

(2018) 10 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 276, 1603 Of 2018, IA No. 01, 02 Of 2018

Firdous Ahmad Ganai @APPELLANT@Hash State Of Jammu & Kashmir & Others

Date of Decision : 03-10-2018

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 124

Citation : (2018) 10 J&K CK 0011

Hon'ble Judges : M. K. Hanjura, J

Bench : Single Bench

Advocate : I. Sofi, S. A. Makroo, Saad Ganai

Final Decision : Disposed Off

Judgement

1. These two petitions raise akin and analogous issues and therefore, require to be decided by a common order.

2. The facts culled out of SWP No.1603/2018 are that the respondent No.3 vide an advertisement notice bearing No.01-CAHO-K of 2013 dated 11.05.2013 invited applications for filling up Class-IV posts (Attendants). In terms of the said advertisement notice the eligibility criteria laid down for the post was under:-

"Minimum and Maximum qualification; Matric and 10+2 respectively (from any recognized board/institute). No additional weightage shall be given for higher qualification)"

3. The petitioner being eligible in all respects for the post and possessing the requisite qualification responded to the advertisement notice and applied under the Physically Handicapped Category. The official respondents after scrutinizing the applications of the candidates, who had responded to the aforesaid advertisement notice, published a list of the candidates short listed on 29.04.2016, in the daily publication of 'Tameel I Irshad'. The petitioner also figured in it. The respondents subsequently issued a final short list. The petitioner found his place in this list also. He was interviewed and the provisional select list came to be published in the aforesaid newspaper on 01.02.2018. The

petitioner figured in the said select list under the Physically Handicapped Category, but no formal order of appointment was issued in his favour. On the set of facts detailed above, the petitioner has craved the indulgence of this Court in granting him the following relief:-

"Writ of mandamus, the respondents be directed to conclude the selection process so initiated in respect of Class-IV posts vide advertisement notice No.01-CAHO-K of 2013 dated 11.05.2013 and for which tentative selection list has also been published vide notice published in daily Tameel I Irshad dt: 1.2.2018 in its entirety and issue the formal order of appointment in favour of petitioner as done in the case of other selected candidates with all consequential benefits at par with the other selected/appointed candidates. Any other appropriate writ, direction or order be also issued in favour of the petitioner as the Hon'ble Court deems just and proper in the facts and circumstances of the case."

4. In SWP No.276/2018, the controversy involved is that the advertisement Notification No.01-CAHO-K of 2013 dated 11.05.2013 came to be issued by the respondent No.3 for filling up of Class-IV posts (Attendants) in Animal Husbandry Department, District Kupwara. It was specifically provided in the Notification that the maximum and minimum educational qualification prescribed for the post is Matric and 10+2 respectively. It was further provided that no additional weightage shall be given for higher qualification. The petitioner also applied for the post under the open category as also under the physically handicapped category, as he has a lifelong locomotive disability of 45%. The case of the petitioner is that under the J&K Persons with Disabilities (Equal opportunities of Rights and Full Participation) Act, 1988, he was entitled to 3% reservation as provided for physically handicapped persons and the said reservation operates horizontally. It is further averred by the petitioner that to his dismay, the private respondent No.4 possessing the educational qualification of B.A., M.A. (Political Science) and B.Ed., applied for the said post, despite knowing the fact that the minimum and maximum qualification for the post is Matric and 10+2 respectively. The petitioner further avers that the private respondent has also sworn a wrong and false affidavit wherein he has undertaken that he will abide by the terms and conditions governing the selection of Class-IV (Attendant) in the Department of Animal Husbandry, District Kupwara, as also that his academic qualification is not more than 10+2 and if he is found guilty of misrepresentation, he will be personally responsible and shall be prosecuted under law and his selection will be liable to be cancelled. The petitioner filed detailed objections against the selection of the said private respondent and brought it to the notice of the official respondents that the private respondent is overqualified. The petitioner also brought the aforesaid facts to the notice of the respondent No.3 that the private respondent possessed the higher educational qualification than the one prescribed in the advertisement notice, but the official respondents have not considered the objections of the petitioner and were hell-bent upon to issue formal appointment order in favour of the private respondent. The petitioner under the shade and cover of the above said facts, implores for the grant of the

following reliefs:-

"i) Writ of Certiorari for quashing the selection list of Class-IV posts advertised vide Advertisement Notification No.01-CAHO-K of 2013 dated 11.05.2013 insofar as same relates to the selection of private respondent figuring in the category of Physically Handicapped/Open under S. No.1 holding the application receipt No.048 as contained in Annexure-C to this writ petition.

ii) Writ of Mandamus commanding the official respondents to select and appoint the petitioner against Class-IV post (Attendant) advertised vide Advertisement Notification No.01-CAHO-K of 2013 dated 11.05.2013 on the basis of his merit secured in the selection process.

iii) Writ of Mandamus commanding the respondents to initiate appropriate action against the private respondent for swearing and executing false affidavit and reject his candidature ab-initio."

5. In their objections filed in answer to SWP No.276/2018 the respondents have contended that the petitioner has not knocked at the doors of the Court with clean hands. He has suppressed the material facts from the Court. It is further averred that the advertisement notice clearly lays down the minimum and maximum eligibility qualification for the Class-IV posts as Matric and 10+2 and it is clearly stated in it that no additional weightage shall be given to the higher qualification. It does not provide that a candidate possessing a higher qualification can apply for the post. It is further averred that the Government vide Cabinet decision No.41/5 dated 18.03.2008, decided that the Recruitment Rules of all the departments shall be modified to include 10th pass as the minimum qualification and 10+2 pass as maximum qualification for Recruitment to the Class-IV posts and on the basis of the said Cabinet decision and in exercise of powers conferred by the proviso to Section 124 of the Constitution of Jammu and Kashmir, SRO 99 dated 07.04.2008, was promulgated by the Government, wherein, the qualification for the post of Class-IV under direct recruitment has been prescribed as Matric (minimum) and 10+2 (maximum). This is a general amendment carried by the General Administration Department and it applies mutatis mutandis to all the Class-IV posts in all the departments and the posts are being filled up with the revised qualification as prescribed under SRO 99 of 2008.

6. The private respondent in SWP No.276/2018, has in his objections, pleaded that it has been falsely projected in the writ petition that any affidavit was sworn by him. The affidavit does not pertain to him and the writ petitioner has falsely attributed the same to the private respondent. He has proceeded to state that the maximum qualification of the candidates for Class-IV posts is not restricted to 10+2 alone. The official respondents have made it clear in the advertisement notification that no additional weightage shall be given for higher qualification, which means the marks awarded to the candidates on the basis of minimum qualification of Matric and Maximum qualification of 10+2 only, shall be

considered and no additional weightage shall be given for higher qualification and thus, the eligibility of the candidate is not restricted to 10+2 only. It is further averred that the writ petitioner has misled the Court. The writ petition is premature and entails dismissal.

7. Heard and considered.

8. From the bare perusal of the advertisement notice what comes to the fore is that the eligibility criteria in terms of the academic qualification laid down for the post was matric and 10+2 respectively, from any recognized board/institute with a further stipulation that no additional weightage shall be given for the higher qualification. Vide another advertisement notice bearing No. DIP/K-10522/13, published in a newspaper running under the name and style of "State Times" in its edition dated 29.11.2013, issued by the Chief Animal Husbandry Officer, Kupwara, on the subject 'short listing of the candidates for Class-IV (Attendant) in Animal Husbandry, District Kupwara', it was notified that all those candidates who have not submitted an affidavit have to produce an affidavit duly attested by the First Class Magistrate to the effect that they do not possess the qualification higher than the one prescribed for the post, i.e., 10+2 before the interview is held. The petitioner in SWP No.1603/2018 filed an affidavit which is attached to CMP No.02/2016 filed in SWP No.276/2018 as Annexure-'O', and the relevant excerpts thereof are reproduced herein-below verbatim:-

"I, Firdous Ahmad Ganie S/o: Ab. Rahim Ganie R/o Braripora, Handwara Tehsil: Handwara Distt: Kupwara do hereby declare on oath as under:-

That I undertake I will abide by the terms/conditions governing the selection of class IV (Attendant) in the department of Animal Husbandry District Kupwara. I also undertake that my academic qualification is not more than 10+2 if found guilty I will be personally responsible and shall be prosecuted under law. Moreover my selection will be cancelled if found maximum qualification i.e. 10+2."

9. It is not disputed by the petitioner in SWP No.1603/2018 that he possessed the higher qualification than the one prescribed in the advertisement notice. What shall be the consequences in a case where a person possesses a higher qualification than the one prescribed in the advertisement notice has been aptly and appropriately discussed by a Division Bench of this Court in the case of Nisar Ahmad Dar & Anr. v. State of J&K & others, reported in 2014(1) JKJ 574 and 2013 (3) SLJ 800, the relevant extracts of which read as under:-

"The advertisement notice, in clear words, stipulated that minimum qualification for Class IV is Matric and the Maximum eligibility qualification is 10+2. In other words, those persons possessing qualification higher than the maximum were considered overqualified and were not eligible to apply. This factual aspect is crystal clear. The legal position is also well settled in this regard. In the case of P. M. Latha and anr. Vs. State of Kerala and ors. (2003) 3 SCC 541 a similar controversy arose with regard to the eligibility qualification for Lower Primary/

Upper Primary Teachers in Government School which was "pass in TTC (Trained Teacher Certificate)". On the basis that B. Ed. is higher qualification than TTC, the selection authority selected B. Ed. candidates. Rejecting the argument that B. Ed. was higher qualification than TTC, their Lordships of the Supreme Court held in para 10 as under:-

"We find absolutely no force in the argument advanced by the respondents that B. Ed. qualification that TTC and therefore, the B. Ed. candidates should be held to be eligible to compete for the post. On behalf of appellants, it is pointed out before us that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for B. Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. 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. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B. Ed. Whether B. Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B. Ed. candidates, for the present vacancies advertised, as eligible." (Emphasis added)

A perusal of the aforesaid para makes the legal proposition crystal clear. The view taken in the aforesaid judgment has been followed and applied in the case of Yogesh Kumar and Ors. Vs. Government of NCT, Delhi and Ors, (2003) 3 SCC 548 where again candidates with qualification of B. Ed. were not considered eligible on account of the fact that the advertisement confined the eligibility to those persons only who had the qualification of Teacher's Training Certificate for the post of Assistant Teacher of Primary Schools of Municipal Corporation Delhi. The view has again been followed and applied in Dilip Kumar Ghosh and Ors. Vs. Chairman and Ors. (2005) 7 SCC 567, State of Orissa Vs. Mamata Mohanty (2011) 3 SCC 436 and State of Haryana and Anr. Vs. Abdul Gaffar Khan and Anr. (2006) 11 SCC 153. Further the respondents might have experienced that persons with graduation qualification are not inclined to perform duties of a Class IV employee and after sometime they tend to leave the job. In any case the basis for prescribing necessary qualification is left to the wisdom of employer. In the absence of any arbitrariness such a basis is acceptable to Courts.

We are further of the view that the appellants are not entitled to hearing on merit for the simple reason that they not only misrepresented the facts but also filed false affidavits demonstrating high handedness and they also misled the authorities. In their affidavits both of them, in categorical terms have stated that they have qualification of 10+2 and not that of graduation. Such an overreaching on the part of the appellants deserves to be condemned and they have lost every right of hearing before this Court because they cannot solicit equity if they themselves have not acted equitably. If there was any doubt in their mind with regard to their eligibility on account of possessing higher qualification, then they

ought to have approached any other forum rather than resorting to concealment of facts in the application forms and then making active misrepresentation on sworn affidavits. In *K. D. Sharma Vs. Steel Authority of India Ltd. and Ors.* (2008) 12 SCC 481 their Lordships of the Supreme Court held that if someone makes misrepresentation before the Writ Court then such a person is not entitled to any equitable relief or hearing on the merit of the controversy. Once such a rule is applicable to a writ petitioner, we see no reason to make it inapplicable to those who have indulged in acts of indiscretion by making active misrepresentation. The learned Single Judge has rightly granted liberty to the official respondents to proceed against the appellants. To our mind no exception is provided to take any other view than the one taken by the learned Single Judge."

10. Taking a cue from the law laid down above, the petitioner in SWP No.1603/2018 was overqualified and could not have applied for the post in question. He has suppressed material facts. He filed a false affidavit, wherein he demonstrated that he does not possess a higher qualification than the one prescribed in the advertisement notice. He cannot solicit equity when he has not acted equitably. He could have knocked at the doors of the Court and could have challenged the advertisement notice on the ground that he possesses a higher qualification and he be permitted to participate in the selection process instead of resorting to the concealment of facts in the affidavit. In responding to the advertisement notice, he has played fraud and employed deceit. Fraud vitiates even the most solemn proceedings in any civilized system of jurisprudence, as a corollary to which, SWP No.1603/2018, entails dismissal and, is accordingly, dismissed. The respondents shall be at liberty to proceed against the petitioner for filing a false affidavit.

11. In view of the aforesaid backdrop, SWP No.276/2018 is allowed and the selection list of Class-IV posts advertised vide Advertisement Notification No.01-CAHO-K of 2013 dated 11.05.2013 insofar as it relates to the selection of the private respondent figuring in the category of Physically Handicapped/Open Category, is quashed. The respondents shall accord consideration to the selection and the appointment of the petitioner as against the Class-IV post (Attendant) advertised vide Advertisement Notification No.01-CAHO-K of 2013 dated 11.05.2013 on the basis of the merit secured by him in the selection process. With the aforesaid directions, both the writ petitions are disposed of along with connected IAs.