertisement was issued inviting applications from desirous candidates by the ZEO vide No. ZEO/R/4058 dated : 26-03-2003. The eligibility

qualification mentioned in the notification is 10+2 or above. The petitioner being 10+2 applied for the post seeking consideration and selection.

Respondent No. 7 a matriculate also applied. Respondent No. 7 was selected by the Committee and selection has been approved vide the

impugned order dated : 22-07-2003 and also appointed vide impugned order dated : 29-07-2003.

3. The petitioner seeks to quash the aforesaid order on the ground that the petitioners, according to the advertised qualification are eligible to seek

consideration whereas the respondent No. 7 being matriculate was not eligible to apply and seek consideration.

4. Respondents in their reply have submitted that under the Scheme, the qualification for a Primary School Teacher is Matric; therefore, the

petitioner being matriculate applied for the post and has been selected.

5. Petition is admitted to hearing. Reply filed by the respondents is treated as counter affidavit as prayed for by the learned counsel for the

respondents. The petition is being taken up for the disposal at their request as the pleadings are complete.

6. Heard learned counsel for the parties. The plea of the learned counsel for the respondent is that appointment of the respondent No. 7 cannot be

questioned or interfered with by the Court as he has been considered in terms of the qualification prescribed in the Scheme.

7. On appreciation of the plea of the learned counsel for the petitioner there appears to be no substance to reject the candidature of the petitioners

being 10+2. The higher qualifications of the 10+2 possessed by the petitioner neither debars him nor he can be said to be ineligible to seek

selection against the advertised post. The advertisement notice issued by the respondents prescribed eligibility as 10+2. The petitioner, thus, was

not eligible on the face of it in terms of the advertisement notice unless eligibility qualification mentioned in the advertisement notice to apply and

seek consideration for selection and appointment is recast. It was not proper for the respondents in law to entertain the application of the

respondent No. 7 being matriculate. Employment is a public property and every eligible candidate has a right to seek consideration, through the

process of selection. The respondents have deceitfully accepted the application of respondent No. 7 contrary to the advertised qualification.

Respondents are duty bound to make correct representation to the public and particularly to the eligible candidates as required by the Scheme.

They have misrepresented by advertising qualification of 10+2 and deprived the Matriculate candidates to seek consideration. The law enjoins that

the things are required to be done as required in law and not in the manner as it suits to the authorities implementing the Scheme.

8. It is submitted at the bar by the learned counsel for the respondents that no right of the petitioner has been prejudiced; therefore, the

appointment of respondent No. 7 is not liable to be interfered with. The question before the Court is not only the prejudice caused to the petitioner

but the manner and method whereby the selection of the respondent No. 7 has been made by the selection authorities' by mis-representation and

deceitful means. The respondents were under legal duty to advertise the post indicating eligibility qualification as Matric so that all eligible

candidates of the area could apply and seek consideration. This has not been done. The qualification mentioned in the advertisement notice is

contrary to the Scheme to achieve the purpose and object providing employment to the unemployed. It is settled proposition of law that once the

eligibility qualification has been prescribed as a matter of policy for selection of suitable candidates, the selection should be made accordingly. This

view has been taken by the Supreme Court in the case titled P.M. Latha and Another Vs. State of Kerala and Others, holding that:

..... Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed qualification,

is a matter of recruitment policy".

9. The respondents have made the selection of the Respondent No. 7 by mis-representation and deceitful means as all the eligible Matriculate

candidates stood deprived of to seek consideration. Not only this , the petitioners having higher qualification have been ignored.

10. In view of the aforesaid reasons the writ petition is allowed. The impugned orders dated : 22-07-2003 and 29-07-2003 are set aside and the

respondents are directed to readvertise the post specifying the eligibility qualification as required in terras of the Scheme and make proper

selection. No order as to costs.