
(2010) 07 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : SWP No's. 705, 758 and 1806 of 2007

Firdousa Akhter and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Citation : (2010) 4 JKJ 996

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Judgement

Sunil Hali, Judge

1. Criteria for making selection for the post of Draftsman in Civil, is stated to have been changed by the J&K Services Selection Board (herein

after referred to as ""Board"")) after selection process was initiated by it. The controversy raised in present petition relates to the fact as to whether

criteria for the selection can be changed after advertisement notice has been issued and process of selection has been initiated. It is this issue which

requires to be determined in this writ petition. In order to appreciate this controversy following facts are required to be noticed.

2. Vide its advertisement notice No. 07 of 2005 dated 20th November 2005, applications were invited from eligible candidates for the post of

Draftsman (Civil), who were not having the age below 18 years And above 37 years as on 1st January 2005 and possess the qualification of Two

Years Draftsman Training Course Certificate/ Diploma from any Government Recognized Institute. The cut-off date for receipt applications was

26th December 2005. The posts available for Kashmir Division for selection were 82 in Open Merit Category, 12 in SC Category, 14 in ST

Category, 28 in RBA Category, 4 in ALC Category and 2 in SOC Category. Satisfying eligibility set out in the advertisement notice, the

petitioners applied for the said post. The criterion for making selection was as under:-

i) Academic Qualification: 80 points

ii) Viva Voce: 20 points

Interviews were conducted on 30th October, 1st and 2nd November 2006. It seems that after interview was conducted, the Board vide its

meeting held on 28th of November 2006, changed the criteria for making selection as under:-

i) Academic qualification: 70 points

ii) Viva Voce: 30 points

It be noted that the present petitions were clubbed together for being disposed of at the admission stage with the consent of the parties as directed

by this Court on 20th of March 2010.

3. The contention of the petitioners is that after having notified the selection criteria, the rules for selection cannot be changed midstream. The

option with the respondents in case of change of criteria was to withdraw the advertisement notice and issue fresh advertisement notice on the

basis of the changed criteria. The underlining idea of changing the criteria was to convert merit of the petitioners into demerit. It is contended that

the manner in which the marks in the viva voce have been awarded in favour of the candidates, as disclosed in the reply to the writ petition, clearly

reflect this fact. Other contentions raised by the petitioners are that some of the forms have been accepted, which were incomplete and were not

inconsonance with the eligibility set out in the advertisement notice.

4. On the other hand stand of the respondents is that the eligibility set out in the advertisement notice was in consonance with the Subordinate

Recruitment Rules 1997, notified vide SRO 180 dated 26.06.1997. The underlining idea of changing criteria was on account of the fact that the

number of papers prescribed for two years Diploma Course and the certificate course is substantially uneven and the candidates who have

qualified the certificate course in the Draftsman trade for Institutions located outside the State have obtained marks which are generally much higher

in terms of percentage vis-a-vis those who have qualified the diploma from State Board of Technical Education. The medium of teaching also offers a difference between the two sets of candidates and so is the case with the content. It was also observed that some private institutions who have been offering two years certificate course and have been awarding marks rather generously were put in advantageous position on the basis of criteria reflected at the time of issuance of advertisement notice. In view of this backdrop it was found necessary, in order to give level playing field to those candidates, who have qualified from State Board of Technical education, to reduce the marks in the qualifying examination from 80 to 70 points. The Board, while taking into consideration interests of petitioners and respondents, dispensed with the written test and called all the candidates for interview. This in nutshell is the contention of the respondents.

5. I have heard learned counsel for the parties. The Power of the State to lay down criteria for making selection is its sole domain. The only requirement is that it should be fair and must have reasonable nexus with the object of selection. The power of the respondents to change the criteria cannot be disputed. The underlining principle in reducing marks in the academic qualification from 80 to 70 points and raising the marks of interview from 20 to 30 points by the respondents is also not a matter, which can be gone into by this Court. The justification provided is that the level playing field has been given to those persons who are at disadvantageous position and are asked to compete with those who are at an advantageous position. The criteria can be changed by the respondents but the only question is at what stage.

6. Right to seek appointment is a fundamental right under Article 16 of the Constitution. For making selection to the public post, State can adopt various methods for making selection to the said post from amongst candidates, who are similarly (sic) situated. The most accepted form of making selection is by advertisement indicating (sic) the post for which selection is to be made, and the eligibility for such post. Eligibility can be based on the rules governing selection to the said post and in absence of rules by an executive instruction, which has to be in consonance with principle of fair play. The mode of making selection can either be by written test or by viva voce or by both written test and viva voce. Any other mode of

selection can also be provided, which (sic) fair. The process and mode of selection has to be determined before the advertise-(sic)ment notice is issued. Once advertisement notice is issued the criteria for making selection is to be disclosed so as to ensure that the candidates are not taken by a surprise. It is essential that the mode of making selection has to be known to the candidates in advance. Once the mode of selection is disclosed, the candidates cannot after participation in the selection turnaround and state that such a mode was not proper and was contrary to the rules. Once the advertisement has been issued and the criteria disclosed, the selection has to be made on the basis of criteria laid down, (sic) cannot be on the basis of criteria, which has been subsequently changed. A person applying for appointment, if otherwise qualified in accordance with the terms of the (sic)dvertisement notice a right accrues to him for consideration in accordance with the terms of the advertisement notice as also criteria for making such a selection. Thus it (sic) held that where selection process is initiated by issuing advertisement notice, (sic)nviting applications, selection has to be made in accordance with the criteria disclosed at the time of advertisement notice. Subsequent amendment cannot be made applicable in the ensuing selection process. I am fortified in this view by the judgments of the Apex Court, which are given herein below:-

1. In K. Manjusree Vs. State of A.P. and Another, , it has been held:

B. Service Law - Recruitment process -Selection criteria - Selection criterion, held, has to be prescribed in advance -Rules of game cannot be changed afterwards -Minimum qualifying marks for interview prescribed after the interviews were over -Held, not permissible - A.P. High Court

Resolutions dated 24.7.2001, 21.2.2002 and 30.11.2004.

C. Service Law - Recruitment process -Eligibility - Minimum qualifying marks - Held, can be prescribed both for written examination and interview but such prescription has to be done in advance.

2. In Hemani Malhotra Vs. High Court of Delhi, , it is observed:

Service Law - Recruitment process -Changing rules of the game during selection process or when it is over - Held, not permissible - Initially there

was prescription of minimum marks for written test only and not for viva voce - However, minimum marks for viva voce prescribed after written

test was over - Held, not permissible - Even otherwise, further held, such course

of action for the purpose of appointment to Delhi Higher Judicial

Service, was contrary to recommendations in Justice Shetty Commission Report, as approved with certain modification in All India Judges' Assn.

case, (2002) 34 SCC 247, for the reason that it was expressly provided therein that there should be no cut-off marks for viva voce.

7. The other contention raised by the petitioners is that the object of soiling down marks for qualifying examination from 80 to 70 points and

enhancing interview marks from 20 to 30 points was intended to convert the petitioners' merit into demerit. This fact is corroborated from the

record and also reflected in the objections filed by the respondents. Higher marks have been given to the respondents in Open Merit in the

interview whileas in case of petitioners they have been given lesser marks. It is clearly reflected in the objections filed by the respondents, indicating

the merit position of the petitioners and respondents. The marks given to the private respondents in the open merit category clearly reflects that

excessive marks have been given to them in the interview', as a result of which their selection was made possible. As a matter of fact most of the

respondents except for few have been allotted marks over and above 20 points and the highest is 28.50 whileas in case of petitioners highest is 18

and lowest is 8.50. Apprehension of the petitioners on that count that the criteria was changed only to change their merit to demerit, is not

misplaced.

8. In view of the discussions herein above, I, accordingly allow this writ petition and set aside selection and appointment of the private respondents

with the direction that a fresh selection process will be initialed on the basis of the criteria disclosed in the advertisement notice No. 07 of 2005

dated 20th November 2005, whereby the marks reserved for the qualification was 80 points and for interview 20 points. All those persons who

have participated in the selection process be allowed to participate in the selection process including the petitioners and respondents. Let this

exercise be completed within three months from the date of this order. For the said period of three months the private respondents, who are in the

job, shall not be disturbed.

9. However, option is given to the official respondents to consider case of the petitioners for appointment in case posts are available. In that

eventuality the selection of the private respondents need not to be quashed. This exercise has to be undertaken during the aforementioned period

of three months. It is made clear that in case this part of direction is not complied with within stipulated period the selection in that case shall stand

quashed as stated herein above.

Disposed of.