

(2014) 09 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : LPA No. 160/2014, CMP No. 248/2014, SWP No. 994/2011 and CMP No. 1643/2011

Feroz Ahmad Bhat and Others

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Citation : (2015) 1 JKJ 68

Hon'ble Judges : M.M. Kumar, C.J.; Ali Mohd. Magrey, J.

Bench : Division Bench

Advocate : M.M. Dar, Advocate, for the Appellant; J.A. Kawoosa, Senior AAG, for the Respondent

Final Decision : Dismissed

Judgement

Ali Mohd. Magrey, J.â€"This Letters Patent Appeal has been preferred against the judgment dated 08.08.2014 passed by the learned Writ Court

whereby three connected writ petitions, SWP Nos. 2325/2011, 1486/2011 & 115/2013, filed by the appellants herein, have been dismissed.

Short admitted facts of the case are that the State Board of School Education (for short, the Board), respondent No. 1 herein, issued

advertisement notice No. F(Admn.-B)CU/06 dated 03.06.2006 inviting applications from eligible candidates for filling up of 29 posts of Junior

Assistants. The selection process was commenced wherein the candidates were initially put to written test at various centres across the three

regions of the State. The written test was followed by type/computer tests. Thereafter, viva voce of the candidates, too, was held and the process

was completed on 20.06.2007. However, before the selection process could be brought to its logical end, the Chairman and the Secretary of the

Board, who also happened to be the constituents of the Selection Committee, demitted their respective offices. The records reveal that the Ex-

Chairman and the Ex-Secretary did not make available the select list of the candidates, despite repeated requests.

2. The Board referred the matter to the Principal Secretary to Government, Law Department, J&K, seeking guidance in the matter. The Law

Department in its opinion, tendered vide U.O. No. PS/PL/LA/BOSE/2009/680 dated 16.09.2009, advised the Board to initiate fresh selection

process after constituting a new selection committee, since the officers on the selection committee were ex-officio and having demitted their offices,

they ceased to be under the discipline of the Board and members of the selection committee.

3. Consequent upon the above, the Board issued a fresh advertisement notice No. F(Admn-B)CU/10 dated 01.01.2010 for the posts of Junior

Assistants 'fallen vacant' in the organization. Clause 5 of the said notification mentioned that:

All such candidates who were eligible to apply pursuant to this office Employment Notice No. F(Admn-B)CU/06 dated 03.06.2006 will be

deemed to be eligible for the above mentioned notification. Such candidates, however, will apply afresh but need not to affix Bank draft worth Rs.

1000/- alongwith the prescribed application format.

The aforesaid notice, apart from prescribing the criteria for assessment, provided that the candidates who will qualify in the written test with a

minimum of 50% of marks shall be called for Type/Computer test and candidates who would qualify the Type/Computer test with 50% marks

shall be called for interview (viva voce).

4. It appears that the Board commenced the selection process and the result notification of the computer/type test (stage 2nd) subsequent to

passing of stage 1st written test, was published on 29.03.2011. The candidates were further informed that the interview in the first instance for the

candidates hailing from Jammu and Ladakh regions shall tentatively be held with effect from 09.04.2011 for which separate notice with full details

shall be published in due course of time which shall be followed by Kashmir Division.

5. Aggrieved of the aforesaid result notification, appellant No. 1 herein filed writ

petition, SWP No. 994/2011, on the ground that he possessed better merit, but was not included in the said list. Vide order dated 16.05.2011, the learned Single Judge, while issuing notice in the main writ petition, provided that, in case selection process was going on, respondents will call the petitioner for interview and subject him to selection process.

6. Thereafter, the appellants seem to have preferred writ petition, SWP No. 1486/2011, seeking to challenge the re-advertisement notice on the ground that, after having completed the selection process pursuant to the first advertisement notice, the Board stood divested of the power to re-advertise the posts. This, despite the fact that the one of the appellants (appellant No. 2) had duly responded to the re-advertisement notice and the other (appellant No. 1), as indicated above, had sought interim direction to direct the respondents to call him for interview. In that petition, SWP No. 1486/2011, the learned Writ Court, vide order dated 19.07.2011, directed the parties to maintain status quo till next date of hearing.

7. The respondent Board issued the provisional select of candidates on 12.10.2011. The appellants filed yet another writ petition, SWP No. 2325/2011, challenging the selection of respondents 5 to 62.

8. The respondent-Board, thereafter, issued order No. 631-B of 2011 dated 28.10.2011 according sanction to the temporary appointment of 48 selected candidates as Junior Assistants in the pay band of Rs. 5200-20-200 PB-1 (Grade Pay of Rs. 1900) as per annexures ""A"" and ""B appended thereto. Subsequently, by order dated 21.12.2011, the Board also operated the Wait List, appointing five candidates against vacancies which remained unfilled on account of non-joining of the candidates. This led to filing of yet another writ petition, SWP No. 115/2013, fourth in the series, by the appellants challenging the selection as well as the appointments so made by the Board.

9. Three of the aforesaid writ petitions, namely, SWP Nos. 1486/2011, 2325/2011 and 115/2013, have been dismissed by the learned writ court by the impugned judgment dated 08.08.2014; whereas the writ petition, SWP No. 994/2011, filed by the first appellant herein, has remained pending.

10. The principal grievance of the appellants has been that once the three

prescribed tests, namely, written examination, type/computer test and viva voce were conducted pursuant to the initial advertisement notice, the respondent Board could not have re-advertised the posts. The second ground urged before the learned Writ Court was that since only 29 posts had been advertised by the first advertisement notice and the re-advertisement notice did not show the exact number of posts, it was not open to the respondents to make selections and appointments on 48 posts of Junior Assistants. In this connection, the appellants placed reliance on the decision of the Supreme Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, . It was thirdly urged before the learned Writ Court that the appellants had been excluded from the selection list for unjustifiable reasons.

11. The learned Writ Court in its impugned judgment has held that the grounds urged in the reply to justify fresh advertisement notice sound convincing and find support from record and, in any case, the second advertisement notice did not deny consideration to the petitioners inasmuch as they were allowed to participate in the selection process. As regards the second ground, on perusal of the original record produced before it, the learned Writ Court noticed that the respondents did not indicate the number of posts in the second advertisement notice; instead they signified their intention to fill up all vacancies as were available on the date of second advertisement notice. The learned Writ Court, accordingly, held that the fact that respondents in the second advertisement notice had not given exact number of posts sought to be filled up and instead conveyed their intention to fill up the vacancies of Junior Assistant as were available on the date of second advertisement notice, belies the stand taken by the learned counsel for the petitioners. As to the unjustifiable exclusion of the appellants from the select list, the learned Writ Court, on the basis of the record, noted that whereas petitioner No. 1 did not participate in the written test and was allowed to appear in the interview pursuant to direction from the Court in which he had secured only 13 marks out of 40, petitioner No. 2 had secured only 37 marks out of 100 marks in the written test as against the minimum of 50 marks fixed to enable him to qualify for the next test. The learned Writ Court, accordingly, held that the petitioners are left with no grievances and do not have a right to question the selection of

private respondents or otherwise assail the selection process on any ground, whatsoever.

12. We have heard learned counsel for the parties, perused the record and considered the matter.

13. It may be observed at the very outset that the appellants have not raised any specific or materially and legally sound ground to assail the

judgment rendered by the learned Writ Court. It was urged before us that during the course of arguments, it was submitted before the learned Writ

Court that the appellant No. 1 had filed writ petition, SWP No. 994/2011, which had a material bearing on the out come of the three writ petitions

decided by the learned Writ Court, for, in that writ petition the appellant No. 1 had expressed an apprehension that the respondents would make

appointments in excess of the posts advertised vide the first notification, and that the learned Writ Court did not accede to the submission. Even if

so, it is not understandable how would such an argument alter the case? Even if the writ petition had been called and heard together with the

clubbed writ petitions, the real question that would arise for consideration would be whether, in the facts and circumstances of the case, the

respondent Board could have made selections and appointments on all the posts which were available in the Board at the time of issuance of the

second notification? Law on this point is no more res integra and we have no reason to disagree with the finding recorded by the learned Writ

Court.

14. The judgment of the Supreme Court in Madan Lal v. State of J&K (supra) is in a different context and is not applicable to the facts of the

present case. In that case the Government had referred only 11 posts to the Public Service Commission. The Commission on its part sent merit list

of suitable candidates which exceeded 11 requisitioned by the Commission. The Supreme Court held that the Public Service Commission may

send merit list of candidates which may exceed 11, but at the time of giving actual appointments the merit list has to be so operated that only 11

vacancies are filled up. That is not at all the case in the present matter.

15. In the instant case, selection process pursuant to the first advertisement notice dated 03.06.2006 was not brought to its logical end. Whatever

be the reason therefor, no right accrued to the appellants to claim their selection

and/or appointment thereto. The second advertisement notice issued almost 3-1/2 years thereafter in its very first paragraph mentioned ""posts of Junior Assistants fallen vacant"". This clearly demonstrated that the respondent-Board by saying so meant the number of posts as were vacant as on the date of issue of the said advertisement notice, i.e. on 01.01.2010. This is also borne out by Note 21 at page 7 of the original record produced by the respondent Board for perusal before us. It is mentioned therein that 29 posts were advertised vide notification dated 03.06.2006 and that the officers and members of the Selection Committee demitted their offices, either because of expiry of their deputation period or on account of their retirement, as a result the selections could not be concluded. It is further mentioned therein that, meanwhile, 23 more posts had become available on account of promotion of officials. Thus, a total of 52 posts of Junior Assistants had fallen vacant. The Secretary proposed that it would be in the best interest of the organization if these posts were advertised. It is not a case, therefore, where the respondents had intended to fill up only 29 posts or that they did not know the exact number of posts to be filled up.

16. On the other hand, in *Suvidya Yadav v. State of Haryana*, (2002) 10 SCC 260, 18 posts of Principal were advertised by the Haryana Public Service Commission. The advertisement notice stated that number of posts would be subject to variation to any extent. Before finalization of the selection, the State Government made a fresh requisition to the PSC indicating the number of vacancies as were available for 1991 which was more than 18. The PSC ultimately recommended the names of 30 persons for the post of Principal. At the instance of a person, who was not selected, the High Court held that selection of persons beyond 18 was bad. Setting aside the said order, the Supreme Court held that since on the date of the recommendation made by the PSC the Government's requisition was for posts more than 18, there was no bar on the power of the PSC in recommending 30 names and that all the 30 names recommended were entitled to be appointed. The selections were held to be in accordance with law. In the instant case, as said above, the respondents had clearly intended to make selections on all the posts of Junior Assistants available on the date of the issuance of the notification. Therefore, no

wrong was committed by the respondents in making selections and appointments against the available posts.

17. Apart from the above legal position, appellant No. 1 herein did not respond to the second advertisement notice despite the fact that the

notification clearly mentioned that candidates who were eligible to apply pursuant to notice No. F(Admn-B)CU/06 dated 03.06.2006 will be

deemed to be eligible for the above mentioned notification and that such candidates will apply afresh. He having not applied for the post afresh,

cannot have any grievance against the selections and appointments made pursuant to the notification.

18. So far as appellant No. 2 is concerned, he having failed to obtain the minimum of 50 marks in the written examination, could not qualify for the

next step of the test. Therefore, he, too, cannot turn back and challenge the re-advertisement notice. He can also neither raise any grievance

against the select list or the appointment of the selectees, since none of his rights stand violated.

19. For the above reasons, we do not see any ground which would warrant interference with the judgment of the learned Writ Court.

20. It may be mentioned here that we have also called for the record of the writ petition, SWP No. 994/2011, and have heard learned counsel for

the parties in that petition too. Since the petitioner had not applied for the post afresh pursuant to the second notification, he cannot raise any

grievance against the result notification challenged therein. The writ petition is wholly unnecessary and deserves to be dismissed as such together

with the connected CMP.

21. For all what has been discussed above, the Letters Patent Appeal as well as SWP No. 994/2011 are dismissed together with the connected

CMPs. Interim direction, if any, subsisting shall stand vacated. No order as to costs.