

(2006) 02 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 246 of 2001

Dr. Bharti Koshal Bhat

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Citation : (2006) 2 JKJ 675

Hon'ble Judges : Y.P. Nargotra, J

Bench : Single Bench

Advocate : M.L. Sharma, for the Appellant; D.C. Raina and V.R. Wazir, for the Respondent

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—The Public Service Commission vide its order notification No. 12 P.S.C of 1999 dated 20.12.1999 invited applications

for the post of Medical Officer Ayurveda in Health and Family Welfare and Medical Education Department. There were eighteen posts which

were to be filled up and out of which three posts stood earmarked for R.B .A category. The petitioner was one of the candidates who applied in

response to the said advertisement. The last date for receipt of the applications was 7th of February 2000. Admittedly along with the application-

form petitioner did not attach the R.B.A category certificate issued by the competent authority appointed under SRO 126 of 1994 (Reservation

Rules). The date fixed for interview of the eligible candidates was 10.1.2001. By that time the petitioner stood issued R.B.A category certificate by

the competent authority. Despite being possessed of the reservation certificate dated 24.5.2000 issued in her favour she was interviewed and

considered in the open category and not in RBA category under which she had applied.

2. The Public Service Commission after completing the selection process issued the select list Vide its notification dated 1.2.2001. The name of the

petitioner did not figure either in the open category or in the RBA category in the select list, therefore, being aggrieved of his non- selection she has

filed the present writ petition for questioning her non- selection and selection of respondents No. 4 to 12.

3. The challenge of the petitioner is two folds. Firstly, it is submitted that petitioner being more meritorious than the private respondents No. 4 to

12 deserved to be selected. Secondly, that respondents No. 10 and 11 who belonged to open category and had been selected under the R.B.A

category, ought not to have been selected in that category and instead the petitioner being a RBA category candidate should have been considered

and selected against the RBA category post.

4. The stand of the respondent-Commission is that as the merit of the petitioner was lower than the selected candidates in the open category,

therefore, she could not be selected in that category. As regards her selection in the RBA Category she could not be considered because she had

not filed the requisite certificate i.e. RBA category certificate within the cut off date, which was the last date for receipt of the application- form.

The RBA category certificate obtained by her after the expiry of the cut of date was of no consequence.

5. I have heard learned Counsel for the parties and perused the record of the Commission. The first contention of Mr. Sharma, learned Counsel

for the petitioner that the petitioner was more meritorious than the last candidate selected in the open category is not tenable. From the record of

the selection, it is evident that petitioner obtained 77 marks, whereas the merit of the last candidate selected in the open category is 86.56 marks.

Mr. Sharma, submits that the petitioner has not been given credit of the past experience, but his this assertion too is without any basis. The break

up of the merit position of the petitioner indicates that for academics he obtained 15 marks out of 25, for experience he was awarded two marks

out of five and in the interview he got 16 marks out of 100. So the first ground urged by the learned Counsel for the petitioner for challenging the

selection is found to be without any merit.

6. Now coming to the second ground of challenge, admittedly, respondent No. 10 Sanjay Chada and respondent No. 11 Narinder Sharma who

had applied in the open category and had obtained 87 and 86.86 marks respectively have been adjusted under the RBA category. Whereas,

respondent No. 9 Rakesh Kumar Shan has been selected under the RBA category having obtained 87.59 marks.

7. The contention of learned Counsel for the petitioner is that respondent No. 10 and 11 could not have been selected in the RBA category when

under the RBA category the petitioner was available for selection. He admits the fact that petitioner had not filed the RBA category certificate

along with the application-form before the cut off date fixed for receipt of the application-form, yet in view of the fact that she had filed a certificate

of the competent authority for showing that the issuance of RBA category certificate in favour of the petitioner was under process. He submits that

since petitioners status, as RBA category is inherent, therefore, even in the absence of the RBA category certificate filed within the cut off date she

could still be considered in the RBA category.

8. In Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, three Judge Bench of Supreme Court held as follows:

Where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to

be judged with reference to that date and that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date

cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and

the authority issuing it is bound by such representation. It cannot act contrary to it. The reasoning in the majority opinion that by allowing the 33

respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of

public interest is, an impermissible justification. The minority opinion in the 1993 decision in Ashok Kumar Sharma case that the 33 respondents,

who were not qualified on the date of submission of the application but had acquired the requisite qualification before the date of interview, could

not have been allowed to appear for interview, was right.

9. In *Tasneem Kounsar and Ors. v. State and Ors.* 2003 (1) SLJ 155, a Division Bench of this Court while taking note of the proposition that a

candidate must possess the requisite qualification on the cut of date observed as follows:

There can be no dispute with the proposition that a candidate must possess the requisite qualification on the cut off date as indicated in the

advertisement notice inviting applications. However, a distinction has to be drawn between the qualifications which are required to be possessed

by an applicant by effort and other qualifications, which are inherited by a person or which become available to a person on account of his being a

resident of a particular area. When a qualification is acquired by effort such as education qualification then the same would be deemed to be

possessed on the date it is acquired. The other qualifications such as member of being a Scheduled Caste or Scheduled Tribe category or resident

of a backward area is something which is already possessed by but is required to be demonstrated by producing the relevant documents. The fact

that there is some distinction between the acquired qualification and qualifications which are inherited is apparent from a Full Bench decision of this

Court in LPA 29/1979 titled *State of Jammu and Kashmir v. Dr. Susheela Sawhney and Ors.* connected matters decided on 7th Oct. 2002 V.K

Jhanji J. while dealing with the meaning of word acquire has made following meaningful observations:

The word acquire used in Note-III is very significant. According to Concise Oxford Dictionary, New Seventh Edition the word acquire means, gain

by and for oneself. According to Concise Oxford Dictionary, Tenth Edition acquire means come to possess, and in Readers Digest Universal

Dictionary, the word acquire means (i) to gain possession of;(ii) to get, especially by ones own efforts or qualities.

Use of the word acquire in Note-III necessarily means a change of relationship vis-'-vis Status of permanent resident of the State, which is said to

be acquired for the first time and which was not existing before.

10. On the said reasoning the Learned Division Bench in that case held as follows:

The situation in the present case is similar. There was failure to produce the requisite certificate regarding place of residence. This aspect of the

matter could have been examined. By way of illustration, if a candidate seeks

benefit of appointment as a handicapped, then the fact that he was so handicapped can be seen even at the time of interview. The certificate in this regard may not be essential. Therefore, to say that the appellant lacked the qualification regarding possession of the requisite certificate of being the residents of Actual Line of Control on the date when they were supposed to possess, is an argument which cannot be accepted. As a matter of fact, the certificates were produced and are placed page No. 14, 15 and 16 of the paper book. Therefore, to say that the appellants did not possess the certificate, is an argument which as indicated above cannot be accepted.

11. In *J & K Public Service Commission and Anr. v. Ms. Rimpi Ohri and Anr.* 2002(1) SLJ 235, the respondent was not considered by the Public Service Commission under the LAC category (resident of Line of Control) for the reason that she had not produced the valid LAC category certificate before the cut off date. So the question arising for consideration before the Learned Division Bench in that case was as to whether candidature of the respondent in that case could be considered under the LAC category when she had not filed the certificate within the cut off date, but the same stood issued in her favour subsequently by the competent authority. Rule 34 of Reservation Rules of 1994 which deals with the reservation certificates was taken note of and then it was observed by the Learned Division Bench as follows:

The rule read as it is, is adequately elastic. The rule is intended to take care of a situation where a resident after obtaining resident certificate migrated to other place and claim benefit of the resident of that area even after the validity of the certificate issued has been expired. In our view, even after the expiry of the validity period of two years as contemplated in Sub-rule (1) of the Rule 34, if he or she continues to reside in the area, non-renewal of the certificate as contemplated under Sub-rule (2) of the rules would not disentitle him or her provided it is established that he or she is still a resident of the area for which a certificate has been issued.

After observing so, it was held:

Reverting to the facts of the present case, admittedly, a resident certificate was issued on 26.10.1995 under the provisions of SRO 126. There is no mention in the certificate of the validity period. However, taking into

consideration the provisions of Rule 34 as discussed above, the certificate expired with effect from 27.10.1997. Despite the expiry of the certificate, factually she was resident of that area, continuously throughout from the date of the application till publication of the result. The Commission vide its letters dated 11.09.2000 also asked her to furnish valid resident certificate. She has submitted valid certificate dated 24.10.2001. It is in these circumstances that we are clearly of the view that she was factually resident of Line of Actual Control and she could not be denied the benefit of SRO 126 of 1994 under the reserved category of resident of LAC and her case should have been considered under the reserved category of resident of actual line of control.

12. This Court thus enunciated the principle that rule of production of eligibility certificate by a candidate on or before the cut off date would not apply to cases, where qualification to become eligible is not to be acquired by an effort but is itself inherent in the candidate by virtue of his status or residence.

13. One of the eligibility conditions in the present case to apply under the RBA category was that the candidate must belong to RBA category and as per the advertisement notice as such, candidate is required to furnish certificate of RBA category along with his application form on or before the cut off date which was 7th of February 2000. The said clause of the advertisement notice reads as under:

The last date for receipt of applications viz 7/2/2000 mentioned above shall for all purposes be the cut off date for determining the eligibility.

Experience improvement in the qualification/marks/additional qualification/distinction in Sports/Games/NCC, if any acquired by the candidate after the last date fixed for receipt of applications shall neither be taken into account nor give any credit.

14. In the present case it is admitted case of the petitioner that RBA category certificate was not filed by her along with her application form before the aforesaid cut off date. Could her candidature be considered in RBA Category despite of her non-filing of category certificate before the cut off date. If the case of the petitioner is to be judged in the light of the afore quoted Division Bench judgments of this Court the answer would be in affirmative. However, contention of Mr. Raina, learned Counsel for the respondent

-Commission is that the afore quoted Division Bench

judgments of this Court no longer hold the field now in view of the latest judgment of the Supreme Court rendered in J&K Public Service

Commission v. Israr Ahmed and Ors., Civil Appeal No. 198 of 2005 arising out of SLP (C) No. 4360 of 2003. In that case first respondent

submitted an application for appearing in the Combined Competitive Service Examination for filling up the various posts in the State. The

examination consisted of three stages, namely, the preliminary examination, the main examination followed by an interview. The last date for

submitting the application for preliminary examination was 16th of March 1999. The first respondent submitted his application in time and in the

application he did not indicate that he was entitled to the benefit of SRO 126 of 1994 dated 28th of June 1994, whereby the reservation was

granted to the residents of the backward area and the line of actual control, but he qualified himself in the preliminary examination. When the

applications were called for the main examination for which the last date for submitting the applications was 23rd of August 2000, he submitted his

application form and claimed reservation under ALC category. The Public Service Commission took a decision that he was not entitled to claim

benefit of reservation as he had not claimed the same in the preliminary examination. The first respondent challenged the selection by filing a writ

petition which came to be dismissed and the Learned Single Judge of this Court held that he was not entitled to the benefit of reservation based on

SRO 126 of 1994, as he had not indicated in his application for the preliminary examination that he was entitled to such benefit. The first

respondent challenged the dismissal order before the Learned Division Bench of this Court and the Learned Division Bench of this Court held that

he infact possessed the eligibility for being considered in the reserved category before the date of advertisement and had submitted his proof only

later and that by itself did not disentitle him from claiming the reservation.

15. The Public Service Commission called in question the legality of the order of the Division Bench before the Supreme Court. It was contended

by the learned Counsel for Commission that as the last date for submitting the application was 16th of March 1999, and the first respondent did

not produce the certificate claiming reservation nor did he indicate in the

application that he belongs to that category. It was submitted that several other applications of similar nature were rejected by the Commission and the respondents application also was treated alike and the Division Bench erred in coming to the conclusion that he was entitled to get reservation. Counsel for the first respondent on the other hand pointed out that though the first respondent did not avail the benefit of reservation when he submitted the application for the preliminary examination he had submitted the application for the main examination in which he had clearly shown that he was entitled to get reservation as per SRO 126 of 1994 dated 20th of June 1994 and he had also produced the certificate along with the application for the main examination. It was submitted that he had claimed the reservation for the main examination and he should have been treated as a reserved candidate in the main examination. Their Lordships of the; Supreme Court observed:

The contention of the first respondent cannot be accepted as he has not applied for the selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail the reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation.

(Emphasis supplied).

16. The Honble Supreme Court thus did not find the first respondent in that case entitled to the benefit of reservation and one of the reason was that he had not claimed the reservation within the cut off the date though he had acquired such qualification later. The present case is fully covered by the ratio of Israr Ahmed case (supra).

17. In the present case, the petitioner had not filed the category certificate

before the cut off date which means that she had not validly claimed reservation which could be by filing the category certificate. Production of certificate at the later stage could not make her entitled to seek reservation. Therefore, on the said date she could not be considered eligible to apply under the said category especially when the advertisement notice also specifically stipulated that the last date for receipt of applications shall for all purposes be cut off date for determining the eligibility. The Commission was therefore, justified in not considering the petitioner under RBA category.

18. Therefore, there is no merit in this writ petition, it is as such dismissed.