

(2015) 12 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : SWP No. 1356 of 2009 C/w SWP No. 1846 of 2009 and SWP No. 1535 of 2009

Farooq Ahmad Ganai

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Citation : (2016) 2 JKJ 361

Hon'ble Judges : Mr. Hasnain Massodi, J.

Bench : Single Bench

Advocate : Mr. Z.A. Qureshi, Sr. Advocate with Ms. Shagufta, Mr. M.Y. Bhat and Mr. Altaf Haqani, Advocates, for the Appellants/Petitioners; Mr. T.H. Khawja, AAG and Mr. Sajad A. Mir, Dy. AG, for the Respondents

Final Decision : Allowed

Judgement

'''

Mr. Hasnain Massodi, J. - Jammu and Kashmir Service Selection Recruitment Board (The Board for short) vide Advertisement Notice No. 03",,,

of 2008, dated 5th August 2008, invited applications from eligible candidates, for filling up amongst others 72 posts of Drug Inspector referred to",,,

it by, Health and Medical Education Department. The Advertisement Notice gave breakup of the available vacancies as also the eligibility criteria",,,

prescribed under the relevant Recruitment Rules. The Board on 26th July, 2008, notified the selection criteria for the advertised posts. The criteria",,,

was later recast and notified on 12th June 2009. Change in selection criteria was questioned in a writ petition being SWP No. 884/2009. However,,,

the Writ Court on 1st September 2009, modified ad-interim order granted earlier and allowed the respondent Board to proceed with the selection",,,

process, providing that the process would remain subject to the outcome of writ petition." ,,,

2. Be that as it may, the selection process was finalized and select list published on 8th September 2009. Petitioners in writ petitions on hand i.e." ,,,

SWP Nos. 1356,1535 and 1846 of 2009, participated in the selection process, but did not find place in the select list. They aggrieved with their" ,,,

non-selection assail the select list on the grounds set out in the respective writ petitions.,,,

3. Petitioners in SWP No. 1356/2009, are aggrieved that 20 points set apart for viva-voice in terms of selection criteria initially notified as well as" ,,,

revised selection criteria, have been awarded in an arbitrary manner and thereby merit converted into demerit. They point out that eleven of the" ,,,

selected candidates have been awarded 20 points, three 19 points and their selection made possible because of higher points awarded in the viva-" ,,,

voice. Petitioners complain that though they performed well in viva-voice, they have been awarded less than 15 points and thereby excluded from" ,,,

the select list. The viva-voice, it is alleged was converted into a tool to indulge in favouritism and ensure selection of favourites notwithstanding their" ,,,

lower merit in the qualifying examination. They are also aggrieved that expert co-opted by the Board with the selection process was MD in" ,,,

Pharmacology and therefore not eligible to act as an expert'. It is insisted that Pharmacy and Pharmacology are two different subjects and the" ,,,

Board ought to have associated an expert with Post Graduate or Doctorate level qualification in Pharmacy. Petitioners insist that as the eligibility" ,,,

criteria for the advertised posts required qualification in Pharmacy at given level, only an expert in Pharmacy could assess their knowledge of the" ,,,

subject and award points, on the basis of their performance in viva-voice. The entire selection process according to petitioners deserves to be" ,,,

cancelled on this ground only. Petitioners on the strength of averments made seek quashment of selection of respondents 4 to 18, and selection" ,,,

criteria to the extent it provided for 20 marks for viva voice. They also seek a direction to respondents to conduct fresh viva voice test.,,,

4. Petitioner in SWP No. 1535/2009, responded to the Advertisement Notice No. 03 of 2008 dated 5th August 2008, offered his candidature" ,,,

under Open Merit Category for the post of Drug Inspector. He like petitioners in other two writ petitions participated in the selection process, but" ,,,

was not included in the select list notified on 8-9-2009. He aggrieved with his non-selection filed present writ petition. Petitioner's case is that he,,,

secured 40.58 points on the basis of his merit in B.Sc. Pharmacy (requisite qualification) and the Board did not add up the points awarded to him,,,

in viva-voice to the points awarded on the basis of qualification and was thereby unjustifiably excluded from the select list. He insists that he,,,

appeared before the Selection Committee and faired well in interview and expected to be selected for the advertised post on the basis of his,,,

academic record and performance in viva-voice. Petitioner points out that as the cut of merit, i.e. the merit obtained by last selected candidate was",,,,

56.52 points, petitioner with 40.58 points together with points awarded in viva-voice was bound to make it to the select list. Petitioner is aggrieved",,,,

that respondents 6 to 8 with 36.73,37.70 and 37.10 points have been selected by awarding them 20 points and 19 points out of 20 points in viva-",,,,

voice respectively. Petitioner like petitioners in SWP No. 1356 of 2009, complains that the viva-voice has been a farce and discretion given to the",,,,

Selection Committee to award 20-points used arbitrarily to the advantage of few candidates and disadvantage of others. Petitioner does not seek,,,

quashment of entire select list. He restrict his relief to quashment of select list to the extent of respondents 6 to 8 and also a direction to,,,

respondents to select and appoint him as Drug Inspector on the basis of his academic merit and points secured in the interview.,,,,

5. Petitioner in SWP No. 1846/2009, claims to have applied for the post of Drug Inspector advertised by Board vide aforementioned",,,,

Advertisement Notice. It is stated that with 62.13 percent marks at Graduation level, petitioner was awarded 42.16 points in academic",,,,

qualification, 13.31 points in viva-voice and with 55.47 points, he had a fair chance to be selected against one of the advertised post, had the",,,,

Board not selected ineligible candidates or used discretion while awarding points in viva-voice arbitrarily in favour of a few candidates. Petitioner,,,

seeks quashment of entire selection list on the grounds that the points set apart for the viva-voice have been awarded in an unfair and arbitrary,,,

manner making viva-voice a sham and farce exercise; that respondents 6, 21, 36 and 39 find place in the select list with post Graduate degree in",,,,

Pharmacology, though they at no point of time produced the degrees, earning them extra weightage, before the Board. Respondents 16, 25 and 34",,,,

are said to have withheld their date of birth Certificate and to have been still selected by the Board. Petitioner is also aggrieved that a person not,,,

expert in the field of Pharmacology was associated with the selection process. It is pleaded that once an expert is found to be ineligible to sit in the,,,

Selection Committee, the selection process itself becomes doubtful and selection made by it liable to be set aside. It is pointed out that the expert",,,

had a degree in Pharmacology and not in Pharmacy, required in case of selection of Drug Inspector. He apart from quashment of select list, asks",,,

for direction to respondents to select and appoint him against one of the advertised posts.,,,

6. The Board in their reply to the writ petitions disputes that Dr. Farhat associated by it as an expert with the selection process did not have,,,

requisite qualification and was therefore disqualified from acting as an expert. The Board insists that with Ph.D. Pharmacology, Dr. Farhat was",,,

competent to act as an expert and the selection process therefore is not to be faulted on said ground. It is pleaded that the selection process was,,,

made and finalized in a fair, objective and transparent manner. It defends awarding of 100 percent or little less than 100 percent points in viva-",,,

voice to some of the selected candidates, stating that points were awarded by the Selection Committee on the basis of their performance in viva-",,,

voice.,,,

7. The Board has tabulated competitive merit of selected candidates and petitioners in three writ petitions to point out that the petitioners because,,,

of their lower merit could not make it to the select list. Petitioner in SWP No. 1535 is said to have secured 52.59 points, as against cut of merit of",,,

56.52 points in the Open Merit Category, respondents 6 to 8 in SWP No. 1535 are said to have secured 56.73, 56.70 and 57.10 points",,,

respectively and made to the select list. Similarly, petitioner in SWP No. 1846/2009, according to the Board secured 54.66 points as against",,,

56.52 points secured by the last selected candidate under Open Merit Category. It is denied that any of the selected candidates awarded extra,,,

marks for Post Graduate Degree in Pharmacy failed to produce the degree before the Board or any of the selected candidates withheld their date,,,

of birth Certificates. The private respondents in all three writ petitions have towed the line taken by the Board. Their reply to the writ petitions,,,

reiterates the stand taken by the Board that selection process was fair and objective and Dr. Farhat, an expert in the subject and rightly co-opted",,,

with the selection process.,,,

8. I have gone through the pleadings, as also record made available by the learned counsel for the Board. I have heard learned counsel for the",,,

parties at length.,,,

9. Facts are not in dispute to the extent of petitioners' participation in the selection process and selection and appointment of private respondents in,,,

the writ petition and other selectees as Drug Inspectors in the grade of 9300-34800 in respondent Department. Petitioners' grievance as set out in,,,

the writ petitions on hand, as regards their non-selection and selection of private respondents may be serialized as under:",,,

a) That Assistant Professor, Pharmacology associated with the selection process as an expert was not a subject expert and therefore not",,,

competent to assess and evaluate performance of the aspirants for the advertized post.,,,

b) That the selection Committee exercised discretion in arbitrary manner while awarding 100 % marks (20 out of 20) to some of the candidates,,,

and thereby facilitated their selection, notwithstanding lower merit in their eligibility qualification, and higher qualification considered expected for",,,

extra weightage.,,,

c) That some of the candidates though lacking eligibility were considered and appointed and some of the candidates not having Post Graduate,,,

Degree in Pharmacy/Medicine/ Pharmaceutical Chemistry to their credit were given extra weightage and selected on the basis of such weightage.,,,

d) That a few candidates notwithstanding their failure to append date of birth certificates with their application were not only considered but,,,

selected for the advertized posts.,,,

Let us proceed to examine the merit of grounds urged to seek quashment of selection, on the anvil, of the pleadings and the selection record.",,,

10. Dr. Samina Farhat associated with the selection process as an expert by the Board is a Doctor by profession with Post Graduate Degree,,,

(MD) and Ph.D. in Pharmacology to her credit. Pharmacology is an important component in the study of Pharmacy and is included amongst the,,,

major areas of instruction in curriculum of a degree in Pharmacy at Bachelor and

Masters level. All those who study and undergo the training in,,,
 Pharmacy are necessarily to study Pharmacology. The Pharmacology as we know
 is a study of interaction of drugs with living system. The,,,
 pharmacist has to learn the effects of the medicine as well as the ways in which
 medicine can be introduced into the body. Pharmacists are,,,
 medication experts and their responsibility include dispensing medication to
 patients, monitoring patient health and progress and optimize patient's",,,,
 response to medication therapies. Pharmacists not only educate and assist
 patients but also guide physicians and other health care professionals on,,,
 medication therapies decisions. They provide expertise about the composition of
 the drugs, including their chemical/biological and physical",,,,
 properties. The subject areas of two discipline overlap. The Pharmacology and
 Pharmacy therefore are not like chalk and cheese, too different",,,,
 from each other. One who has studied medicine, and is an expert in
 pharmacology is expected to have fairly good knowledge about the Pharmacy.",,,,
 Challenge thrown by the petitioner to competence of Dr. Samina Farhat,
 Assistant Professor, Department of Pharmacology, Government Medical",,,,
 College, Srinagar therefore is not to succeed.",,,,

11. It is well settled law that this court while exercising power of judicial review
 cannot step into the shoes of the Selection Committee or assume,,,
 an appellate role to examine whether the marks awarded by the Selection
 Committee in viva-voice test are excessive, not corresponding to their",,,,
 performance in such test. The assessment and evaluation of performance of
 candidates appearing before the Selection Committee/ Interview,,,
 Board is to be left to the members of the Committee. There is no reason to find
 fault with the marks awarded by the Selection,,,
 Committee/Interview Board only because 100% (20 out of 20) marks have been
 awarded or that the marks are on higher side. Once the,,,
 petitioners participated in the selection process, they are not to feel aggrieved
 with the process for the reason that the marks awarded to them in",,,,
 viva-voice are not up to their expectations or on lower side.,,,,

12. In *Paramjeet Singh and others v. State* 2008 (2) JKL 121 [HC] one of the
 grounds urged to question the selection Of teachers in District,,,
 Cadre Rajouri was that the petitioners notwithstanding their performance were
 granted lesser marks in interview as compared to selected,,,

candidates and therefore selection was bad and liable to be set aside. The high court rejecting the contention observed:,,,

25. As regards the contention that the selection committee deliberately gave lesser marks to the petitioners in interview despite the fact that they,,,

had performed well in the interview, unless it is shown that it was interested in the selection of all the selectees, cannot be accepted. There is",,,

nothing on record to show that members of the selection committee had any interest in the selection of the selectees. The writ petitioners have,,,

participated in the interviews and their merit and performance has been adjudged by the selection committee. They cannot be permitted to assail,,,

the result of the interviews on the ground that they performed well but were given lesser marks while the selectees were awarded higher marks in,,,

the absence of material to show that the selection committee or any of its member was biased against the writ petitioners or was inclined to favour,,,

the selectees. It was for the selection committee to judge the relative merit of the candidates before it and this Court is not entitled to sit as a Court,,,

of appeal over the assessment made.,,,,

The Court placed reliance on law laid down in *Madan Lal v. State of Jammu and Kashmir*, 2010 (5) JKJ 819 [SC]: 1995 (3) SCC 486 It",,,

would be advantageous to reproduce Paras 10 and 17 of Judgment in *Madan Lal Case* noticed by the writ court:,,,

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the",,,

said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal,,,

and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully,,,

urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others,,,

consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid,,,

down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be",,,

brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we,,,

are certainly not acting as a court of appeal over the assessment made by such an expert committee." "" ,,,

17. In the light of what is stated above, while dealing with contention no. 1, this contention also must fail. The petitioners subjectively feel that as" ,,,

they had fared better in the written test and had got more marks-therein as compared to concerned selected respondents, they should have been" ,,,

given more marks also at the oral interview. But that is in the realm of assessment of relative merits of concerned candidates by the expert ,,,

committee before whom these candidates appeared for the viva-voice test. Merely on the basis of petitioners apprehension or suspicion that they ,,,

were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was" ,,,

vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the ,,,

petition about any personal bias of the members of the interview committee against the petitioner. They have also not alleged any mala fides on the ,,,

part of the interview committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced." ,,,

It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the concerned ,,,

respondents. It cannot be the subject matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the ,,,

committee so far as the candidates interviewed by them are concerned." "" ,,,

13. This court however while not interfering with the assessment of the candidates made by the Selection Committee/Interview Board and the ,,,

marks awarded is expected may required to examine the record and find out whether the Selection Committee/Interview Board awarded marks to ,,,

the candidates as claimed by the Selection making authority-Jammu and Kashmir Service Selection Recruitment Board in the present case. In ,,,

other words, though Court may not look into decision but it is to examine the decision taking process. It may fall within exclusive domain of" ,,,

members of Selection Committee/Interview Board to assess candidates and award .marks, but court is to examine whether the procedure and" ,,,

guidelines were followed. Before going to the selection record to examine merit of the case set up, it would be appropriate to extract Paras 7 and" ,,,

8 of recommendation of Selection list prepared by the Selection Committee:,,,

7. It is also a known fact that after issuance of advertisement notices and short listing processes, the applicants short listed are subjected to",,,

undergo interview process. The interview is being conducted by a Committee constituted under the Statutory Rules and orders and each Member,,,

of the Committee is to assess a candidate individually and put in the Award, his/her assessment as per performance. This is called the individual",,,

award of the Member of a committee. Normally there, are three Members for State, Divisional/District Cadre Posts. Each Committee is headed",,,

by a Member of the Board who is called Convenor. On completion of the interview, the award are sealed by each Member in an envelope and",,,

handed over to the Board through Convenor for further process. With the awards the Convenor also furnishes a check list wherein he/she verifies,,,

the original certificates at the time of interview. The check list is signed by the Convenor is taken of verification/authentication. With the check list,",,,

also attested photo copies of the certificates of the candidates are annexed. Besides, an attendance sheet of the candidates who attended the",,,

interview the interview and signed the attendance sheet, and also the absentees thereof are mentioned.",,,

8. At the time of initiation of processing of selections for a post, the sealed envelopes of Convenor and Members of Committee, are opened and",,,

fed into the computer for calculations and addition of points obtained in the interview with the weightage of the academic points as per criteria,,,

framed for the purpose. Thereafter, in accordance with the categories such as General/RBA/SC/ST/ALC/OSC/HC as per the requisition furnished",,,

by the indenting department. The list is called selection list and is commensurate with the posts advertised in each category. A final selection list is,,,

prepared after checking the academic percentage and weightage plus the total points obtained in the interview. Every effort is made to make the,,,

exercise error and omission free but still then any mistake cannot be ruled out. Though, no Officer/Official of the Board is directly or indirectly",,,

involved in the process of Awards of interview but is only a compilation of the records furnished by the Committee for finalization of the selection,,,

lists. Accordingly, it is the Board constituting Members who have to finalize the selections after perusal of other relevant records. The compilation",,,

work is submitted to the Board for commanding its issuance after finalization." "" "" ,,,

14. From perusal of the above extracted paras of the recommendation, it transpires that each Member of the Selection Committee/Interview" "" ,,,

Board is to separately assess the candidates who appear before it, award marks and separately seal the award rolls, in an envelope and hand over" "" ,,,

it to the Board through Convenor of the Selection Committee. It is thereafter that the award rolls prepared by the Members individually are to be" "" ,,,

perused, the marks' awarded by the Members added up and the final award roll prepared reflecting the marks secured by a candidate in the" "" ,,,

interview. The separate award rolls prepared by the expert would assume importance as the expert co-opted with the selection process at the" "" ,,,

stage of viva-voice interview, is expected to be a subject expert and marks awarded by him to reflect knowledge and understanding of the" "" ,,,

candidate in the concerned subject. To illustrate in the present case, the eligibility criteria required a candidate to have Bachelor Degree in" "" ,,,

Pharmacy. The subject expert in Pharmacy associated with the viva-voice test is expected to have a better idea about the knowledge and level of" "" ,,,

understanding of a candidate in Pharmacy. Be that as it may, though the court in exercise of judicial review may not look into (the methodology" "" ,,,

employed by the Selection Committee/Interview Board), the weightage given to the assessment made by the expert and allied questions or the" "" ,,,

marks awarded by the member, yet the court is required to examine whether Members of the Board have adhered to procedure, assessed the" "" ,,,

candidates and prepared award rolls in accordance with the prescribed procedure." "" ,,,

15. In the present case, the award rolls prepared by the Members individually are not on selection record. Learned counsel for the respondent" "" ,,,

Board though given an opportunity to produce individual award rolls as also the final award roll prepared on adding the marks awarded by the" "" ,,,

Members individually has not been able to produce such record. Learned counsel has expressed his inability to trace the requisite record and" "" ,,,

produce before the court. Even the final award roll reflecting the performance of the candidates in viva-voice and points secured on the basis of" "" ,,,

merit in eligibility qualification and the qualification warranting extra weightage is not signed by the Members of the Selection Committee. There is" "" ,,,

practically nothing on record to indicate the assessment of candidates individually made by the Members of the Selection Committee and their,,,

overall merit including the marks awarded in interview. The absence of the award rolls prepared individually by the Members and final award rolls,,,

prepared and signed by the Members of the Selection Committee vitiates entire selection process at least from on the stage shortlisted candidates,,,

i),Degree in Pharmacy (B. Pharmacy) OR,=,65 points

ii),Degree In pharmaceutical Chemistry OR,=,65 points

iii),P.G in Chemistry with Pharmaceutical as a special Subject OR,=,65 points

iv),"Associate Ship diploma of the Institution of Chemists (India) by passing the Examination with analyst of drugs And Pharmaceutical as one of the subject. OR",=,65 points

v),"Graduate in Medicines or Science of a University recognised for this purpose by appointing authority and has at least one year post Graduate training in a Laboratory under (i) Govt. Analyst Appointed under Act. (ii) Govt. Analyst Appointed under Act. (iii) Chemical examiner of (iv) the Head of an institution specially Approved for the purpose by the appointing Authority.",=,65 points

vi),P.G. Pharmacy/ Medicine / Pharmaceutical Chemistry,=,10 points

vii),Ph.D.,=,"05

points(Across

the Board)

vii),Viva-voice,=,20 points

,Total,=,100 points

ii) In case, the consideration to appointment of petitioners as directed is not possible, because of non-availability of the posts, the select list",,,

published by respondent Board on 8th September 2009, and appointment made pursuant thereto shall stand quashed and set aside. The",,,

respondent Board shall constitute Selection Committee to conduct fresh interview of all the candidates who earlier appeared before it. The,,,

members of the Selection Committee as per prescribed procedure shall individually assess and evaluate the candidates, prepare individual award",,,

rolls reflecting such assessment and hand over individual award rolls under sealed cover to the Convenor of the Selection Committee. The,,,

Convenor of the Selection Committee, shall compute total marks awarded in viva-voice test and adding the marks so obtained to the marks" ,,,

awarded to the candidates on the basis of merit in eligibility qualification and higher qualification, if any, on pro date basis, prepare final merit list" ,,,

duly signed by all the members of the Selection Committee. Respondent Board on the basis of the final merit list shall make recommendation to the,,,

respondents 1 and 2 i.e. indenting department and respondents 1 and 2, shall act on the recommendation so made, and issue appointment order in" ,,,

favour of the selected candidates, of course after verification of the certificates and completion of other procedural formalities. This exercise shall" ,,,

be completed within six months from the date of receipt of copy of this judgment.,,,

iii) In the event, the respondents decide to carry out direction No. II (supra), it may allow the selected/appointed candidates including private" ,,,

respondents to continue till the exercise undertaken in compliance of direction No. II, is completed and appointment orders issued, as their en bloc" ,,,

exit/ouster may result in administrative problems, risk to public health and lead to collapse of the entire machinery set up to achieve the objective of" ,,,

Drugs and Cosmetics Act.,,,

20. Record be returned back to respondent Board.,,,